

Factsheet

# Voice: A History of Representation

# ANTAR



# Voice: A History of Representation

**“We do need a voice but, more importantly, we need to be heard. And even more important than being heard, is we need to be understood, and then action [must be] taken based on what we’ve shared. I still have a big question about how that happens.”<sup>1</sup>**

**Paul Callaghan**

Until the success of the landmark 1967 Referendum, the Australian Commonwealth Government could not legislate on Aboriginal and Torres Strait Islander affairs. Instead, the States alone had the constitutional power to legislate for the ‘protection’ of Aboriginal and Torres Strait Islander peoples. Such protection took the form of laws like the *Aborigines Protection Act 1909* (NSW) which granted the NSW Aboriginal Protection Board the power to control Aboriginal reserves across the state and its 1915 amendment, which gave the Board broad powers to remove Aboriginal children from their families at any time and for any reason.<sup>2</sup>

When the amendment to Section 51 of the Constitution was approved at the 1967 Referendum, it had the practical and legal effect of allowing laws about First Nations peoples to be made at the Federal level.<sup>3</sup> Perhaps less formally but no less importantly, it also gave the Australian public an expectation that the Federal Parliament had a significant role to play in addressing the often dire practical conditions under which Aboriginal and Torres Strait Islander people lived.

There was then, and is still now, a fundamental lack of a permanent safeguard to ensure that Aboriginal and Torres Strait Islander peoples have a role in the

---

<sup>1</sup> Paul Callaghan as quoted in [‘Raising Indigenous voices on a Voice to Parliament’](#), Sydney Morning Herald, 20 January 2023.

<sup>2</sup> [Aborigines Protection Act](#), National Museum of Australia.

<sup>3</sup> [1967 Referendum Factsheet](#), ANTAR.

decision-making processes that affect their lives and communities. This role is often understood in simple terms as ‘having a say’. More recently, it has been articulated in the form of an Aboriginal and Torres Strait Islander Voice; that is, a constitutionally enshrined representative body that is able to productively engage with and make representations to the Parliament and Government concerning law and policy-making on issues that affect First Nations people.

Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples states:

**“Indigenous peoples have the right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision making institutions.”<sup>4</sup>**

The ability of First Nations peoples to secure and advance their right to meaningful self-determination hinges at least in part on their ability to participate in Federal decision-making through a representative body that is elected, accountable and enduring. As we will see, the need for and existence of such a body has been a highly contested and dynamic issue in Australian politics, and tracing the ultimate fates of representative structures over the years begs the question: even when First Nations peoples have and use their Voice(s), why are they being silenced?

---

<sup>4</sup> [UNDRIP](#), 15.

# Voice advisory bodies: a history of Aboriginal and Torres Strait Islander representative structures

The first substantive action from the Federal government regarding Aboriginal and Torres Strait Islander people having an increased say in their affairs following the 1967 Referendum came from the Whitlam government in 1972 with the formation of the National Aboriginal Consultative Committee (NACC). However, Aboriginal and Torres Strait Islander-led campaigning for a Voice in decision-making reaches back much further. What follows is a selected history of advisory or representative bodies to date that have been created with the intention to convey the voices, wishes and concerns of First Nations peoples at a national level.

## 1958 - 1978

### FCAATSI

**Fate: Disbanded**

Prior to the formation of NACC in 1972, The Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI) was founded in Adelaide, South Australia on 16 February 1958 as a civil rights organisation campaigning for the welfare of Aboriginal and Torres Strait Islander peoples. It was the first national body representing First Nations interests and acted as an umbrella organisation for a variety of state-based advocacy organisations, and its formation at the time was a significant milestone. At the height of its influence, FCAATSI brought together 68 organisations; it also successfully led the campaign for the 1967 Referendum. After the referendum and leading into the early 1970s, there was growing concern about the influence of non-Indigenous FCAATSI members – only three out of the original thirty people

who founded the Council in 1958 were First Nations, and the Executive Council had a white majority. Inspired by the Black Panther movement in the United States, there was a growing desire for Aboriginal-controlled organisations who could lead their own fight.<sup>5</sup>

At a very tense national conference in 1970, a motion was put to restrict membership of the executive and voting rights at general meetings to First Nations members.<sup>6</sup> From this point onward, council leadership was split and never recovered. FCAATSI eventually changed its name to the National Aboriginal and Islander Liberation Movement (NAILM) to reflect its change in focus, but disbanded in 1978 when state funding was removed.<sup>7</sup>

