



Expert analysis of the 'Official Yes/No Cases' published by the Australian Electoral Commission

Constitution Alteration (Aboriginal and Torres Strait Islander Voice) 2023

28 August 2023

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Introduction and Executive summary

With the release of the 'Official Yes and No Cases' by the Australian Electoral Commission, members of the **Gilbert + Tobin Centre of Public Law** and the **Indigenous Law Centre** has developed this resource to assist the Australian public navigate that material. This report explains the authorship of the Yes and No cases and the role of the Australian Electoral Commission in distributing them to Australian households. This report provides a line-by-line analysis of the substantive claims that are contained in the Yes and No cases. This analysis is informed by our combined expertise and experience in constitutional law, Indigenous legal issues, referendum law, political science and government administration.

This analysis reveals that the Yes pamphlet's claims are accurate – that is, they are based on facts and the historical record, as well as research in relation to policy development in Indigenous affairs. Where more general claims are made, they are supported by research.

In contrast, the No pamphlet's claims are largely misleading, that is, the claims are out of context, with relevant information omitted, or imply something that is incorrect. Further, many of the claims are inaccurate, that is, they are not based on the facts and the historical record. Other general claims in the No campaign are unsupported by research in the relevant areas.

These findings are not simply disagreements in terms of the proposed amendment – or differences of opinion. The No pamphlet is replete with factual inaccuracies and misleading and unsupported claims. This analysis is of great concern for the outcome of the referendum. Misinformation – whether that be in the form of inaccurate information, or misleading or unsupported claims – has the capacity to distort voters' understanding of the issues and ultimately their vote and the result.

The **Gilbert + Tobin Centre of Public Law** and the **Indigenous Law Centre** are based at the University of New South Wales (UNSW). The Gilbert + Tobin Centre of Public Law is a leading Australian public law research centre, producing high quality research and engaging with government, academics and the broader community to deepen understanding of public law issues, inform debate and influence change. The Indigenous Law Centre was established in 1981, it is Australia's first and pre-eminent University-based Indigenous legal centre. It has contributed to the recognition, protection and development of the legal rights and freedoms of Indigenous peoples both in Australia and internationally.

Explainer: The Yes and No cases

Australian referendum law provides for the preparation and circulation of a pamphlet. Under the *Referendum (Machinery Provisions) Act 1984* (Cth), the pamphlet may contain arguments for and against the proposed constitutional amendment of 2,000 words each (the so-called Yes and No cases) and a statement showing the proposed changes to the Constitution. The Yes and No cases are authorised by a majority of those members of the Parliament who voted for and against the amendment. The Act requires the Electoral Commissioner, upon receipt of the Yes and No cases, to arrange for the pamphlet to be printed and sent to each household at least 14 days before polling day.

In July 2023, the Electoral Commissioner received Yes and No cases relating to the Voice proposal and published them on the Australian Electoral Commission website as *Your Official Yes/No Referendum Pamphlet*. The Commissioner published the Yes and No cases in the form in which they were submitted by the relevant members of Parliament. The Commission will print and distribute the pamphlet to all households at least 14 days before the referendum, which is to be held by the end of the year.

The Yes/No pamphlet was originally introduced in 1912 to provide better information to voters in referendums, and it was hoped that the arguments would be put impartially and without misleading or incorrect claims. However, the pamphlet has proven to be controversial, and used to make political arguments designed to persuade voters, and not inform their vote. They have in the past contained exaggerated and misleading claims. This has led to calls for reform of the Yes/No Pamphlet and for the arguments to be drafted, or reviewed, by an independent body of relevant diversity, expertise and experience.

In the absence of such reforms, the Indigenous Law Centre and Gilbert + Tobin Centre of Public Law has undertaken its own review of the claims made in the Yes/No pamphlet, to assist voters with reliable information, for understanding the proposal and the arguments for and against the change, and to help in making an informed decision at the upcoming referendum.

Explainer: The role of the Australian Electoral Commission (AEC) in the Yes/No Pamphlets

The Australian Electoral Commission (AEC) is an independent body created by statute to provide for the independent and impartial management of the electoral system for voters, including by managing the electoral roll, delivering polling services at elections, and conducting education and public awareness campaigns. It is also responsible for conducting referendums under the *Referendum (Machinery Provisions) Act 1984* (Cth).

Under this legislation, the Electoral Commissioner is required to distribute the Yes and No cases, authorised by the parliamentarians, as part of a pamphlet.

While the pamphlet is called the "Official" Yes/No pamphlet, it is important to remember that the independent AEC was not involved in preparing the Yes and No cases, and has not been involved in reviewing the accuracy of the claims made in the cases.

Analysis – Key to terminology

Term	Explanation
Accurate	The claim is accurate.
Inaccurate	The claim is inaccurate.
Assisted by further explanation	Understanding the claim is assisted by further explanation.
Misleading	Information has been presented incorrectly, out of context or omitted.
General claim supported by research	The claim is a specific one as to the future but is supported by available general research.
Unsupported	This is a subjective claim but is unsupported by the argument made or is a claim as to the future that is not supported by available general research.

Overview – Analysis of the Yes/No case key claims

The Yes Case – the 8 'key facts'	
Idea comes from Aboriginal and Torres Strait Islander people.	This is accurate. The request for the Voice came from the national deliberative consultation process with Aboriginal and Torres Strait Islander people, known as the Regional Dialogues and the First Nations Constitutional Convention at Uluru in 2017. Polling confirms that the idea continues to receive overwhelming (more than 80%) support from Aboriginal and Torres Strait Islander people.
Recognises First Peoples in our Constitution.	This is accurate. The opening line of the constitutional amendment explicitly ties the creation of the Voice to the recognition of Aboriginal and Torres Strait Islander peoples.
A committee of Aboriginal and Torres Strait Islander people.	This is accurate, assisted by further explanation. The constitutional amendment refers to the Aboriginal and Torres Strait Islander Voice as being a 'body'. The composition of the Voice will be determined by the Parliament in designing the detail of the body. The Government's publicly released ' Design Principles ' include that the Voice will be made up of and chosen by Aboriginal and Torres Strait Islander people.
Gives people a say on issues affecting them.	This is accurate, assisted by further explanation. The Voice will give Aboriginal and Torres Strait Islander people a say on <i>government and parliamentary decisions</i> about issues relating to them.
Listening will mean better results – and better value for money.	General claim supported by research. There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators (health, housing, education etc) when the government listens to the views of Aboriginal and Torres Strait Islander people, and this will result in better results and value for money.
Representatives from all states and territories, the Torres Strait Islands and remote communities.	This is accurate, assisted by further explanation. It is not constitutionally required, but reflects the Government's published Design Principles, that it has agreed to follow should the referendum be successful.
Will include young people and a balance of men and women.	This is accurate, assisted by further explanation. It is not constitutionally required, but reflects the Government's published Design Principles, that it has agreed to follow should the referendum be successful.
Parliament and Government still responsible for laws, programs and funding.	This is accurate. The Solicitor-General of the Commonwealth has advised that there is nothing in the constitutional amendment that would 'fetter or impede' the exercise of the powers of the Parliament or the Executive. Indeed, the Solicitor-General has advised that the Voice will enhance their work. The Voice does not have constitutional power to veto parliamentary and government decisions, and the Government's Design Principles indicate there is no intention for the Voice to administer funding or deliver services.

The No Case – 10 reasons to vote No	
1. THIS VOICE IS LEGALLY RISKY	This is misleading. It does not reflect the overwhelming majority of legal opinion that has confirmed the proposal for the Voice in the constitutional amendment is legally and constitutionally sound.
2. THERE ARE NO DETAILS	This is inaccurate. Full details have been provided about the constitutional amendment. This includes the wording of the amendment, the Government’s explanatory memorandum presented to Parliament in March, a joint parliamentary committee report on the amendment in May, the Solicitor-General’s legal advice published in April, and the communiques and advice of the Referendum Working Group and Constitutional Expert Group who did their work across 2022-23. Reflecting ordinary constitutional practice, the remaining detail, including the operation of the Voice and its membership, has been left in the constitutional amendment to be determined by the Parliament, through the ordinary legislative process, and can be changed by the Parliament. It is misleading to imply however that there is no information about how these details will be determined, as significant details are provided in the Government’s publicly released Design Principles.
3. IT DIVIDES US	This is misleading. It does not reflect the current constitutional position, in which there has always been different treatment of Aboriginal and Torres Strait Islander people, including a power to make special laws based on race. The Voice proposal is a way of recognising this existing difference, and the unique status, history and culture of Aboriginal & Torres Strait Islander people, in a positive way. The concept of division implies discrimination and unequal treatment. But contrary to this simple statement, equality does not require treating all people the same – indeed, such formal ideas of equality are outdated, and often perpetuate structural and institutional discrimination and unfair treatment. Modern ideas of equality look at substantive treatment, which recognises that there will be differences between individuals and groups that might require different treatment. According to international and domestic human rights law, one such group are Indigenous peoples, whose unique history, culture and connection to land require due recognition. This includes political participation.
4. IT WON’T HELP INDIGENOUS AUSTRALIANS	This is unsupported. This claim mischaracterises the Voice as a ‘bureaucracy’, which does not reflect the intended representative nature of the Voice. It also ignores the significant research that supports the view that greater input from Aboriginal and Torres Strait Islander people into government policies and laws that affect them will result in better outcomes for them, and better use of public funding.
5. NO ISSUE IS BEYOND ITS SCOPE	This is inaccurate. The Voice may make representations only about matters ‘relating to Aboriginal and Torres Strait Islander peoples’. While this is a deliberately broad remit, it is legally limited. The Voice will also have to operate within pragmatic and political realities, which means it will not have the resources to make representations on every matter relating to Aboriginal and Torres Strait Islander people, and it will need to prioritise the most pressing issues for those people it represents and to whom it is accountable.
6. IT RISKS DELAYS AND DYSFUNCTION	This is misleading. It ignores the fact that the amendment leaves Parliament and the Government with the last say on laws and policies. It does not reflect the overwhelming majority of legal opinion that the High Court is highly

	<p>unlikely to draw any implied requirement for the Government to give notice to the Voice, consult with the Voice, or take into account the Voice's views. While the basic principle of access to the courts means there may be constitutional challenges and arguments mounted, the overwhelming majority of legal opinion is that there will be no ongoing constitutional supervisory role for the courts that could create ongoing delay and dysfunction. The constitutional amendment deliberately emphasises political participation by Aboriginal and Torres Strait Islander peoples in the policy and parliamentary process rather than specifying any legal obligations on the Parliament or Government.</p>
7. IT OPENS THE DOOR FOR ACTIVISTS	<p>This is a subjective claim that is apt to mislead. This is because it overlooks the fact that the Voice cannot compel government or Parliament to do anything, and that any future decision regarding matters such as Aboriginal and Torres Strait Islander rights or reparations will need to be made and agreed on by the democratically elected Government and Parliament. The so-called 'activist' statements quoted in the No case come from individuals, and do not represent the collective view of Aboriginal and Torres Strait Islander people. Indeed, the intention of the Voice is that it will provide a vehicle through which those views can be more accurately ascertained, and communicated to Government and the Parliament.</p>
8. IT WILL BE COSTLY AND BUREAUCRATIC	<p>This is a subjective claim that is apt to mislead. The question of funding and resourcing, as with every other government body, including the Parliament and the Courts, will be an ongoing matter that is determined by the government. This will allow, as part of the ordinary and democratic budgetary process, for the annual budget of the Voice to be determined, and varied, as the operations of the Voice, and the broader budgetary context, requires. The exact allocation of funding will depend on the final design of the Voice, following a successful referendum. It is also likely that the initial set-up of the Voice will require more investment than its ongoing operation. Further, once established, the evidence suggests that the Voice will start to result in better outcomes, and therefore more efficient allocation of government funding, resulting in net funding gains from the establishment of the Voice.</p>
9. THIS VOICE WILL BE PERMANENT	<p>This is misleading. The constitutional amendment has been carefully drafted so that the creation of the Voice and its core function are constitutionally entrenched, but its detailed design will be set by the Parliament through the normal, public law-making process, and can be changed, adapted and improved through the normal, public and transparent law-making process. The Australian people can abolish the Voice through a referendum.</p>
10. THERE ARE BETTER WAYS FORWARD	<p>This is unsupported. There is no concrete proposal put forward to address the issues that the Voice is directed at provided under this 'reason'.</p>

