

# A Voice to Parliament and government

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The proposed First Nations Voice is a simple idea – to provide a representative voice for Aboriginal and Torres Strait Islander people so that the government and Parliament can hear their views. A constitutional First Nations Voice is intended to be *both* symbolic and practical. It would be a powerful statement, recognising the place of First Nations people as part of our polity and their history and cultural connection to Australian lands and waters. It would also be a vehicle for ‘practical’ action to address Indigenous disadvantage.

The *Constitution* indicates who we are as a nation, who belongs, and how power is exercised. Changing the *Constitution* to guarantee a First Nations Voice would be an important statement that Australia has moved on from our historical exclusion of Aboriginal and Torres Strait Islander people. It would continue the journey that our *Constitution* has been on since 1901. The original text of the *Constitution* specifically excluded people of ‘an aboriginal race in any State’ as outside the Commonwealth’s legislative power and excluded Aboriginal people from the reckoning of the numbers of the people of the Commonwealth. In 1967, both exclusions were deleted. These 1967 changes were an important symbolic statement, as well as a practical change that gave the Commonwealth power to make laws for Aboriginal people – including laws such as native title and cultural heritage protection.

In 2020, another important symbolic and practical change was achieved, this time in a decision of the High Court. In *Love v Commonwealth*, the Court held that ‘Aboriginal Australians’ could not be ‘aliens’ for the purposes of s 51(xix) – a term to indicate people who do not ‘belong’ to the constitutional people. This meant Aboriginal people could not be subject to detention and deportation from Australia.

In 2023, the Voice proposal now provides an opportunity to take another symbolic and practical step – this time, one asked for by First Nations peoples in the consensus position of the Uluru Statement from the Heart. A First Nations Voice entrenched in the *Constitution* would recognise Aboriginal and Torres Strait Islander people as active members of the Australian polity. The

Voice would be a powerful, positive recognition of First Nations peoples as having a guaranteed say in the policies and laws made in relation to them, and as peoples who undoubtedly ‘belong’.

The Voice would be more than symbolic. It is intended to be the first step towards better decision-making by the Commonwealth government and Parliament, and to redress the political powerlessness of First Nations peoples and open the way for Treaty and Truth – the other elements sought in the Uluru Statement. The *Constitution* sets out the institutions of state power, what roles they have and how they interact with each other. The Voice would be established as an institution, entrenched in our political system of government.

The Voice has been designed to be a body which is representative of First Nations and able to give the Parliament and government advice on the impact that decisions, laws and policies have on First Nations peoples. The Voice is to acclimatise Australian public institutions to listen to First Nations, with the aim of incremental change over time to make better decisions. A Voice could provide the advice that the government and Parliament need.

Given the purpose of the Voice, it must have the capacity to make representations to both the Parliament and the Executive government of the Commonwealth. State power is exercised in distinct ways by each of those components of our constitutional structure. The Executive develops and implements policy as well as crafting proposals which then develop into the legislative work of the Parliament. The Parliament is the core of representative government and exercises legislative power as well as scrutinising the Executive. Making representations to only one of those two key institutions of power would be an incomplete and incoherent practice if the Voice is to make First Nations’ views heard by the Australian state.

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