**“Black Australians must strengthen themselves into a solid, determined, fighting unit and dictate their own terms for their own advancement. They must define what is best for their own advancement and then they can determine where white Australians can be of assistance... Black reformers know they must unite their own people and allow them to elect their own councillors to speak and negotiate on their own behalf. Only then will black and white Australians be able to form a coalition and work together for the good of both sides”.**<sup>8</sup>

#### **Oodgeroo Noonuccal**

---

<sup>5</sup> Peter Read, 'Cheeky, Insolent and Anti-white: The split in the Federal Council for the Advancement of Aboriginal and Torres Strait Islanders - Easter 1970'. *The Australian journal of politics and history*, 1990, Vol.36 (1), p 76.

<sup>6</sup> A.Barrie Pittock. '[Easter 1970 and the origins of the National Tribal Council: a personal view](#)'. Koori Web.

<sup>7</sup> '[Federal Council for the Advancement of Aborigines and Torres Strait Islanders](#)', The Australian Women's Register.

<sup>8</sup> Pittock, 'Easter 1970', 2.

## 1972 - 1977

### NACC

**Fate: Abolished**

In 1972, the National Aboriginal Consultative Committee (NACC), also known as National Aboriginal Congress, was formed by the then-new Whitlam government who claimed that the process of First Nations peoples electing Aboriginal and Torres Strait Islander members to the NACC would address self-determination.<sup>9</sup> This marked a turn away from assimilationist policies and the beginning of a bipartisan 'self-determination' era in Australian policy which peaked with the creation of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1990 – more on this soon – and was ushered out with the Howard government in 1996. The policy of self-determination recognised that Aboriginal and Torres Strait Islander peoples had a right to be involved in decision making about their own lives, and was described by Whitlam himself as 'Aboriginal communities deciding the pace and nature of their future development as significant components within a diverse Australia'.<sup>10</sup>

The NACC was an advisory body made up of 41 nationally elected Aboriginal and Torres Strait Islander people who advised the Minister for Aboriginal Affairs on Aboriginal and Torres Strait Islander policy.<sup>11</sup>

Rather than acting as a meaningful tool for the advancement of First Nations self-determination, the NACC was treated as an advisory and consultative organisation with little effective power or influence.<sup>12</sup> Ultimately, it did not have the capacity to develop into an independent, agenda-setting policy organisation due to a lack of government support for such a function.

---

<sup>9</sup> Andrew Gunstone, 'Reconciliation, Peacebuilding and Indigenous Peoples in Australia' in Ed. Heather Devere, Kelli Te Maihāroa, John P. Synott. *Peacebuilding and the Rights of Indigenous Peoples: Experiences and Strategies for the 21st Century*, Springer International Publishing AG (2016): 18.

<sup>10</sup> Jenny Hocking, '[A transforming sentiment in this country': The Whitlam government and Indigenous self-determination](#)', *Australian Journal of Public Administration*, 77 (2018): S5.

<sup>11</sup> [The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples Interim Report](#). Parliament of Australia, 30 July 2018.

<sup>12</sup> Scott Bennett, *White Politics and Black Australians*, Routledge: London, (1999) as quoted in Devere et al. 'Peacebuilding', 18.

In 1976, the Department of Aboriginal Affairs condemned the National Aboriginal Consultative Committee (NACC), arguing that members' 'hostile attitudes' did not encourage the Minister or the Department 'to be forthcoming in responses to NACC requests, demands or advice'.<sup>13</sup> The following year, the NACC was abolished by the Fraser government when the advice provided by the NACC clashed with the Fraser government's policies.<sup>14</sup>

## 1977 - 1985

### NAC

#### **Fate: Abolished**

Following on from the abolishment of the NACC, the Fraser government established the National Aboriginal Conference (NAC) as a government consultative body comprising state and territory branches and a national executive of 10 members who were chosen by the state and territory branches as opposed to directly elected. Theoretically, the Conference provided a forum in which Aboriginal views on the conduct of Aboriginal affairs were expressed at a State and National level.<sup>15</sup> The NAC was consultative in nature, without executive authority, but could advise the Federal Minister for Aboriginal Affairs on specific issues referred to it by the Government.<sup>16</sup>

The Conference is known for its recommendation of a form of treaty between Aboriginal peoples and the Australian Government, using the Yolngu word 'makarrata' which in the Yolngu language means "the end of a dispute between communities and the resumption of normal relations".<sup>17</sup> Interestingly, the NAC took this position as they understood the broader Australian public would reject

---

<sup>13</sup> Harry Hobbs, '[Consultation and a First Nations Voice: Building on the Aboriginal and Torres Strait Islander Commission](#)' *AUS PUB LAW*, 5 March 2021.