Analysis: The Yes Case

Yes Case claim	Analysis / explanation
<p>Vote Yes for a better future for Aboriginal and Torres Strait Islander people and all Australians.</p>	<p>This is a summary aspirational statement about the future impact of the Voice which is consistent with the stated aspirations in the Uluru Statement from the Heart, that the Voice will provide a better future for Aboriginal and Torres Strait Islander people as well as the wider Australian population.</p>
<p>Vote Yes for unity, hope and to make a positive difference.</p>	<p>This is a summary aspirational statement about the future impact of the Voice.</p>
<p>Voting YES is about:</p> <p>Recognition</p> <p>■ Recognising Aboriginal and Torres Strait Islander people in our Constitution and paying respect to 65,000 years of culture and tradition.</p> <p style="text-align: center;">***</p> <p>Listening</p> <p>■ Listening to advice from Aboriginal and Torres Strait Islander people about matters that affect their lives, so governments make better decisions.</p>	<p>Meeting the request in the Uluru Statement from the Heart for a constitutionally-enshrined Voice will operate as constitutional recognition of the unique place and history of Aboriginal & Torres Strait Islander people. This request came from one of the most comprehensive consultation processes with Aboriginal and Torres Strait Islander people ever conducted, through the 2016-2017 Regional Dialogues and the First Nations Constitutional Convention held at Uluru in May 2017. It is the form of recognition that they have asked for.</p> <p style="text-align: center;">***</p> <p>The reference to listening refers to the core function of the Voice: making representations to government and the Parliament on matters affecting Aboriginal and Torres Strait Islander people, so that decisions and laws are informed by those views. There is substantial academic research that supports the claim that when the government listens to the views of Aboriginal and Torres Strait Islander people, this leads to</p>

<p style="text-align: center;">***</p> <p>Better Results ■ Making practical progress in Indigenous health, education, employment and housing, so people have a better life.</p> <p style="text-align: center;">***</p> <p>It's a change only you can make happen.</p>	<p>better decisions, in the sense of better outcomes and better use of public money. The positive impact of listening to Indigenous voices is supported by research such as that conducted in Australia led by Professors Fiona Stanley and Marcia Langton, and internationally at the Harvard Project on Indigenous Governance and Development.</p> <p>The recent Productivity Commission's draft report (2023) into the implementation of the Closing the Gap Agreement also supports the claim that without more genuine engagement with Aboriginal and Torres Strait Islander people, progress will not be made on the socio-economic targets in the Closing the Gap Agreement.</p> <p style="text-align: center;">***</p> <p>There is substantial academic research (see immediately above) that supports this claim that practical progress will be made in relation to key indicators such as Indigenous health, education, employment and housing, when the government listens to the views of Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p> <p>This statement reflects the constitutional role that the Australian people play in voting for a constitutional amendment under section 128 of the Constitution.</p>
<p>Vote Yes to an idea that comes directly from Aboriginal and Torres Strait Islander people themselves: Constitutional Recognition through a Voice.</p>	<p>It is correct that the call for constitutional recognition through the Voice came from a carefully designed national deliberative process with Aboriginal and Torres Strait Islander people from across the country. This was known as the Regional Dialogues, which led to the First Nations Constitutional Convention and the</p>

	<p>delivery of the Uluru Statement from the Heart. The Uluru Statement calls for constitutional recognition through structural reform that will facilitate participation in government and parliamentary decisions, known as the Voice.</p>
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What is the Voice:

The Voice will be a committee of Aboriginal and Torres Strait Islander people who will give advice to the Parliament and Government on issues that affect their community.

It will include Indigenous Australians from every state and territory, the Torres Strait Islands and representatives from the regions and remote communities.

Members of the Voice will be chosen by Aboriginal and Torres Strait Islander people in their local area and serve for a fixed period.

The constitutional amendment refers to the Aboriginal and Torres Strait Islander Voice as being a 'body'. The composition of the Voice will be determined by the Parliament in designing the detail of the body.

Working with the First Nations Referendum Working Group, the government has agreed to a set of 'Design Principles', that will guide the design of the Voice should a referendum be successful. They include:

The Voice will be chosen by Aboriginal and Torres Strait Islander People based on the wishes of local communities:

- Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government.
- To ensure cultural legitimacy, the way that members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-referendum process.

The Voice will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth:

- Members of the Voice would be Aboriginal and/or Torres Strait Islander, according to the standard three part test.
- Members would be chosen from each of the states, territories and the Torres Strait Islands.
- The Voice would have specific remote representatives as well as representation for the mainland Torres Strait Islander population.
- The Voice will have balanced gender representation at the national level.

The Design Principles also include that 'Members would serve on the Voice for a fixed period of

	<p>time, to ensure regular accountability to their communities’.</p> <p>The constitutional amendment refers to the core function of the Voice as making representations to Parliament and the Government on matters relating to Aboriginal and Torres Strait Islander peoples. It is accurate to describe this function as giving ‘advice’ in that it will not have any binding effect on government and the Parliament. There is a requirement that the Voice only give advice on issues ‘relating to Aboriginal and Torres Strait Islander peoples’. That includes matters that exclusively relate to Aboriginal and Torres Strait Islander people, and also general matters that have a specific impact on them.</p>
<p>Why we need it:</p> <p>There are big challenges facing Aboriginal and Torres Strait Islander people:</p> <ul style="list-style-type: none"> ■ A life expectancy 8 years shorter than non-Indigenous Australians. <p style="text-align: center;">***</p> <ul style="list-style-type: none"> ■ Worse rates of disease and infant mortality. 	<p>This is correct. Latest Australian Bureau of Statistics (ABS) data from 2015-2017 puts life expectancy of Aboriginal and Torres Strait Islander people between 7.8 and 8.6 years below that of non-Indigenous Australians.</p> <p style="text-align: center;">***</p> <p>This is correct. The Australian Institute of Health & Welfare burden of disease study for 2018 found "After taking into account differences in age structure, Indigenous Australians experienced overall burden from disease and injury at 2.3 times the rate of non-Indigenous Australians".</p> <p>The Australian Institute of Health & Welfare reports that the "death rate for Indigenous infants was 1.9 times as high as for non-Indigenous infants. Between 2010 and 2019,</p>

<p style="text-align: center;">***</p> <p>■ A suicide rate twice as high.</p> <p style="text-align: center;">***</p> <p>■ Fewer opportunities for education and training.</p> <p style="text-align: center;">***</p> <p>Clearly, the current approach isn't working.</p>	<p>there was no significant change in the Indigenous infant mortality rate." In the same period the rate for non-Indigenous children dropped by 28%, so the gap widened by 58% in that recent period.</p> <p style="text-align: center;">***</p> <p>According to the Australian Institute of Health & Welfare, suicide rates in Aboriginal and Torres Strait Islander people for the 20 years to 2021 have been 1.4 to 2.4 times higher than for non-Indigenous Australians. This is supported by ABS data.</p> <p style="text-align: center;">***</p> <p>The ABS data from 2021 on the Closing the Gap Targets (5-7) that relate to the education opportunities for Aboriginal and Torres Strait Islander children and adults show that, while there has been progress to create more equal opportunities for education and training, Australia is not on track to meet the targets that will close the gap with non-Indigenous Australians. For instance, 68.1% of Indigenous people aged 20-24 in 2021 had attained year 12 or equivalent, against 90.7% of the non-Indigenous population (Target 5).</p> <p style="text-align: center;">***</p> <p>This is a statement that draws conclusions about the current approach, based on the accurate presentation of current outcomes for Aboriginal and Torres Strait Islander people. For instance, the recent Productivity Commission's draft report (2023) into the implementation of the Closing the Gap Agreement commented "Progress in implementing the Agreement's</p>
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<p style="text-align: center;">***</p> <p>To close these gaps, find solutions and plan for the future we need to listen to advice from Aboriginal and Torres Strait Islander people about issues affecting their lives and communities.</p>	<p>Priority Reforms has, for the most part, been weak and reflects a business-as-usual approach to implementing policies and programs that affect the lives of Aboriginal and Torres Strait Islander people.”</p> <p style="text-align: center;">***</p> <p>There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people.</p>
<p>How the Voice will work:</p> <p>The Voice is about advice.</p> <p style="text-align: center;">***</p> <p>When governments listen to people about issues that affect them, they:</p> <ul style="list-style-type: none"> ■ Make better decisions. ■ Get better results. ■ Deliver better value for money. 	<p>This is a correct summary of the constitutional function of the Voice, which is described in the amendment as making ‘representations’ to the Government and the Parliament. These representations will inform the work of Government and Parliament but are not binding on them, and in that respect are about ‘advice’.</p> <p style="text-align: center;">***</p> <p>This is accurate in that there is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people, and this will result in better value for money.</p>
<p>The Voice will give advice on key issues facing Aboriginal and Torres Strait Islander people, from better infant</p>	<p>Under the constitutional amendment, the issues on which the Voice will provide advice must relate to Aboriginal and Torres Strait Islander peoples. Within this deliberately broad set of matters, the outer limits of which will be legally</p>

health to improving services in remote areas.

Parliament and Government will still be responsible for all laws, programs and funding.

Patrick Dodson, Senator for Western Australia, Yawuru Elder: *"When people on the ground are listened to and engaged, better laws and policies are made. Advice from the Voice will make our*

enforceable, the Voice will determine its own priorities. The Voice will be accountable to those whom it represents, a key force for ensuring it will focus on the priority issues facing Aboriginal and Torres Strait Islander communities.

Statements from Aboriginal and Torres Strait Islander people indicate that their priorities for the work of the Voice relate to health, housing, jobs, education, incarceration, land management and cultural protection.

The constitutional amendment gives the Voice the function of making representations to Government and the Parliament. This is accurately described as an advisory function only and one that does not amount to a veto power. The Solicitor-General of the Commonwealth has explained that there is nothing in the constitutional amendment that would 'fetter or impede' the exercise of the powers of the Parliament or the Executive. The constitutional amendment allows Parliament to decide on conferring other functions on the Voice. The Government's Design Principles indicate that there is no intention for the Voice to have a program delivery function. They state: 'The Voice would be able to make representations about improving programs and services, but it would not manage money or deliver services.'

<p><i>decisions and directions more informed and more successful. Recognition in the Constitution will help heal our nation."</i></p>	
<p>THE VOICE: KEY FACTS</p> <p>■ Idea comes from Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p> <p>■ Recognises First Peoples in our Constitution.</p> <p style="text-align: center;">***</p> <p>■ A committee of Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p> <p>■ Gives people a say on issues affecting them.</p> <p style="text-align: center;">***</p>	<p>This is correct in that the request for the constitutionally-enshrined Voice came from the national deliberative consultation process with Aboriginal and Torres Strait Islander people, known as the Regional Dialogues and the First Nations Constitutional Convention at Uluru.</p> <p style="text-align: center;">***</p> <p>The opening line of the constitutional amendment explicitly ties the creation of the Voice to the recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia.</p> <p style="text-align: center;">***</p> <p>The constitutional amendment refers to the Aboriginal and Torres Strait Islander Voice as being a 'body'. The composition of the Voice will be determined by the Parliament in designing the detail of the body. The Government's publicly released 'Design Principles' include that the Voice will be made up of and chosen by Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p> <p>This requires clarification in that the Voice will give Aboriginal and Torres Strait Islander people a say in <i>government and parliamentary decisions</i> about issues relating to them.</p> <p style="text-align: center;">***</p>

<p>■ Listening will mean better results – and better value for money.</p> <p style="text-align: center;">***</p> <p>■ Representatives from all states and territories, the Torres Strait Islands and remote communities.</p> <p style="text-align: center;">***</p> <p>■ Will include young people and a balance of men and women.</p> <p style="text-align: center;">***</p> <p>■ Parliament and Government still responsible for laws, programs and funding.</p> <p>KEEP READING FOR 8 MORE REASONS TO VOTE YES.</p>	<p>There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people, and this will result in better results and value for money.</p> <p style="text-align: center;">***</p> <p>This is not constitutionally required, but it reflects the Government’s Design Principles, that it has agreed to follow should the referendum be successful.</p> <p style="text-align: center;">***</p> <p>This is not constitutionally required, but it reflects the Government’s Design Principles, that it has agreed to follow should the referendum be successful.</p> <p style="text-align: center;">***</p> <p>This is correct. The Voice does not have constitutional power to veto parliamentary and government decisions, and the Government’s Design Principles indicate there is no intention for the Voice to administer funding or deliver services.</p>
<p>1. This idea came directly from Aboriginal and Torres Strait Islander people.</p> <p>Voting Yes means:</p>	

■ Supporting an aspiration put forward by Aboriginal and Torres Strait Islander people over decades.

■ Accepting a proposal backed by over 80% of Aboriginal and Torres Strait Islander people.

This is correct. The idea for a Voice was put forward in the Uluru Statement from the Heart, issued following a process involving more than 1000 Aboriginal and Torres Strait Islander people known as the Regional Dialogues and the First Nations Constitutional Convention in 2016-2017. This process was overseen by the government-funded and bi-partisan supported Referendum Council. This process itself has its origins in earlier government and parliamentary consultations and Indigenous advocacy, including the 2012 Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, the 2015 Joint Select Committee on Constitutional Recognition, and the Kirribilli Statement.

While there is no singular, consensus position among Aboriginal and Torres Strait Islander people, the evidence shows that an overwhelming majority of Aboriginal and Torres Strait Islander people support this change. This is demonstrated, for instance, through the national deliberative consultative process that sits behind the Uluru Statement from the Heart, which involved more than 1000 Aboriginal and Torres Strait Islander people across the country, and which led to a consensus position asking for a constitutionally enshrined First Nations Voice. It is consistently confirmed through polling. In January 2023, an Ipsos poll indicated 80% support amongst the 300 Indigenous respondents. In April 2023, YouGov found support at 83% among the 732 Indigenous participants in its poll across the country. In 2022, Reconciliation Australia's Barometer survey found that 87% of First Nations respondents said it was important to protect a First Nations body in the Constitution. In addition to the polling, there is also significant support among

<p style="text-align: center;">***</p>	<p>prominent Indigenous organisations, including, for instance, the Northern Territory Land Councils, which in June 2023, issued the Barunga Declaration to the Government in support of the Voice, and peak bodies such as the Australian Indigenous Doctors Association.</p> <p style="text-align: center;">***</p>
<p>The call for a Voice did not come from politicians.</p>	<p>This is correct. It was issued by Aboriginal and Torres Strait Islander people in the Uluru Statement from the Heart to the Australian people.</p> <p style="text-align: center;">***</p>
<p style="text-align: center;">***</p> <p>In 2017, after many years of work and countless conversations in every part of the country, nearly 250 Aboriginal and Torres Strait Islander leaders and elders endorsed the <i>Uluru Statement from the Heart</i>.</p>	<p style="text-align: center;">***</p> <p>This is correct, and reflects the processes that led to the delivery of the Uluru Statement from the Heart: the Regional Dialogues and the First Nations Constitutional Convention, which involved 250 Aboriginal and Torres Strait Islander delegates drawn from the more than 1000 delegates who participated across the Country.</p> <p style="text-align: center;">***</p>
<p style="text-align: center;">***</p> <p>Calling for recognition in the Constitution through a Voice.</p>	<p style="text-align: center;">***</p> <p>This is an accurate statement of the proposal, in that it refers to constitutional recognition and the establishment of the Voice.</p> <p style="text-align: center;">***</p>
<p style="text-align: center;">***</p> <p>Asking us to help make practical change in their lives and create better opportunities for their children.</p> <p style="text-align: center;">***</p>	<p style="text-align: center;">***</p> <p>There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p>

<p>Australians from all walks of life, all faiths and cultures, and all sides of politics have given their support to this proposal.</p>	<p>There is a very broad spectrum of community support for the proposal. A faith leaders' open letter in February was signed by representatives of the National Council of Churches, Anglican Church, Catholic Bishops Conference, National Imams Council, Australian Sangha Association, Executive Council of Australian Jewry, Hindu Council of Australia, National Sikh Council and the Uniting Church. A joint resolution of multicultural community organisations in support of the Voice referendum has over 150 signatures. Major sporting bodies have supported constitutional recognition through the Voice, including the AFL Commission, the National Rugby League, Netball Australia, Cricket Australia, Football Australia, Tennis Australia and Rugby Australia. The ACTU and many individual unions will be supporting a Yes vote. The Law Council of Australia, the peak national representative body for the legal profession, says the amendment is necessary and overdue. The peak body for doctors, the Australian Medical Association, supports the Uluru Statement and the Voice. Most of Australia's ASX Top 20 companies have committed to speak up for a Yes vote. Organisations in the not-for-profit sector were amongst the earliest supporters of the Uluru Statement and its call for a constitutionally enshrined Voice. Amongst political parties, the Australian Labor Party officially supports the proposal, as do the Australian Greens, while the Liberal and National Parties do not. But the supporters of the Yes campaign include politicians from all sides of politics, including former members of the Opposition front bench, and current and former politicians who have resigned from their political parties in protest over the party's position.</p>
<p>***</p>	<p>***</p>

<p>Now we can make it a reality.</p> <p style="text-align: center;">***</p> <p>Voting Yes is an act of unity that will bring Australians together.</p>	<p>This reflects the upcoming opportunity to vote in the constitutional referendum, which, if successful, would constitutionally enshrine Voice.</p> <p style="text-align: center;">***</p> <p>This is a subjective statement of aspiration, which accords with the statement of aspiration in the Uluru Statement from the Heart.</p>
<p>2. Constitutional recognition for concrete results.</p> <p>Constitutional recognition is a powerful statement that will drive practical change.</p> <p style="text-align: center;">***</p> <p>Voting Yes means:</p> <ul style="list-style-type: none"> ■ Recognising Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. <p style="text-align: center;">***</p> <ul style="list-style-type: none"> ■ Celebrating and sharing 65,000 years of history. <p style="text-align: center;">***</p>	<p>Practical change will not be driven by constitutional recognition alone, it is the fact that constitutional recognition is being done <i>through</i> structural reform of the Voice that will particularly drive change.</p> <p style="text-align: center;">***</p> <p>The constitutional amendment expressly states that the Voice is a form of recognition.</p> <p style="text-align: center;">***</p> <p>This appears to refer to the extent recognition acts as a celebration of Aboriginal and Torres Strait Islander history, or to the extent that the Voice will be a vehicle through which Aboriginal and Torres Strait Islander history can be better understood, shared and celebrated.</p> <p style="text-align: center;">***</p>

<p>■ Sending a powerful message to the world about Australia's unity.</p> <p style="text-align: center;">***</p>	<p>There is certainly international interest in the outcome of the referendum, with international bodies, including the UN Special Rapporteur on Indigenous Peoples expressing support for the adoption of the Voice.</p> <p style="text-align: center;">***</p>
<p>■ Making a practical difference for the future.</p> <p style="text-align: center;">***</p>	<p>There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p>
<p>Generations of Aboriginal and Torres Strait Islander people have enriched our nation with their culture and creativity, their knowledge of the land and waters, and their contribution to Australian life.</p> <p style="text-align: center;">***</p>	<p>This is correct.</p> <p style="text-align: center;">***</p>
<p>Our ancient continent is home to the world's oldest living cultures. Recognising this in our Constitution is an inspiring way to celebrate our shared history.</p> <p style="text-align: center;">***</p>	<p>This is correct, with archaeologists dating Aboriginal culture back at least 65,000 years, making it the world's oldest living culture.</p> <p style="text-align: center;">***</p>
<p>Voting Yes is an act of reconciliation that will deliver real results.</p> <p style="text-align: center;">***</p>	<p>This is a summary of the above statements.</p> <p style="text-align: center;">***</p>
<p>The form of recognition Indigenous Australians are</p>	<p>This reflects the position called for in the Uluru Statement from the Heart, issued following the deliberative consultations with Aboriginal and</p>

asking us to support is a Voice.
A vehicle for practical change.

Torres Strait Islander people known as the
Regional Dialogues.

**Johnathan Thurston, NRL
champion and coach,
Gunggari man:**

*"Our young people deserve the
chance to be their best. I work
closely with schoolkids in the
Yarrabah community in
Queensland. I've seen the
obstacles they face. Nobody
understands that better than
their local community. Giving
them a say will mean more of
our kids reach their potential.
That's what the Voice is about."*

3. Ensure people have a better life.

The Voice is a vehicle to deliver real improvements for Aboriginal and Torres Strait Islander people in:

- Life expectancy.
- Infant mortality and health.
- Education and employment.

For a long time, governments with good intentions have spent billions trying to deal with these issues.

But they haven't achieved lasting improvement because they haven't listened to people on the ground.

The current approach is broken and the Voice is our best chance to fix it.

There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people.

This is true. One example of such a program is the Indigenous Advancement Strategy, which involved an initial commitment by the Coalition government of \$4.8 billion over four years from 2014-2015.

It is true that to date the money that has been spent, and the policies that have been attempted have not made significant or lasting progress on many key indicators, as is demonstrated by the [annual Closing the Gap reports](#), and the conclusions of the recent [Productivity Commission's](#) draft report (2023) on implementation of the Closing the Gap Agreement. The statement that the reason they haven't achieved lasting improvement is because they haven't listened to people on the ground is referable to the evidence. There is substantial academic research that supports the claim that practical progress will be made in relation to key indicators when the government listens to the views of Aboriginal and Torres Strait Islander people. There is also evidence of poor

<p style="text-align: center;">***</p> <p>No-one thinks the Voice will instantly solve everything - but we will finally have the right approach in place. Here are three examples where listening to Indigenous people has delivered better outcomes.</p> <p style="text-align: center;">***</p> <p>IMAGINE THE PROGRESS AUSTRALIA COULD MAKE WITH A VOICE.</p> <p style="text-align: center;">***</p> <p>Listening Works: Better Health Services</p> <p>Community-controlled Aboriginal Medical Services employ local Indigenous people.</p>	<p>government administration. In a 2017 Audit, the Australian National Audit Office found that the administration of the Indigenous Advancement Strategy did not follow the department’s own criteria and mandatory guidelines. Adequate records weren’t kept and the department did not have an proper way of measuring performance and whether the objectives behind the spending of money were being met.</p> <p style="text-align: center;">***</p> <p>This accords with the evidence that demonstrates government engagement and listening to Indigenous peoples will result in better, longer-term solutions to systemic and complex problems.</p> <p style="text-align: center;">***</p> <p>This is a statement of aspiration, but accords with the academic research on likely effects of an institution such as the Voice.</p> <p style="text-align: center;">***</p> <p>The facts of this case study are accurate, drawing on the work of the Institute for Urban Health, which services South East Queensland Aboriginal Medical Services, including ATSICHS Brisbane, Yulu-Burri-Ba Aboriginal Corporation for Community Health, Kalwun and Kambu, Moreton Aboriginal and Torres Strait Islander Community Health Service: https://www.iuih.org.au/. This Institute was the subject of a 2019 academic article, where these figures are obtained: https://www.publish.csiro.au/py/Fulltext/PY19038</p>
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They run clinics and visit remote areas, providing essential services like child immunisation.