<sup>14</sup> [The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples Interim Report](#). Parliament of Australia, 30 July 2018; and Gunstone, 'Reconciliation', 19.

<sup>15</sup> [National Aboriginal Conference, National Secretariat, Registry files and related papers 1977-1985](#), AIATSIS.

<sup>16</sup> *ibid*

<sup>17</sup> Wright 1985: 125 as quoted in Gunstone, 'Reconciliation', 20.

the word 'treaty'. Indeed, the Fraser government argued they would consider a makarrata but would reject a treaty as it "implies an internationally recognised agreement between two nations".<sup>18</sup>

Much like the NACC before it, relations between the Conference and the Federal Government progressively deteriorated over the course of its life, and the NAC was eventually abolished by the Hawke government in 1985 when the Government disagreed with its advice.<sup>19</sup>

## 1990 - 2005

### ATSIC

#### **Fate: Abolished**

After abolishing its predecessor, the NAC, due to its antagonistic relations with the Government, and under sustained pressure to address self-determination, the Hawke government in 1990 legislated to create the Aboriginal and Torres Strait Islander Commission (ATSIC).<sup>20</sup> The Hawke government argued that the formation of ATSIC, which had the administrative role of a government department and the representative role of the NAC, would advance self-determination.<sup>21</sup>

With both an administrative and representative arm, ATSIC had to play a delicate balancing act as the primary voice for Aboriginal and Torres Strait Islander peoples at the national level while also operating as a government agency.<sup>22</sup> It was the first national representative body that gave First Nations peoples both advisory and decision making capacity.<sup>23</sup>

---

<sup>18</sup> Baume 1981: 713 as quoted in Gunstone, 'Reconciliation', 20.

<sup>19</sup> Gunstone, 'Reconciliation', 19.

<sup>20</sup> Ibid, 21.

<sup>21</sup> Bennett, 'White Politics'.

<sup>22</sup> Larissa Behrendt, '[The abolition of ATSIC – Implications for democracy](#)', Democratic Audit of Australia – November 2005, 1.

<sup>23</sup> Ibid, 2.



ATSIC's main functions were to advise governments at all levels, provide peak national and international advocacy for Australian Aboriginal and Torres Strait Islander affairs, and deliver and monitor programs and services.<sup>24</sup> The original representative structure of ATSIC comprised 60 regional councils and a 20-member board consisting of 17 commissioners elected from within 17 geographical zones, plus a chairperson and two commissioners appointed by the Minister.<sup>25</sup> However, the structure of ATSIC was altered several times throughout its history, and, consequently, its responsibilities changed and fluctuated as a result of functions being transferred to and from other agencies.<sup>26</sup> Even more problematically, ATSIC was constrained by the fact that the majority of its budget – up to 85 percent – was quarantined by the government for expenditure on particular programs.<sup>27</sup>

By all accounts, ATSIC and its relationship with the Federal Government was criticised from a wide range of standpoints. Supporters of First Nations self-determination criticised ATSIC for its lack of autonomy from government and its failure to shape Indigenous affairs. They claimed that ATSIC's ministerial advice was ignored; that ATSIC's service delivery programs operated at the margins, that ATSIC produced a 'white' bureaucracy because it was unable to employ its own staff, and that it was subject to extensive external reviews and onerous administrative compliance.<sup>28</sup> Others point to the exclusion of fundamental policy areas such as education and health from ATSIC oversight as well as structural problems such as a chronic under-representation of women and lack of legitimacy in First Nations communities because the organisation and structures were based around Western political and administrative models.<sup>29</sup>

---

<sup>24</sup> Thalia Anthony, '[Learning from ATSIC](#)', ABC News. 6 January 2010.

<sup>25</sup> John Hannaford, Jackie Huggins, and Bob Collins, *In the Hands of the Regions - A New ATSIC: Report of the Review of the Aboriginal and Torres Strait Islander Commission*, November 2003: 18

<sup>26</sup> [The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples Interim Report](#). Parliament of Australia, 30 July 2018

<sup>27</sup> Ibid; for more, see Angela Pratt and Scott Bennett, '[The end of ATSIC and the future administration of Indigenous Affairs](#)', *Current Issues Brief No. 4* 2004-05: 9.

<sup>28</sup> Anthony, 'Learning from ATSIC'

<sup>29</sup> Fewer than 30 per cent of ATSIC representative roles were held by women. For more, see Gunstone, 'Reconciliation', 21; Anthony, 'Learning from ATSIC' and Dr Peter Burdon, Adelaide Law School, University of Adelaide, Committee Hansard, Adelaide, 5 July 2018: 22 as quoted in [The Joint Select Committee on](#)

Still others, however, argue that ATSIC became a scapegoat for the inadequacies of all levels of government in Aboriginal and Torres Strait Islander affairs.<sup>30</sup> It was often argued by the government that because socio-economic statistics for Aboriginal and Torres Strait Islander people still showed large levels of disadvantage compared to other sections of the population, ATSIC was not working.<sup>31</sup>

In 2003, an Australian Government review into ATSIC was launched, which found that an urgent structural change was needed.<sup>32</sup> Shortly after, in 2004, the Howard government announced its intention to abolish ATSIC, with the Mark Latham-led Labor Opposition pledging to do likewise.<sup>33</sup> ATSIC was formally abolished in 2005.

It is important to note that the government's moves to abolish ATSIC ran contrary to many of the major recommendations of the Review Panel into ATSIC's roles and functions, whose final report recommended against dismantling the body. The Review Panel suggested instead an overhaul of ATSIC's representative structure, in order to overcome the sense of detachment between local First Nations communities and the national board, and a strengthening of regional planning processes.<sup>34</sup>

Instead, then Prime Minister John Howard and the Minister for Indigenous Affairs, Senator Amanda Vanstone, announced that "the experiment in separate representation, elected representation, for indigenous [sic] people has been a failure" and that they would instead "appoint a group of distinguished indigenous [sic] people to advise the Government on a purely advisory basis in relation to aboriginal affairs".<sup>35</sup> Legislation to abolish ATSIC was swiftly passed

---

[Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples Interim Report](#). Parliament of Australia, 30 July 2018.

<sup>30</sup> Angela Pratt and Scott Bennett, ['The end of ATSIC and the future administration of Indigenous Affairs'](#), *Current Issues Brief No. 4* 2004-05: 10

<sup>31</sup> Behrendt, 'The abolition of ATSIC', 2.

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

<sup>34</sup> *ibid*

<sup>35</sup> Transcript of the Prime Minister the Hon. John Howard MP, Joint Press Conference with Senator Amanda Vanstone, Parliament House, Canberra, 15 April 2004.

with no consultation with First Nations communities.<sup>36</sup> Vanstone later conceded that removing all of ATSIC's regional apparatus during its abolition "might have been a mistake".<sup>37</sup>

But was the 'experiment' in elected representation for First Nations people truly a failure? Other voices raise compelling reasons for the abolition of ATSIC, pointing to the possibility that it was an attempt to silence dissent. ATSIC was able to develop policy on some key areas that reflected the position of First Nations peoples but conflicted with the Government's position; for example, ATSIC funded Native Title Representative Bodies to litigate native title claims in matters where the Federal government was a party.<sup>38</sup> It also pushed for the formation of a Treaty with the Federal government, and was vocal about the introduction of mandatory sentencing laws. In this sense, ATSIC refused to follow 'the black bureaucracy script', making it a prime target for dismantling.<sup>39</sup>

**"If we are truly committed to the notion of self-determination, we cannot begin to pursue it without instruments of governance".<sup>40</sup>**

**Jackie Huggins**

## **2004 - 2007**

### **National Indigenous Council**

**Fate: Discontinued**

After ATSIC was abolished, the Howard Coalition government created a hand-picked, government-appointed advisory committee in the form of the National Indigenous Council (NIC) to represent the interests of Aboriginal and Torres Strait Islander communities. The NIC's Terms of Reference required it to

---

<sup>36</sup> Anthony, '[Learning from ATSIC](#)'

<sup>37</sup> For more, see <https://www.abc.net.au/news/corrections/2018-08-22/amanda-vanstone-atsic/10152046>

<sup>38</sup> Behrendt, 'The abolition', 6.