In South East Queensland, the local Aboriginal Medical Service and the community worked together to hugely increase the number of annual health checks, from 550 to over 20,000 over 10 years.

Listening Works: Better Results in Education

Families and community leaders have been involved in every step of the new Dhupuma Barker school in Arnhem Land, from lesson-planning to uniforms and lunches.

Genuine partnership has driven strong school attendance rates and better results. The 'Dhupuma Firebirds' Robotics team recently competed in the VEX International Championships in Texas, the first team from the Northern Territory ever to qualify.

The annual reports of the Institute provide further support for these figures:

<https://www.iuih.org.au/strategic-documents/corporate-documents/>

The facts of this case study are accurate, as described in the Dhupuma Barker School's website: <https://barkerbarang.edu.au/about-our-schools/dhupuma-barker>

Principal Phillip Heath says:
"Listening to the community is a game-changer in regional and remote education."

Listening Works: Indigenous Rangers

There are nearly 2,000 Indigenous Rangers working on country.

Rangers care for our environment by working to prevent bushfires, controlling feral pests and improving the health of our rivers.

Listening to Indigenous Rangers means sharing in 65,000 years of knowledge and connection to our land and waters.

Vote Yes for better results around Australia.

Vote Yes to help close the gap.

The facts of this case study are accurate, as described in the NIAA's description and reporting on the Indigenous ranger program:

<https://www.niaa.gov.au/indigenous-affairs/environment/indigenous-ranger-programs>

4. Bring our country together.

Voting Yes means:
■ Becoming reconciled with our past and moving to a better future.

This is a subjective statement about the intent and aspirations for the Voice. In terms of reconciliation, it would represent the acceptance by the Australian people of an invitation issued

	<p>by Aboriginal and Torres Strait Islander people. In terms of a better future, this reflects the substantial research that listening to Indigenous peoples will result in better outcomes.</p>
<p style="text-align: center;">***</p> <p>■ A change only you can make happen.</p>	<p style="text-align: center;">***</p> <p>This is correct. A constitutional amendment requires a referendum of the Australian people.</p>
<p style="text-align: center;">***</p> <p>Australia has come a long way since our Constitution came into effect in 1901.</p>	<p style="text-align: center;">***</p> <p>This is a broad and largely subjective statement about progress that is difficult to measure. There have certainly been significant constitutional, legal, political, economic and social changes since 1901.</p>
<p style="text-align: center;">***</p> <p>We now rightly celebrate Indigenous Australians and their contributions to our country.</p>	<p style="text-align: center;">***</p> <p>This broad statement reflects generally the social attitudes towards the culture and contributions of Aboriginal and Torres Strait Islander people in Australia.</p>
<p style="text-align: center;">***</p> <p>At the 1967 referendum, 90% of Australians voted Yes to changing the Constitution, so Aboriginal and Torres Strait Islander people would be counted in the population in the same way as everyone else.</p>	<p style="text-align: center;">***</p> <p>This is correct. In 1967 90.77 per cent of Australians voted Yes to two changes to the Constitution that affected Aboriginal Australians. One of those changes was to remove section 127, which had previously excluded Aboriginal people from the reckoning of the people of the Commonwealth, something that had financial and representative repercussions.</p>

<p style="text-align: center;">***</p> <p>It was a unifying step forward.</p> <p style="text-align: center;">***</p> <p>Together we have a chance to take the next step - recognising Aboriginal and Torres Strait Islander people through a Voice.</p> <p style="text-align: center;">***</p> <p>Other nations with similar histories, like Canada and New Zealand, formally recognised their own First Peoples decades ago.</p> <p>Experience shows there is nothing to fear - and so much to gain.</p> <p style="text-align: center;">***</p> <p>Rachel Perkins, Filmmaker from Alice Springs, Arrernte/Kalkadoon woman: <i>"Our people have spent decades campaigning for the opportunity of a better life. We've never been more determined or more united. The Voice is our best shot, let's take it."</i></p>	<p style="text-align: center;">***</p> <p>The 1967 referendum is celebrated as an important step forward in relations between Aboriginal and Torres Strait Islander people and non-Indigenous Australians.</p> <p style="text-align: center;">***</p> <p>This is correct in that it refers to the legal and constitutional requirement for all Australians to vote in a referendum, and for a majority of Australians nationally, and a majority within four of the six states, to make this constitutional change.</p> <p style="text-align: center;">***</p> <p>This is correct, although the form of recognition that has been given to First Peoples in different settler states has differed. In Canada, this has included constitutional recognition of Indigenous rights, whereas in New Zealand, where there is no written constitution, this has been achieved through a variety of mechanisms, most notably the Treaty of Waitangi and the Waitangi Tribunal.</p>
<p>5. Save money.</p>	

When governments listen to people, they get better outcomes and use funding more effectively.

Aunty Pat Anderson AO, Co-Chair Uluru Dialogues, Alyawarre woman: *"When you involve people, you make better decisions and the money you spend goes where it's needed most: to the people on the ground."*

Governments from both sides have invested billions in programs that haven't fixed problems or reached communities.

A Voice will help us listen to locals and save money.

We're all better off when governments don't waste

There is substantial academic research that supports the claim that when the government listens to the views of Aboriginal and Torres Strait Islander people, this leads to better decisions, in the sense of better outcomes and better use of public money.

This is true. One example of such a program is the Indigenous Advancement Strategy, which involved an initial commitment by the Coalition government of \$4.8 billion over four years from 2014-2015. In a 2017 Audit, the Australian National Audit Office found that the administration of this program was made in breach of the department's own criteria and guidelines, and could not adequately measure whether there was a return on the money spent. The recent [Productivity Commission's](#) draft report (2023) into the implementation of the Closing the Gap Agreement confirms that little progress has been made under the current approach, despite the investment of significant amounts of government funding.

These are summary statements of the points made above.

<p>taxpayer money on things that aren't working.</p>	
<p>6. The time is now.</p> <p>The idea of a Voice has been decades in the making. Many Aboriginal and Torres Strait Islander people have put in a great deal of hard work and goodwill.</p> <p style="text-align: center;">***</p> <p>Voting No means nothing will change. It means accepting we can't do better.</p> <p>Don't risk more of the same:</p> <ul style="list-style-type: none"> ■ Worse life expectancy. ■ Worse results in education and employment. ■ Worse outcomes in health. <p>Vote Yes to break this cycle and unite our nation.</p> <p style="text-align: center;">***</p> <p>Eddie Betts, Adelaide and Carlton AFL legend, Gubrun, Wirangu/Kokatha man:</p>	<p>The idea for a Voice was put forward in the Uluru Statement from the Heart, issued following a process involving more than 1000 Aboriginal and Torres Strait Islander people known as the Regional Dialogues and the First Nations Constitutional Convention in 2016-2017. This process was overseen by the Referendum Council, which was funded under a Coalition government and had bi-partisan support. This process itself has its origins in earlier government and parliamentary consultations and Indigenous advocacy, including the 2012 Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, the 2015 Joint Select Committee on Constitutional Recognition, and the Kirribilli Statement.</p> <p style="text-align: center;">***</p> <p>Voting no doesn't necessarily mean that nothing will change, but that this particular reform will not be achieved, with all the process behind it and benefits associated with it. Voting No also does mean that there will be no ability to see the differences a constitutionally enshrined Voice can make.</p>

<p><i>"I know the Voice won't fix everything overnight but I feel like it's the opening of a pathway to make sure we are included and respected in decision-making on issues that impact us."</i></p>	
<p>7. Practical advice that works.</p> <p>The Voice will advise on practical steps to improve Indigenous health, education, employment and housing.</p> <p style="text-align: center;">***</p> <p>Putting the Voice in the Constitution gives it stability and independence, now and into the future.</p> <p>This means the Voice can give frank advice, without getting caught up in short-term politics.</p> <p style="text-align: center;">***</p> <p>We can't solve all the challenges Indigenous Australians face overnight.</p>	<p>The Voice is given the constitutional function of making representations on matters relating to Aboriginal and Torres Strait Islander people. The amendment does not direct the Voice to look at certain priorities, but we know from Aboriginal and Torres Strait Islander people that some of their most pressing concerns relate to health, education, employment and housing.</p> <p style="text-align: center;">***</p> <p>This is true. It is a key point of distinction between a purely legislated model, and a constitutional model of the Voice, as is being proposed. In the past, Indigenous representative advisory bodies have been abolished by governments, which has had negative consequences for their independence, their stability and their ability to make a difference. Constitutional enshrinement and the protection and status it gives the Voice, allows the Voice to have greater independence from the government of the day.</p> <p style="text-align: center;">***</p> <p>This is one of the reasons that lay behind the call for an ongoing constitutional Voice: that it will not be time-limited, and will have an ongoing</p>

<p>We need action now, as well as planning for the long term.</p> <p style="text-align: center;">***</p> <p>That’s why we need a Voice that can’t be abolished with the stroke of a pen.</p> <p style="text-align: center;">***</p> <p>Legal experts have made it clear that the Voice will not have the power to prevent, delay or veto laws or decisions. The Voice is about advice.</p>	<p>role in the Australian system of government, rather than be a transitory measure.</p> <p style="text-align: center;">***</p> <p>Once established, the Voice will not be able to abolished through an executive action alone, or even through legislation. The constitutional existence of the Voice is set out in the proposed section 129, and to the intention is that it cannot be abolished once established without a referendum (importantly, in many ways, it differs, for instance, from the inter-state commission). However its composition, powers, procedures, and how it interacts with the Executive and the Parliament, will be able to be changed through legislation, which is part of the inbuilt flexibility of the design.</p> <p style="text-align: center;">***</p> <p>The overwhelming majority of legal opinion agrees that the Voice will have no veto power over parliamentary and government decisions. The Solicitor-General of the Commonwealth, the government’s most senior, independent lawyer, has provided a full advice that indicates that the Voice proposed in the constitutional amendment would enhance Australia’s system of government and in particular the operation of representative and responsible government. He explained it would not ‘fetter or impede’ the exercise of the powers of the Parliament or the Executive.</p>
<p>8. Making government work better.</p> <p>Voting Yes means: ■ Government getting better advice and delivering better outcomes.</p>	<p>There is substantial academic research that supports the claim that when the government listens to the views of Aboriginal and Torres Strait Islander people, this leads to better</p>