<sup>39</sup> Virginia Falk, '[The Rise and Fall of ATSIC](#)', *Australian Indigenous Law Reporter* Vol. 8, No. 4, 2004: 17 Vol. 8, No. 4 (2004): 17.

<sup>40</sup> Jackie Huggins, 2003 Review into the Aboriginal and Torres Strait Islander Commission (ATSIC)

provide expert advice to Government on improving outcomes for Indigenous Australians.<sup>41</sup> The appointed representatives, however, were acting in an individual capacity and had no responsibility to represent broader Indigenous interests or be accountable to the communities whose interests their recommendations and views concerned.<sup>42</sup>

The NIC was rejected by several influential First Nations leaders who charged it with being a 'token gesture' ultimately used to rubber-stamp its policies by hand-picking First Nations individuals who would tell the Government what it wanted to hear.<sup>43</sup> Yawuru elder and politician Patrick Dodson claimed that with the NIC, the Government had "copped out" and "taken away any real ability of Aboriginal people to influence the political direction of policies over our lives and reduced us to being subordinates".<sup>44</sup> The NIC's mandate was ultimately discontinued in 2007.

## 2010 - 2019

### National Congress of Australia's First Peoples

#### **Fate: Forced out of operation**

In early 2010, the Rudd Labor Government established a new Aboriginal and Torres Strait Islander national body with its leaders directly elected by First Nations people, the National Congress of Australia's First Peoples.<sup>45</sup> The Congress was established as an independent, non-government entity and, in a national first for any organisation, had gender equality built into all aspects of its structure.<sup>46</sup>

---

<sup>41</sup> National Indigenous Council, '[Terms of Reference](#)'. Wayback Machine.

<sup>42</sup> Behrendt, 'The abolition', 7.

<sup>43</sup> '[Australian Government Announcement of new Indigenous Council Sparks Debate](#)', Cultural Survival. 16 November 2004; see also '[RIGHTS-AUSTRALIA: Concerns Over New Indigenous People's Body](#)', IPS News, March 16 2008

<sup>44</sup> '[Australian Government Announcement of new Indigenous Council Sparks Debate](#)', Cultural Survival. 16 November 2004.

<sup>45</sup> Gunstone, 'Reconciliation', 24.

<sup>46</sup> National Congress of Australia's First Peoples,

The Congress expressed strong support for the idea of constitutional recognition of Aboriginal and Torres Strait Islander peoples, with the hope that amendment to Australia's founding document would more accurately reflect Aboriginal and Torres Strait Islander peoples' custodianship, eliminate discriminatory provisions and recognise the inherent rights of First Nations peoples.<sup>47</sup> The Congress also lobbied for a treaty with the Commonwealth to recognise Aboriginal and Torres Strait Islander people's history and occupation of Australia.

In 2013, the Government withdrew most of its funding for the Congress. At the time, it represented more than 180 First Nations organisations and nearly 10,000 individual members. In 2019, the National Congress announced it was in serious financial trouble, with influential First Nations leaders such as Linda Burney and Patrick Dodson calling for the Government to restore its funding.<sup>48</sup> Later that year, the Congress was forced out of operation after the Minister for Indigenous Australians, Ken Wyatt, decided against committing further funding, citing "significant level of debt" and "unsustainable structure" as the reasons.<sup>49</sup>

The former co-chair of the Congress, Rod Little, spoke out after its closure, arguing that the Coalition government's lack of commitment to supporting the Congress was reflective of its fear of advocacy and innovative forms of governance; Little accused the government of silencing their voices in favour of funding service providers "to make them feel good about making a difference".<sup>50</sup>

---

<sup>47</sup> Jody Broun, 'Shaping Change: The National Congress of Australia's First Peoples Explores the Path Towards Constitutional Reform' *Indigenous Law Bulletin* 7, no. 25 (2011): 37.

<sup>48</sup> Lorena Allam, '[Dodson, Burney call for government to fund National Congress of Australia's First Peoples](#)', *The Guardian* 12 June 2019.

<sup>49</sup> Cassandra Morgan, '[National Congress of Australia's First Peoples' closure a step back for Aboriginal people: Rod Little](#)' *Canberra Times*, October 29 2019.

<sup>50</sup> *ibid*

**2013 - 2017**

## **Indigenous Advisory Council**

**Fate: Dissolved**

In 2013, and running in parallel with the National Congress, the Abbott government implemented the Indigenous Advisory Council (IAC) with members once again selected by the government. The IAC's stated purpose was to provide advice to the Government on Indigenous affairs, focusing particularly on practical changes to improve the lives of Aboriginal and Torres Strait Islander people including but not limited to 'improving school attendance and educational attainment' and 'creating lasting employment opportunities in the real economy'.<sup>51</sup>

In 2017, Malcolm Turnbull dissolved the IAC. Gurindji activist Maurie Japarta Ryan called the suspension of the Indigenous Advisory Council another attempt to silence Indigenous voices, drawing connections to the abolition of ATSIC:

**"The previous Prime Minister abolished ATSIC, this mob is doing the same thing. What they've done is clear out Aboriginal issues in Canberra for a start. To not have a voice at this very moment when Malcolm Turnbull is talking about whether it's a plebiscite or whether you're gonna have a referendum... This is all wrong".<sup>52</sup>**

## **Voice and the Constitution: a safeguard?**

As we have seen, there has been no shortage of Government-sponsored representative bodies designed to give Aboriginal and Torres Strait Islander peoples a say in the issues and policies that directly affect their lives and

---

<sup>51</sup> [Prime Minister's Indigenous Advisory Council](#)

<sup>52</sup> Nakari Thorpe, '[Is scrapping the Indigenous Advisory Council silencing our voice?](#)' NITV, 2 February 2017.

communities. But what the previous history also reveals is a lack of commitment to long term funding of these bodies, and a startling willingness on the part of governments to abolish, dissolve or dismantle representative structures that they perceive to be threatening, inefficient, experimental or otherwise at odds with their preferred policies.

Constitutional lawyer Harry Hobbs points out that many of these national Indigenous advisory bodies failed because they were intended merely to *incorporate* First Nations peoples into the processes of government without meaningfully restructuring the framework of governance.<sup>53</sup> When Aboriginal and Torres Strait Islander peoples spoke out or emphasised different priorities, the representative bodies were dismissed and abolished.<sup>54</sup>

These repeated limitations and failures on the part of Government have informed the request for Voice issued in the 2017 Uluru Statement from the Heart for a national representative body - the Aboriginal and Torres Strait Islander Voice - to be constitutionally enshrined. Writing a First Nations Voice into the Constitution ensures that it cannot simply be abolished; it will also help build moral and political pressure on the Government and Parliament to engage with and be accountable to the representations made by the Voice.<sup>55</sup>

Renowned constitutional law expert and Cobble Cobble woman Megan Davis has been vocal in her position that the history of representative bodies since the 1970s shows that a legislative Voice can easily be abolished and that constitutional recognition of a First Nations Voice "...is the only way to confer legitimacy."<sup>56</sup> Unlike past representative bodies, Davis argues that constitutional enshrinement of the Voice "ensures that the voice can speak fearlessly."

---

<sup>53</sup> Hobbs, 'Consultation'.

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

<sup>56</sup> ['Indigenous voice crucial to treaty, Uluru statement co-author Megan Davis says'](#) The Guardian, 4 June 2023.

## Voice to Parliament: the latest

A Voice to Parliament will be a permanent body to make representations to the Federal Parliament and the Executive Government on legislation and policy of significance to Aboriginal and Torres Strait Islander peoples.

The Voice would be able to make these representations proactively and in the early stages of developing proposed laws and policies.<sup>57</sup> Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government, in a way that suits the wishes of local communities in order to ensure cultural legitimacy. After the referendum, there will be a process with Aboriginal and Torres Strait Islander communities, the Parliament, and the broader public to settle the Voice design.