<p style="text-align: center;">***</p> <p>■ An addition to the Constitution backed by the experts.</p>	<p style="text-align: center;">***</p> <p>decisions, in the sense of better outcomes and better use of public money.</p> <p style="text-align: center;">***</p> <p>The constitutional amendment has the support of an overwhelming majority of legal experts across Australia.</p>
<p style="text-align: center;">***</p> <p>Senior lawyers and former High Court Judges have been part of this process.</p>	<p style="text-align: center;">***</p> <p>This is correct. The process of drafting the constitutional amendment has involved senior lawyers, former High Court judges and academic experts from across the country. This included through the work led by the Indigenous Law Centre in conjunction with the Law Council of Australia and the Australian Association of Constitutional Law, the government’s Constitutional Expert Group, and the joint parliamentary committee process that received hundreds of submissions from legal experts across the country.</p>
<p style="text-align: center;">***</p> <p>What the Legal Experts Say:</p> <p>■ Constitutionally and legally sound.</p>	<p style="text-align: center;">***</p> <p>While not unanimous, an overwhelming majority of expert legal opinion is that the Voice proposed in the constitutional amendment is constitutionally and legally sound. For example, submissions to the joint parliamentary committee looking at the constitutional amendment overwhelmingly supported the soundness of the proposal. These included submissions from a former High Court Chief Justice, a former High Court Justice, Australia’s leading public law barrister, the Solicitor-General of the Commonwealth and the Law Council of Australia.</p>

<p style="text-align: center;">***</p> <p>■ Will enhance our system of government.</p> <p style="text-align: center;">***</p> <p>■ No veto power – Parliament and Government have final sign-off.</p> <p style="text-align: center;">***</p> <p>Robert French AC, Chief Justice of the High Court of Australia 2008-2017 and Geoffrey Lindell, Emeritus Professor of Law, University of Adelaide: <i>"The Voice is a big idea but not a complicated one. It is low risk for a high return... The Voice will provide a practical opportunity for First Peoples to give informed and coherent and reliable advice to the Parliament and the Government."</i> Joint Opinion Piece, Australian Financial Review, 4/2/2023.</p>	<p style="text-align: center;">***</p> <p>The Solicitor-General of the Commonwealth, the government's most senior, independent lawyer, has provided a full advice that indicates that the Voice proposed in the constitutional amendment would enhance Australia's system of government and in particular the operation of representative and responsible government.</p> <p style="text-align: center;">***</p> <p>It has been repeatedly explained by experts that the Voice in the constitutional amendment has no veto power over the Parliament or the Government. This means that the Voice cannot override (that is, veto) decisions made by the Parliament or the Government. The Voice provides its advice in the form of representations to the Government and Parliament, and the Parliament and Government have the final sign-off on what decisions are made, what policies are developed, and what laws are passed.</p>
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Analysis: The No Case

No Case claim	Analysis / explanation
<p>REASONS TO VOTE NO – A SUMMARY</p> <p>This Referendum is not simply about “recognition”. This Voice proposal goes much further.</p> <p style="text-align: center;">***</p> <p>If passed, it would represent the biggest change to our Constitution in our history.</p> <p style="text-align: center;">***</p>	<p>The Voice proposal is a form of constitutional recognition for the place of Aboriginal and Torres Strait Islander people. It is the only form of recognition that was asked for by Aboriginal and Torres Strait Islander people after a series of deliberative consultations (known as the Regional Dialogues) that resulted in the Uluru Statement from the Heart. It is true that it not only provides recognition, but also contains structural constitutional reform, which is why it is often referred to (for instance, in the Yes argument) as recognition ‘through’ the Voice and practical recognition.</p> <p style="text-align: center;">***</p> <p>Whether this is the ‘biggest change’ is a subjective claim that is difficult to measure. What can be said is that past referendums have made significant changes to our Constitution. For instance, Australians have voted for important changes to our federal system, including the expansion of Commonwealth legislative power over social services (1946) and Aboriginal and Torres Strait Islander peoples (1967), and the alteration of the financial relationship between the Commonwealth and the States (1928).</p> <p style="text-align: center;">***</p>

It is legally risky, with unknown consequences.

While calculating the exact legal interpretation of any new proposal cannot be done with absolute certainty, the overwhelming majority of expert legal opinion that has considered the various legal risks associated with the constitutional amendment have indicated that it represents very low legal risk in terms of likelihood of extensive or prolonged litigation in the Courts, or the clogging up of government and parliamentary decision making.

While not unanimous, an overwhelming majority of expert legal opinion is that the Voice proposed in the constitutional amendment is constitutionally and legally sound. These included submissions to the joint parliamentary committee looking at the amendment, from a former High Court Chief Justice, a former High Court Justice, Australia's leading public law barrister, the Solicitor-General of the Commonwealth and the Law Council of Australia.

The Solicitor-General of the Commonwealth, the government's most senior, independent lawyer, has provided a full advice that indicates that the Voice proposed in the constitutional amendment would enhance Australia's system of government and in particular the operation of representative and responsible government. He explained it would not 'fetter or impede' the exercise of the powers of the Parliament or the Executive.

It has been repeatedly explained by experts that the Voice in the

<p style="text-align: center;">***</p> <p>It would be divisive and permanent.</p>	<p>constitutional amendment has no veto power over the Parliament or the Government. This means that the Voice cannot override (that is, veto) decisions made by the Parliament or the Government. The Voice provides its advice in the form of representations to the Government and Parliament, and the Parliament and Government have the final sign-off on what decisions are made, what policies are developed, and what laws are passed.</p> <p style="text-align: center;">***</p> <p>The claim of division is misleading in that it implies discriminatory and unequal treatment. The Voice proposal is about recognising the unique status of Aboriginal and Torres Strait Islander people as the Indigenous Peoples of Australia through enhanced political participation. Internationally, this is recognised as being consistent with substantive equality.</p> <p>To say that the Voice is permanent is misleading in two respects. First, it could be removed by a future constitutional referendum. Second, the constitutional amendment has been carefully drafted so that the creation of the Voice and its core function are constitutionally entrenched, but its detailed design will be set by the Parliament through the normal, public law-making process, and can be changed, adapted and improved through the normal, public law-making process. Former Chief Justice of the High Court of Australia, Murray Gleeson, has described this as being 'constitutionally entrenched but legislatively controlled'.</p>
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<p style="text-align: center;">***</p> <p>If you don't know, vote no.</p>	<p style="text-align: center;">***</p> <p>This statement is a matter of opinion about how Australians should exercise their constitutional responsibility to determine whether to vote in favour of a constitutional change under s 128.</p>
<p>RISKY</p> <p>We all want to help Indigenous Australians in disadvantaged communities. However, this Voice is not the answer and presents a real risk to our system of government.</p> <p style="text-align: center;">***</p>	<p>This claim is misleading as it ignores the significant amount of research that has been conducted that proves that more input from Aboriginal and Torres Strait Islander people into decisions that affect them results in better outcomes. The positive impact of listening to Indigenous voices is supported by research such as that conducted in Australia led by Professors Fiona Stanley and Marcia Langton, and internationally at the Harvard Project on Indigenous Governance and Development.</p> <p>Supporting this position is the fact that the previous Coalition federal government, led by Prime Minister Scott Morrison, oversaw in 2020-2021 the development of a proposal for a federal Voice to "ensure that Indigenous Australians are heard at all levels of government" and said "the best outcomes are achieved when Indigenous Australians are at the centre of decision-making". Rather than risky, the Voice is compatible with Australia's system of parliamentary government.</p> <p style="text-align: center;">***</p>

This Voice specifically covers all areas of "Executive Government". This means no issue is beyond its reach.

The High Court would ultimately determine its powers, not the Parliament.

The Voice has a broad function of making representations to the "Executive Government of the Commonwealth". But that is different from the issues that it can address. The Voice may only make representations to the Government about matters "relating to Aboriginal and Torres Strait Islander peoples". While this is a deliberately broad remit, it is legally limited. The Voice will also have to operate within pragmatic and political realities, which will mean it will not have the resources to make representations on every matter relating to Aboriginal and Torres Strait Islander people, and it will need to prioritise the most pressing issues for those people it represents and to whom it is accountable.

This is misleading in that both the Parliament and the High Court will have roles to play in determining the Voice's powers, with the most significant role being played by the Parliament. The constitutional amendment specifically gives the Parliament authority to determine the powers of the Voice. Craig Lenehan SC, a public law barrister, has [explained](#) that the constitutional amendment allows for government and Parliament to manage in a practical way how the Voice's representations are to be made, how they are received, and how they are dealt with. The High Court will have a supervisory role to ensure that any legislation the Parliament passes does not contravene the constitutional function of the Voice to make representations to the government and the Parliament.

<p style="text-align: center;">***</p> <p>It risks legal challenges, delays and dysfunctional government.</p>	<p style="text-align: center;">***</p> <p>This statement is misleading. The overwhelming majority of legal opinion is that while there may be future legal challenges relating to the operation of the Voice, these are likely to be settled relatively quickly, and the High Court is highly unlikely to interpret the constitutional amendment in a way that would create dysfunctional delays within government. This includes more than 85% of the submissions that were made in support of the concept of the Voice to the parliamentary inquiry investigating the legal soundness of the constitutional amendment. Former Chief Justice of the High Court, Robert French has explained that should any future arrangements be unworkable (in the sense of producing delays or dysfunction) "the parliament could amend the law accordingly".</p>
<p>UNKNOWN</p> <p>No details have been provided on how members of the Voice would be chosen or how it would operate. Australians are being asked to vote first before these details are worked out.</p>	<p>This is misleading. Working with the First Nations Referendum Working Group, the government has agreed to a set of 'Design Principles', that will guide the design of the Voice should a referendum be successful. This provides information on matters such as how members will be chosen and how it will operate. These include:</p> <p>The Voice will give independent advice to the Parliament and Government:</p> <ul style="list-style-type: none"> - The Voice would make representations to the Parliament

and Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.

- The Voice would be able to make representations proactively.
- The Voice would be able to respond to requests for representations from the Parliament and the Executive Government.
- The Voice would have its own resources to allow it to research, develop and make representations.
- The Parliament and Executive Government should seek representations in writing from the Voice early in development of proposed laws and policies.

The Voice will be chosen by Aboriginal and Torres Strait Islander People based on the wishes of local communities:

- Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government.
- To ensure cultural legitimacy, the way that members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-referendum process.