In July of 2021, Tom Calma and Marcia Langton (having been appointed by the Morrison Coalition government) released their co-authored final report to the Australian government on the Indigenous Voice co-design process, the culmination of a robust and contested process to design the Voice details as recommended by the 2018 Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples.<sup>58</sup>

According to the comprehensive report, the Voice would operate as a cohesive and integrated system composed of a) Local & Regional Voices and b) a National Voice. There would be 24 members of the National Voice with a gender-balance, with each member elected by the Local & Regional Voices; there would then be 35 Local & Regional Voices to represent districts across the country, who will be elected by the communities they represent.

At the Garma festival on 30 July 2022, Prime Minister Anthony Albanese reiterated his Government's solemn promise to implement the Uluru Statement from the Heart in full, starting with the enshrinement of an Aboriginal and

---

<sup>57</sup> [The Voice design principles](#)

<sup>58</sup> [Indigenous voice co-design process: final report to the Australian Government](#), NIAA



Torres Strait Islander Voice in the Constitution. Albanese announced draft provisions - three sentences to be added to the Constitution - in recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia.<sup>59</sup>

Since 2022, a Referendum Working Group comprised of diverse First Nations leaders from across Australia who have had longstanding involvement in the process for constitutional recognition, has been working to advise the Government on the timing of the referendum, the wording of the constitutional amendment and referendum question, as well as information about principles of the Voice.<sup>60</sup> On 23 March 2023, Prime Minister Albanese announced the wording of the proposed change to the Constitution:

## **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:

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.”

Following this announcement, a Joint Select Committee was set up to inquire into and report on the provisions of the bill introduced by the Government to be

---

<sup>59</sup> [Prime Minister Address to Garma Festival](#), 30 July 2022 speech

<sup>60</sup> [First Nations Referendum Working Group](#)

submitted to a referendum on the Aboriginal and Torres Strait Islander Voice. It released its report in May 2023 with one recommendation: that the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023 be passed unamended.<sup>61</sup>

On 31 May 2023, the Voice to Parliament referendum bill passed the House of Representatives with 121 in favour and 25 against.<sup>62</sup> On 19 June, after rare third hearing speeches were made, the bill passed the Senate with 52 votes in favour and 19 against.<sup>63</sup> This means a referendum must be held within two to six months from 19 June.

## On Voice, listening, and being heard

**“There are two paths from here. One is the path of listening and not hearing. And the other is the path of listening and hearing. Before we arrive at an agreed position we, as a nation, need to learn how to listen and hear what it is the first peoples are saying”.<sup>64</sup>**

**Megan Davis and Marcia Langton**

There is no doubt that Aboriginal and Torres Strait Islander peoples both need and are deserving of an enduring representative body designed to bring their voices, concerns and priorities into the halls of Australian power. It has been both stated and proven, time and time again, that First Nations peoples know

---

<sup>61</sup>[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc\\_pdf/AdvisoryReportontheConstitutionAlteration\(AboriginalandTorresStraitIslanderVoice\)2023.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000125/toc_pdf/AdvisoryReportontheConstitutionAlteration(AboriginalandTorresStraitIslanderVoice)2023.pdf)

<sup>62</sup> [‘House of Representatives passes Voice referendum legislation, which is assured of Senate passage’](#), The Conversation, 31 May 2023.

<sup>63</sup> [‘Historic Indigenous voice referendum bill passes parliament ahead of public vote’](#), The Guardian, 19 June 2023.

<sup>64</sup> Megan Davis and Marcia Langton. *It's Our Country : Indigenous Arguments for Meaningful Constitutional Recognition and Reform*, Melbourne University Publishing, 2016: 13.

what is best for their communities.<sup>65</sup> They have not only the long-standing lived experience but culturally relevant solutions, and while the implementation of these solutions need not rely on the permission of the government of the day, it is incumbent upon those in power to not only make space for these solutions to be shared, but to remove the structural barriers in place that prevent their enactment.

## **“Aboriginal people have got the solutions, we've always had the solutions. Let us get on with it.”**

### **Roy Ah See**

In light of this, it is helpful to make a distinction between having a Voice, being listened to, and being heard.

First Nations peoples are already, and have always been, speaking and sharing their truths.

As we face a referendum later this year asking us to vote on whether to enshrine an Aboriginal and Torres Strait Islander Voice into the Australian Constitution, perhaps less attention and worry should be focused on establishing the details of the Voice and more paid to the question of how to ensure the Government will engage with and truly listen to what is – in some cases already and repeatedly – being said?