The Voice will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth:

- Members of the Voice would be Aboriginal and/or Torres Strait Islander, according to the standard three part test.
- Members would be chosen from each of the states, territories and the Torres Strait Islands.
- The Voice would have specific

<p style="text-align: center;">***</p> <p>Australians should have details before the vote, not after.</p>	<p>remote representatives as well as representation for the mainland Torres Strait Islander population.</p> <ul style="list-style-type: none"> - The Voice will have balanced gender representation at the national level. <p style="text-align: center;">***</p> <p>This is misleading. Full details have been provided to the Australian people about the constitutional amendment, that is, the part of the proposal that will be put into the Constitution. This includes the wording of the amendment, the government's explanatory memorandum, a joint parliamentary committee report, the Solicitor-General's legal advice, and the communiques and minutes of the Referendum Working Group and Constitutional Expert Group. The Australian people have been given all relevant details to understand the part of the proposal that is being voted on in the referendum.</p>
<p style="text-align: center;">***</p> <p>We don't know how it will work, we don't know who will be on it, but we do know it will permanently divide us as Australians.</p>	<p style="text-align: center;">***</p> <p>Under the constitutional amendment, and in accordance with usual constitutional practice, the details of the membership, procedures and powers of the Voice will be determined by the Parliament. This is what happens, for instance, in relation to the High Court of Australia. The Australian people are not being asked to constitutionally entrench these details. Legal experts have explained that releasing the legislative details of the proposal would actually mislead Australian voters, because people would be confused about what</p>

<p style="text-align: center;">***</p> <p>Some Voice supporters say this would just be a first step to reparations and compensation and other radical changes. So, what would come next?</p>	<p>will be constitutionally entrenched, and what will be subject to future legislative change. To help Australians understand what the Voice is likely to look like, the Government has released a set of 'Design Principles', that will guide the design of the Voice should a referendum be successful. This includes details about how the Voice will be selected, representative, accountable and the operations of the Voice. It has also indicated that the final design will be determined by the Parliament, following further consultation with Aboriginal and Torres Strait Islander people, after the referendum.</p> <p style="text-align: center;">***</p> <p>This is misleading as it implies that the Voice will unilaterally lead to changes such as the payment of reparations and compensation. This statement does not explain the reality that the Voice is an advisory body only, and that any decisions as to whether the government will grant further rights, or reparations or compensation to Aboriginal and Torres Strait Islander people will be determined by a future Government and Parliament. This does not change the current constitutional position, where, for instance, the Commonwealth Government has established redress schemes for members of the Stolen Generations.</p>
<p>DIVISIVE</p> <p>Enshrining a Voice in the Constitution for only one group of Australians means permanently dividing our country.</p>	<p>This is misleading because it does not reflect the current constitutional position. The history of the colonisation of Australia is one in which there has</p>

	<p>always been different treatment of Aboriginal and Torres Strait Islander people. This is reflected, for instance, in the current constitutional text in which the Commonwealth Parliament is given power to make special laws for people of a particular race. In practice, that power has only been used to make laws specifically about Aboriginal and Torres Strait Islander people.</p> <p>The Voice proposal is a way of recognising this existing difference, and the unique status, history and culture of Aboriginal and Torres Strait Islander people, in a positive way.</p>
<p style="text-align: center;">***</p> <p>It creates different classes of citizenship through an unknown body that has the full force of the Constitution behind it.</p>	<p style="text-align: center;">***</p> <p>The statement about different classes of citizenship is misleading. The constitutional amendment does not change the classes of citizenship in the <i>Australian Citizenship Act 2007</i> (Cth). The Voice recognises existing constitutional difference, and the unique status, history and culture of Aboriginal and Torres Strait Islander people.</p> <p>The statement that this is an “unknown body” is misleading, as there are full details about the proposed amendment, and details about the proposed future design of the composition, procedures and powers of the body, available for voters.</p>
<p style="text-align: center;">***</p> <p>Many Indigenous Australians do not support this.</p>	<p style="text-align: center;">***</p> <p>It is misleading to say that “many” Indigenous Australians do not support this, when in fact most Indigenous</p>

	<p>Australians do. While there is no singular, consensus position among Aboriginal and Torres Strait Islander people, the evidence shows that an overwhelming majority of Aboriginal and Torres Strait Islander people support this change. This is demonstrated, for instance, through the national deliberative consultative process that sits behind the Uluru Statement from the Heart, which involved more than 1000 Aboriginal and Torres Strait Islander people across the country, and led to a consensus position being adopted, asking for a constitutionally enshrined First Nations Voice. It is consistently confirmed through polling. In January 2023, an Ipsos poll indicated 80% support amongst the 300 Indigenous respondents. In April 2023, YouGov found support at 83% among the 732 Indigenous participants in its poll across the country. In 2022, Reconciliation Australia's Barometer survey found that 87% of First Nations respondents said it was important to protect a First Nations body in the Constitution. In addition to the polling, there is also significant support among prominent Indigenous organisations, including, for instance, the Northern Territory Land Councils, which in June 2023, issued the Barunga Declaration to the Government in support of the Voice, and peak bodies such as the Australian Indigenous Doctors Association.</p>
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<p>PERMANENT</p> <p>Putting a Voice in the Constitution means it's permanent. We will be stuck with negative consequences.</p>	<p>To say that the Voice is permanent is misleading in two respects. First, it could be removed by a future constitutional</p>
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	<p>referendum. Second, the constitutional amendment has been carefully drafted so that the creation of the Voice and its core function are constitutionally entrenched, but its detailed design will be set by the Parliament through the normal, public law-making process, and can be changed, adapted and improved through the normal, public, and transparent law-making process.</p>
<p>TEN REASONS TO VOTE NO</p>	
<p>1. THIS VOICE IS LEGALLY RISKY</p> <p style="text-align: center;">***</p> <p>Australia’s Constitution is our most important legal document. Every word can be open to interpretation.</p> <p style="text-align: center;">***</p> <p>Australia hasn’t changed its Constitution since 1977. This would be the biggest change to our democracy in Australia’s history.</p>	<p>This is misleading in that it does not reflect the overwhelming majority of legal opinion that has confirmed the proposal for the Voice in the constitutional amendment is legally and constitutionally sound, and unlikely to result in significant court litigation, delay or dysfunction within government.</p> <p style="text-align: center;">***</p> <p>This is correct: the Constitution is the most important legal document in that it is the supreme law. The words of the Constitution are interpreted by the Government, the Parliament, and in most cases, ultimately the High Court of Australia.</p> <p style="text-align: center;">***</p> <p>It is correct that the Australian Constitution has not been changed through a referendum since 1977.</p> <p>Whether this is the ‘biggest change’ to our democracy in Australia’s history is a subjective claim that is difficult to measure. What can be said is that there have been other significant legislative</p>

<p style="text-align: center;">***</p> <p>It is a leap into the unknown. This Voice has not been road tested. There is no comparable constitutional body like this anywhere in the world.</p>	<p>and constitutional changes in our history that have resulted in major changes to our democracy. These include legislative changes that made voting compulsory and introduced proportional representation for the Senate, and constitutional and legislative changes that gave Territorians the right to Senate representation, and the right to vote in constitutional referendums. What we do know is that the Commonwealth Solicitor-General has indicated that this change is consistent with, and likely to 'enhance' the Australian system of democracy.</p> <p style="text-align: center;">***</p> <p>This is misleading. While there has never been a constitutionally enshrined Voice in Australia, there has been ongoing recognition by governments across both sides of politics that there is a need to have greater input from Aboriginal and Torres Strait Islander people into government decisions and laws that affect them. This recognition has included, for instance, the creation of the National Aboriginal Consultative Committee (NACC), the National Aboriginal Conference (NAC), the Aboriginal and Torres Strait Islander Commission (ATSIC), National Congress of Australia's First Peoples, and the Indigenous Advisory Council (IAC).</p> <p>It is correct that there is no comparative constitutional body exactly the same as the proposed Voice anywhere in the world. However, two points should be noted here. The first is that there are a number of examples internationally of</p>
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	<p>Indigenous representative bodies established to give people a voice and to engage with governments and/or legislatures about matters that affect Indigenous peoples. The concept is not new and untested. Examples include the Sami representative bodies in Finland, Norway and Sweden, and the New Zealand Māori Council. Each has its own distinctive and local character. The second is that the Voice as proposed in the constitutional amendment is carefully tailored to enhance the Australian constitutional system of democracy.</p>
<p style="text-align: center;">***</p> <p>Enshrining a Voice in the Constitution means it is open to legal challenge and interpretation by the High Court.</p>	<p style="text-align: center;">***</p> <p>This is correct, and accords with the views of a majority of legal experts.</p>
<p style="text-align: center;">***</p> <p>Legal experts don't agree, and can't know for sure, how the High Court will interpret such a constitutional change.</p>	<p style="text-align: center;">***</p> <p>This is misleading. It is true to say that no one can say 'for sure' how a future High Court will interpret the constitutional amendment, and while there is no universal agreement between legal experts, there is an overwhelming majority of legal expert opinion that the Voice in the constitutional amendment is constitutionally and legally sound, and it will not give rise to unintended and unworkable legal consequences.</p>
<p style="text-align: center;">***</p> <p>"I would foresee a decade or more of constitutional and administrative law litigation arising out of a voice..."</p>	<p style="text-align: center;">***</p> <p>This is one selective quote from a former High Court judge. Other former members of the High Court including</p>

<p><i>(Ian Callinan AC KC, former High Court Judge)</i> The Australian, 17/12/2022</p> <p style="text-align: center;">***</p> <p>This opens a legal can of worms.</p>	<p>former High Court Chief Justice Robert French and former Justice Kenneth Hayne have said that the High Court will not seek to imply something that makes government unworkable. Hayne said of High Court judges, "You do not make implications in a Constitution that will bring government to a halt" and called the claim to the contrary "untenable".</p> <p style="text-align: center;">***</p> <p>This is misleading. The constitutional amendment deliberately focuses on the policy and parliamentary process, not the courts. It emphasises participation by Aboriginal and Torres Strait Islander peoples in the political process rather than specifying any legal obligations on the Parliament or Executive. As a consequence, the overwhelming majority of legal opinion is that the Voice is constitutionally and legally sound.</p>
<p>2. THERE ARE NO DETAILS</p> <p>This is a big decision.</p> <p style="text-align: center;">***</p> <p>However, the Government won't reveal key details before the vote.</p>	<p>It is correct that changing the Australian Constitution is a big decision, and one that is constitutionally left for the Australian people through an exercise of the ultimate – popular – sovereignty under section 128 of the Constitution.</p> <p style="text-align: center;">***</p> <p>It is misleading to state that the Government won't reveal key details. Full details have been provided to the Australian people about the constitutional amendment, that is, the</p>

	<p>part of the proposal that will be put into the Constitution. This includes the wording of the amendment, the government’s explanatory memorandum, a joint parliamentary committee report, the Solicitor-General’s legal advice, and the communiques and minutes of the Referendum Working Group and Constitutional Expert Group. The Australian people have been given all relevant details to understand the part of the proposal that is being voted on in the referendum.</p>
<p style="text-align: center;">***</p> <p>We don’t know how it will help disadvantaged communities and close the gap.</p>	<p style="text-align: center;">***</p> <p>This statement is misleading, as it ignores the significant amount of research that has been conducted that proves that more input from Aboriginal and Torres Strait Islander people into decisions that affect them results in better outcomes.</p> <p>The authors of the Uluru Statement from the Heart said that a constitutionally enshrined Voice was the means to address “the structural nature of our problem” and “the torment of our powerlessness”.</p>
<p style="text-align: center;">***</p> <p>We don’t know how many members this Voice would have.</p>	<p style="text-align: center;">***</p> <p>This is misleading in two key respects. The first is that it implies that the membership of the body is a matter to be decided at the referendum, but we do not have this detail. The number of members of the Voice has been left in the constitutional amendment to be determined by the Parliament, and can</p>

<p style="text-align: center;">***</p> <p>We don't know if they would be elected or chosen, or how this would occur.</p>	<p>be changed by the Parliament. This reflects ordinary and desirable constitutional practice, for instance, the numbers of the members of the High Court is not set in the Constitution, and has changed over time. It is also misleading because it implies we have no information about how many members the Voice will have. The Government's Design Principles indicates where representation will be drawn from, giving a general sense of the size and representation of the Voice. For instance, the Principles state:</p> <p>The Voice will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth</p> <ul style="list-style-type: none"> - Members of the Voice would be Aboriginal and/or Torres Strait Islander, according to the standard three part test. - Members would be chosen from each of the states, territories and the Torres Strait Islands. - The Voice would have specific remote representatives as well as representation for the mainland Torres Strait Islander population. - The Voice will have balanced gender representation at the national level. <p style="text-align: center;">***</p> <p>This is factually correct, but is misleading in that it omits reference to the information on selection in the Government's Design Principles that state:</p> <p>The Voice will be chosen by Aboriginal and Torres Strait Islander</p>
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<p style="text-align: center;">***</p> <p>We don't know how it would make representations or be held accountable.</p>	<p>People based on the wishes of local communities</p> <ul style="list-style-type: none"> - Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government. - To ensure cultural legitimacy, the way that members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-referendum process. <p style="text-align: center;">***</p> <p>This is correct, but is misleading in that it fails to explain that how the Voice will make representations to Government and the Parliament is left to the Parliament to determine, which will be done in legislation to make sure it is efficient and effective across the different parts of government. It is misleading in that it doesn't refer to the Government's Design Principles that explain how the Voice will operate in the following way:</p> <p>The Voice will give independent advice to the Parliament and Government:</p> <ul style="list-style-type: none"> - The Voice would make representations to the Parliament and Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples. - The Voice would be able to make representations proactively. - The Voice would be able to respond to requests for representations from the Parliament and the Executive Government. - The Voice would have its own resources to allow it to research,
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<p style="text-align: center;">***</p>	<p>develop and make representations.</p> <ul style="list-style-type: none"> - The Parliament and Executive Government should seek representations in writing from the Voice early in development of proposed laws and policies. <p>The Design Principles also explain how the Voice will be accountable, including that:</p> <ul style="list-style-type: none"> - Members would serve on the Voice for a fixed period of time, to ensure regular accountability to their communities. <p>And that:</p> <p>The Voice will be Accountable and Transparent:</p> <ul style="list-style-type: none"> - The Voice would be subject to standard governance and reporting requirements to ensure transparency and accountability. - Voice members would fall within the scope of the National Anti-Corruption Commission. - Voice members would be able to be sanctioned or removed for serious misconduct. <p style="text-align: center;">***</p>
<p>These details would only be worked through after Australians have voted.</p>	<p>It is correct that the exact details will be worked out after a referendum, but it is misleading to imply there is no information about this future process, and there is no reference to the Government’s Design Principles that provide this information.</p> <p style="text-align: center;">***</p> <p>This is a misleading and selective use of quotes from the Yes campaign. It does</p>

According to the Yes campaign, it "doesn't make sense" to have details before the vote:
"It doesn't make any sense to do that detailed consultation until we have the support of the Australian people to change the constitution."
(Yes23 Brochure)

This is the wrong way around.

You wouldn't buy a house without inspecting it or a car without test driving it.

not reflect the full reasons as to why exact details of a legislative model have not been released. These have been explained by, for instance, the Indigenous Law Centre in its September 2022 Issues Paper:

'As a matter of constitutional principle, there are clear dangers in providing a full, detailed model of the Voice prior to a referendum, in the form of a draft Bill or actual legislation. It will potentially mislead voters and impair the constitutional function of the referendum: that is, voters may think they are voting on the detail of the model, and not the constitutional provision which is pitched at a much higher level of generality and principle. Perversely, this might operate de facto to entrench the original version as legislated, making future parliaments reluctant to amend the model that accompanied the referendum. That would undermine one of the key objectives of the constitutional amendment – to provide flexibility for the model to evolve, as it adapts to changing needs and circumstances.'

This is a subjective statement, but it does not accord with the views of constitutional experts, such as the Indigenous Law Centre and the Constitutional Expert Group set out immediately above.

While there is subjectivity in drawing any analogy, this analogy is apt to mislead, in that the purchase of a house or a car is the purchase of a particular house, or a particular model/make of car. The Voice proposal is not a vote on the particular model of the Voice. It asks

	<p>the people to vote Yes or No on a question of principle: should we recognise the first peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice. The constitutional amendment refers to two fundamental issues: the existence of the Voice and its core function. There is significant detail relating to these matters. The detail of the Voice model will be determined through the ordinary parliamentary process, and subject to changes, amendments and improvements.</p>
<p style="text-align: center;">***</p> <p>Yet you are being asked to vote to change our Constitution without details.</p> <p>Australians shouldn't be asked to sign a blank cheque.</p>	<p style="text-align: center;">***</p> <p>This is misleading, in that the constitutional amendment provides for the establishment of the Voice and its core function, and then leaves the details to Parliament, to be determined through the ordinary, democratic parliamentary process. As with all laws, the Parliament will need to create a Voice that is consistent with the whole constitutional document: one that doesn't undermine the functioning of the democratic system, nor interfere with the separation of powers.</p>
<p style="text-align: center;">***</p> <p><i>"How can Australians possibly agree to something where we don't know the detail?"</i> <i>(Senator Kerryne Liddle, Shadow Minister for Child Protection and the Prevention of Family Violence and Arrernte woman)</i></p>	<p style="text-align: center;">***</p> <p>The statement in this quote that we don't know the detail is misleading for two reasons. Full details have been provided to the Australian people about the constitutional amendment, that is, the part of the proposal that will be put into the Constitution. This includes the wording of the amendment, the government's explanatory memorandum, a joint parliamentary committee report, the Solicitor-</p>

	<p>General’s legal advice, and the communiqués and minutes of the Referendum Working Group and Constitutional Expert Group. The Australian people have been given all relevant details to understand the part of the proposal that is being voted on in the referendum. The second reason is that it omits any reference to the Government’s Design Principles that provide further information on the detailed model of the Voice to be created by legislation after the referendum.</p>
<p>3. IT DIVIDES US</p>	<p>This is misleading because it does not reflect the current constitutional position. The history of the colonisation of Australia is one in which there has always been different treatment of Aboriginal and Torres Strait Islander people. This is reflected, for instance, in the current constitutional text in which the Commonwealth Parliament is given power to make laws about people of a particular race under section 51(xxvi). In practice, that power has only been used to make laws specifically about Aboriginal and Torres Strait Islander people.</p> <p>The Voice proposal is a way of recognising this existing difference, and the unique status, history and culture of Aboriginal and Torres Strait Islander people, in a positive way.</p> <p>It is misleading to say that “many” Indigenous Australians do not agree with this, when in fact most Indigenous Australians do. While there is no</p>
<p>Enshrining in our Constitution a body for only one group of Australians means permanently dividing Australians. Many Indigenous Australians do not agree with this.</p>	
<p>“This Voice will not unite us, it will divide us by race.” (<i>Senator Jacinta Nampijinpa Price, Shadow Minister for Indigenous Australians and Warlpiri woman</i>)</p>	

	<p>singular, consensus position among Aboriginal and Torres Strait Islander people, the evidence shows that an overwhelming majority of Aboriginal and Torres Strait Islander people support this change. This is demonstrated, for instance, through the national deliberative consultative process that sits behind the Uluru Statement from the Heart, which involved more than 1000 Aboriginal and Torres Strait Islander people across the country, and led to a consensus position being adopted, asking for a constitutionally enshrined First Nations Voice. It is consistently confirmed through polling. In January 2023, an Ipsos poll indicated 80% support amongst the 300 Indigenous respondents. In April 2023, YouGov found support at 83% among the 732 Indigenous participants in its poll across the country. In 2022, Reconciliation Australia's Barometer survey found that 87% of First Nations respondents said it was important to protect a First Nations body in the Constitution. In addition to the polling, there is also significant support among prominent Indigenous organisations, including, for instance, the Northern Territory Land Councils, which in June 2023, issued the Barunga Declaration to the Government in support of the Voice, and peak bodies such as the Australian Indigenous Doctors Association.</p>
<p style="text-align: center;">***</p> <p>This goes against a key principle of our democratic system, that all Australians are equal before the law.</p>	<p style="text-align: center;">***</p> <p>This statement and quote are incorrect for two reasons. It ignores the differential treatment that has always</p>

"The inclusion of the proposed s 129 would mean that we become a nation where, whenever we or our ancestors first came to this country, we are not all equal."

(David Jackson AM KC, former Federal Court Judge)

Parliamentary Inquiry Submission,
11/04/2023

existed in Australia for Aboriginal and Torres Strait Islander people. Today that includes the race power in the Constitution, which gives the Commonwealth Parliament power to make laws for people based on their race (section 51(xxvi)) and has only ever been used in relation to Aboriginal and Torres Strait Islander people.

As former Chief Justice of the High Court, Murray Gleeson said: "It has been suggested that it is divisive to treat Indigenous people in a special way. The division between Indigenous people and others in this land was made in 1788. It was not made by the Indigenous people. The race power in the Constitution is now used in practice to make special laws for them. The object of the proposal is to provide a response to the consequences of that division."

The second reason is that the statement and quote refer to a narrow and incomplete concept of 'equality'. Equality does not require treating all people the same – indeed, such formal ideas of equality are outdated, and often perpetuate structural and institutional discrimination and unfair treatment. Modern ideas of equality look at substantive treatment, which recognises that there will be differences between individuals and groups that might require different treatment. According to international and domestic human rights law, one such group are Indigenous peoples, whose unique history, culture and connection to land require due recognition. This includes through political participation.

<p style="text-align: center;">***</p> <p>Our Constitution belongs to all Australians.</p>	<p style="text-align: center;">***</p> <p>This is correct in that section 128 of the Constitution gives the task of changing the Constitution to the Australian people, reflecting the popular sovereignty that rests in their hands. There is nothing in the constitutional proposal that changes the popular sovereignty at the heart of the Australian Constitution. The requirement for a referendum to decide whether to amend the Constitution reflects this popular ownership.</p>
<p style="text-align: center;">***</p> <p>Our Parliament is there to represent all Australians.</p>	<p style="text-align: center;">***</p> <p>While this is correct, and reflected in the requirements in sections 7 and 24 of the Constitution that the Senate and the House of Representatives are "directly chosen by the people", there is nothing in the proposed constitutional amendment that will change the representative nature of the Australian Parliament, nor change the functions and powers of the Australian Parliament. Rather, those functions and powers will be improved through the input of Aboriginal and Torres Strait Islander peoples. In this way, the Commonwealth Solicitor-General referred to the amendment as enhancing the system of democracy in Australia, and not impeding or fettering the powers of the Parliament or the Executive.</p>
<p style="text-align: center;">***</p> <p>It now includes a record 11 Indigenous Members and Senators.</p>	<p style="text-align: center;">***</p> <p>This is correct, and it represents a record number of Indigenous MPs in the Commonwealth Parliament. But the</p>

<p style="text-align: center;">***</p> <p>Our national anthem was recently changed to reflect the fact we are “one and free”.</p> <p style="text-align: center;">***</p> <p>By contrast, this Voice would permanently divide Australians, in law and spirit.</p> <p>“We’re all Australians. And that’s the way it should end up. It shouldn’t be divided by this so-called Voice which is going to split this country right down the centre.”</p>	<p>statement is misleading in that it implies that Indigenous members and Senators fulfil the same function as the Voice. Indigenous MPs do not represent Aboriginal and Torres Strait Islander people. They represent their parties and their constituencies. Currently, there are six Indigenous members of the ALP, one Indigenous member of the Country Liberal Party, one Indigenous member of the Liberals, one Indigenous member of The Greens, one Indigenous member of the Jacqui Lambie Network and one independent Senator for Victoria (former Greens). The nature of politics means that Indigenous representation in the Parliament will rise and fall over time, depending on things such as party pre-selection decisions, and election results. In contrast, the Voice is an enduring body that directly represents Aboriginal and Torres Strait Islander people from every part of Australia.</p> <p style="text-align: center;">***</p> <p>It is correct that this change of words was recently made to the national anthem.</p> <p style="text-align: center;">***</p> <p>This is misleading in so far as the concept of division implies a disregard for substantive equality. Contrary to this simple statement, equality does not require treating all people the same – indeed, such formal ideas of equality are outdated, and often perpetuate structural and institutional discrimination and unfair treatment. Modern ideas of equality look at</p>
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<p><i>(Ian Conway, Central Arrernte Senior Custodian)</i></p>	<p>substantive treatment, which recognises that there will be differences between individuals and groups that might require different treatment. According to international and domestic human rights law, one such group are Indigenous peoples, whose unique history, culture and connection to land require due recognition. This includes through political participation.</p>
<p>4. IT WON'T HELP INDIGENOUS AUSTRALIANS</p> <p>We all want to help Indigenous Australians in disadvantaged communities, to close the gap and achieve reconciliation.</p> <p style="text-align: center;">***</p> <p>However, more bureaucracy is not the answer.</p> <p>There are currently hundreds of Indigenous representative bodies at all levels of government, along with the National Indigenous Australians Agency, which has 1,400 staff.</p>	<p>This is a subjective statement of intention, but it reflects many public statements made by people on all sides of politics, and across the Yes and No campaigns.</p> <p style="text-align: center;">***</p> <p>This claim is misleading in two respects. The first is the misleading claim that the Voice is equivalent to 'bureaucracy', which does not reflect the intended representative nature of the Voice. It would not be the creation of another department, but a new representative institution. The NIAA performs an important – but very different – role to the Voice. The NIAA is not a representative body, but rather the Commonwealth government department that provides advice to the Minister and delivers the policies and programs of the department. It may consult with and report to the government the views of Aboriginal and Torres Strait Islander people, but it is not a representative body, and it is not</p>