Consider two of the most devastating issues facing Aboriginal and Torres Strait Islander communities: deaths in custody and child removal. The 1991 Royal Commission into Aboriginal Deaths in Custody made over 330 recommendations. Since then, and despite repeated and tireless advocacy and calls for change from prominent and everyday First Nations individuals, the landscape has worsened, with Aboriginal and Torres Strait Islander deaths in

---

<sup>65</sup> For example, see: [‘Successful Aboriginal health solutions’](#), [2005 speech by Tom Calma](#), [‘Our Knowledge, Our Way’](#), [“Too much money is spent on jails and policing: what Aboriginal communities told us about funding justice reinvestment to keep people out of prison”](#).

custody at a record high.<sup>66</sup> Likewise, the 1997 Bringing them Home report on continuing high rates of First Nations child removals and overrepresentation of First Nations children in out-of-home care made 54 recommendations. A 2017 review found that the majority of these recommendations had not been implemented and that many First Nations children and families were in fact worse off.<sup>67</sup> This abject failure is not due to a lack of Aboriginal and Torres Strait Islander individuals and communities raising their voices on these issues.

Throughout 2022 and 2023 in Victoria, for example, the Yoorrook Justice Commission - Victoria's first formal truth-telling process into historical and ongoing injustices experienced by First Peoples - received submissions from First Nations leaders, experts, service providers and community members on the issue of persistent systemic and structural injustice against First Peoples in the criminal justice and child protection systems.<sup>68</sup> Many of these submissions offered culturally safe, trauma-informed policies and alternatives to current incarceration and child removal practices. Deputy Chair of the Commission, Wurundjeri and Ngurai Illum Wurrung woman Sue-Anne Hunter, shared that at the time of Kevin Rudd's 2008 apology to First Nations peoples, there were under 10,000 Aboriginal and Torres Strait Islander kids in out-of-home care. In 2023, there are currently over 22,000.<sup>69</sup>

It is clear that First Nations peoples have raised, and will continue to raise, their Voice(s) in whatever avenues are available to them – from the many representative bodies throughout the years to commissions, reports, petitions and in grassroots movements on the streets – on the issues that affect their lives and communities. For all of the commentary and history on the need for Aboriginal and Torres Strait Islander peoples to have a say in the policies and

---

<sup>66</sup> 'Indigenous deaths in custody at record high and public perception of police worst in 10 years, report finds', The Guardian, 6 June 2023; see also '[Act now on enduring disgrace of Indigenous deaths in custody](#)', The Age, 5 March 2023.

<sup>67</sup> [Bringing Them Home 20 years on: an action plan for healing](#)

<sup>68</sup> 'Overview', Yoorrook Justice Commission

<sup>69</sup> [Yoorrook Justice Commission tweet](#), Twitter 26 May 2023.

decisions that continue to affect their lives, considerably less attention has been paid to what Stan Grant calls Australia's 'communications problem'.<sup>70</sup>

Ultimately, whether we can learn from the broken history of government-appointed First Nations bodies goes beyond having a Voice. It is about being heard and understood, and this lies not in the hands of Aboriginal and Torres Strait Islander peoples but with the rest of us.

Without a responsive government driven by an engaged and informed citizenry who are committed to the struggle for self-determination that First Nations peoples have been engaged in for generations – and to the undoing of the settler colonial structures and mindsets that continually thwart their efforts – no single representative body will be able to provide the substantive changes for individuals and communities that First Nations peoples have been calling for. First Nations peoples deserve, at the very least, to have their inherent rights for self-determination in the form of an Aboriginal and Torres Strait Islander Voice constitutionally enshrined.

The question is will we – can we – listen?

---

<sup>70</sup> Stan Grant, '[In the year of the Voice, Australians must overcome a language barrier if we're to speak to each other, to hear the same truth](#)', *ABC News*, 12 February 2023.

© ANTAR 2023

Email: [hello@antar.org.au](mailto:hello@antar.org.au)  
Phone: 02 9280 0060

PO Box 77  
Strawberry Hills NSW 2012

**With thanks:**

This background report was authored by  
Ms Jessica Johnston (ANTAR Research & Programs Officer)

**ANTAR is proud to acknowledge and pay our respects  
to First Nations Peoples as the traditional owners  
of the lands on which we work across the continent.**

For more information visit:

**ANTAR.ORG.AU**