<p style="text-align: center;">***</p> <p>A centralised Voice risks overlooking the needs of regional and remote communities.</p> <p>"A national voice cannot speak for country." <i>(Nyunggai Warren Mundine AO, Australians for Unity board member and Bundjalung man)</i></p>	<p>accountable back to Aboriginal and Torres Strait Islander people.</p> <p>The second is that the claim ignores the significant research that supports the view that greater input from Aboriginal and Torres Strait Islander people into government decisions, policies and laws that affect them will result in better outcomes for them, and better use of public funding.</p> <p>The claim is also inaccurate in saying that there are hundreds of Indigenous representative bodies. There are many Aboriginal and Torres Strait Islander corporations providing services in specific areas like health, land management and legal services, and there are some bodies in the States and Territories that have some kind of representative function. However they are not performing the intended role of the Voice. There is currently no national representative body that is available to provide advice to Parliament and the Executive on the full suite of laws, policies and decisions that affect Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p> <p>This is misleading in that the Voice will be national, but the Government's Design Principles explain how the Voice will be representative of Aboriginal and Torres Strait Islander people across the country, including in regional and remote communities. These Principles state:</p>
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<p style="text-align: center;">***</p> <p>Right now, many voices are crying out for help in tackling devastating social problems in some remote communities. What's needed is action.</p> <p>“What we need in Canberra is ears, not a Voice.” (Senator Jacinta Nampijinpa Price, Shadow Minister for Indigenous Australians and Warlpiri woman)</p>	<p>The Voice will be representative of Aboriginal and Torres Strait Islander Communities, Gender Balanced and Include Youth:</p> <ul style="list-style-type: none"> - The Voice would have specific remote representatives, as well as representation for the mainland Torres Strait Islander population. <p style="text-align: center;">***</p> <p>It is true that many Aboriginal and Torres Strait Islander people living and working in remote areas are calling for action on urgent problems confronting their communities. It is misleading not to include the fact that so many of these people support the Voice as an important, practically orientated step towards achieving action.</p> <p>To give one example, Bardi man from the Kimberley, Tyronne Garstone said that the Voice will provide “an ongoing, constructive conversation with politicians and bureaucrats about what works and what doesn’t”. He said, “We have long-term issues we need to fix ... health, education, employment, housing, incarceration and the protection of our culture ... We want this to be about the people of Australia standing together, saying it is time to break this cycle”.</p>
<p>5. NO ISSUE IS BEYOND ITS SCOPE</p>	<p>This title is legally and politically wrong. The Voice may make representations only about matters ‘relating to Aboriginal and Torres Strait Islander peoples’. While this is a deliberately broad remit, it is legally limited. The Voice will also have to operate within pragmatic and political realities, which</p>

	<p>will mean it will not have the resources to make representations on every matter relating to Aboriginal and Torres Strait Islander people, and it will need to prioritise the most pressing issues for those people it represents and to whom it is accountable.</p>
<p style="text-align: center;">***</p> <p>This Voice model isn't just to the Parliament, it goes much further – to all areas of "Executive Government". That includes all government departments, agencies and other bodies (like the Reserve Bank).</p>	<p style="text-align: center;">***</p> <p>It is correct that the constitutional amendment gives the Voice the constitutional function of making representations to Parliament and to the Executive Government of the Commonwealth . However, this doesn't extend the scope of the Voice's jurisdiction, as the Voice is still limited to making representations about matters relating to Aboriginal and Torres Strait Islander peoples.</p>
<p style="text-align: center;">***</p> <p>Decisions in relation to the economy, national security, infrastructure, health, education and more, would all be within its scope.</p>	<p style="text-align: center;">***</p> <p>This is misleading, in omitting the constitutional requirement that the government decision and must involve a matter that relates to Aboriginal and Torres Strait Islander people. Further, as a matter of political reality, the Voice will have to prioritise on what it makes representations, and will only use its time and resources on the issues that are most pressing for Aboriginal and Torres Strait Islander peoples.</p>
<p style="text-align: center;">***</p> <p>In the words of a member of the Government's Referendum Working Group:</p>	<p style="text-align: center;">***</p> <p>The quote refers to different actors who might fall within the "Executive Government" and points out the one function to be conferred by the</p>

"The voice will be able to speak to all parts of the government, including the cabinet, ministers, public servants, and independent statutory offices and agencies – such as the Reserve Bank...It can't shut the voice up."

(Professors Megan Davis and Gabrielle Appleby)

The Australian, 1/4/2023

In the words of a constitutional law professor who supports the Voice:

"I think it's fatally flawed because what it does is retain the full range of review of executive action. This means the Voice can comment on everything from submarines to parking tickets...We will have regular judicial interventions."

(Professor Greg Craven AO)

Daily Mail, 24/3/2023

Many legal experts have expressed concern about its scope, however their concerns have simply been overlooked.

Constitution on the Voice is the capacity to make representations.

This quote omits a vital detail. The constitutional amendment does not give the Voice the function of making representations over 'the full range of executive action', but limits it to matters relating to Aboriginal and Torres Strait Islander peoples. Professor Craven himself has said the use here of his quote is misleading. He has pointed out that in reality two constraints exist: "If the Voice starts commenting on everything from parking tickets to whatever, it would waste its own credibility". Secondly, he said that Parliament has the power to legislate about the way in which the Voice makes representations "within the envelope of what the constitutional amendment says".

This statement is misleading, in that the overwhelming majority of legal experts have expressed no concern regarding the scope of matters that the Voice can make representations on. In fact, the intentionally broad remit of matters has been seen as a constitutional strength,

	<p>meaning that while there are limits, they are unlikely to result in significant constitutional litigation, and the Voice will set its own priorities according to its political and resourcing realities. Concerns that have been raised about the amendment were not overlooked, but rather were thoroughly addressed during the detailed deliberations of the joint parliamentary committee that examined the amendment. The committee concluded that the amendment was constitutionally sound.</p>
<p>6. IT RISKS DELAYS AND DYSFUNCTION</p> <p style="text-align: center;">***</p> <p>The Australian Parliament deals with hundreds of pieces of legislation a year.</p> <p style="text-align: center;">***</p> <p>This Voice’s scope goes beyond Parliament, covering departments, agencies and all areas of “Executive Government”.</p> <p style="text-align: center;">***</p> <p>How would the Voice handle this?</p>	<p>This is misleading for the reasons stated below.</p> <p style="text-align: center;">***</p> <p>This is correct.</p> <p style="text-align: center;">***</p> <p>This is correct to the extent that it identifies WHO the Voice can speak to. But it omits an important limit on the scope of WHAT the Voice can speak about, which is only “matters relating to Aboriginal and Torres Strait Islander peoples”.</p> <p style="text-align: center;">***</p> <p>There are many examples of how bodies engage with Parliament and Government. For instance, there are small parliamentary committees that are tasked with reviewing each piece of legislation that is introduced into Parliament each year, and each piece of delegated legislation that is made each</p>

If the Voice is not satisfied with the way it has been consulted, or a decision that is made, it could appeal to the courts. How long would this take?

Many legal experts have warned this would cause considerable delays in decision making.

“The Voice will almost certainly become a lightning rod for protracted debate about a vast array of current issues.

year. Supported by an expert secretariat, parliamentarians regularly navigate this workload. Of course, the Voice will face practical constraints in terms of funding and resources. It will need to prioritise what areas it focusses its attention on, because its purpose will be to have political influence. The Parliament will also play a role in setting out in legislation how the Voice’s representations are to be received by Government.

This is misleading in that it does not reflect the overwhelming majority of legal opinion that it is highly unlikely that the High Court will draw an implied requirement for the Government to give notice to the Voice, consult with the Voice, or take into account the Voice’s views. While there may be an initial constitutional challenge, the High Court will likely deal with this quickly (as it does with other important operational constitutional questions). The overwhelming majority of legal opinion is that there will be no ongoing constitutional supervisory role for the courts that will create ongoing delay and dysfunction.

These statements are misleading. The overwhelming majority of legal opinion is that if there are future legal challenges relating to the operation of the Voice, these are likely to be settled relatively quickly, and the High Court is highly unlikely to interpret the constitutional amendment in a way that

<p>Nearly every matter of current concern on the national agenda will be seen as having an Indigenous component of some kind.” <i>(Nicholas Hasluck AM KC, former WA Supreme Court Judge)</i> Parliamentary Inquiry Submission, 16/4/2023</p> <p>The risk of legal appeals and delays means a risk of dysfunctional government.</p> <p style="text-align: center;">***</p> <p>That is not good for Australia.</p>	<p>would create dysfunctional delays within government. Former Chief Justice of the High Court, Robert French has explained that should any future arrangements be unworkable (in the sense of producing delays or dysfunction) “the parliament could amend the law accordingly”. French said “I don’t believe there is any real basis ... for an implied constitutional obligation to take into account representations”.</p> <p>Leading constitutional barrister Bret Walker SC said “the notion that there is an implication ... whereby the validity of executive actions will be somehow jamming the courts from here to kingdom come as a result of this enactment, is really too silly for words”.</p> <p style="text-align: center;">***</p> <p>This is a subjective statement, but based on the misleading claims above.</p>
<p>7. IT OPENS THE DOOR FOR ACTIVISTS</p> <p>The legal uncertainty and the absence of details raises the question: what comes next?</p> <p style="text-align: center;">***</p> <p>Some Voice supporters are upfront in saying this Voice will be a first step to reparations and compensation and other radical changes.</p>	<p>This is a misleading statement in that it refers to “legal uncertainty” and “absence of details” where there is significant agreement regarding the constitutional and legal soundness and certainty of the proposal, and the existence of details.</p> <p style="text-align: center;">***</p> <p>It is correct that there have been some statements by individuals who support the Voice that they hope the Voice will be a vehicle through which other changes can occur. However, it is</p>

"This is the first step, it's a vital step and it puts all the explanation behind it. 'Pay the Rent' for example, how do we do that in a way that is transparent and that actually sees reparations and compensation to Aboriginal and Torres Strait Islander people...?"
(Thomas Mayo, Referendum Working Group)
SEARCH Foundation speech, 12/2/2020

The Uluru Statement from the Heart says a Voice is a first step, before a treaty and truth telling.

By definition, a treaty is an agreement between governments, not between one group of citizens and its government.

misleading to imply a necessary connection to radical change. The first is that it overlooks the fact that the Voice cannot compel government or Parliament to do anything, and that any future decision regarding Aboriginal and Torres Strait Islander rights, reparations or compensation will need to be made and agreed on by the democratically elected Government and Parliament. The second is that these statements come from individuals, and do not represent the collective view of Aboriginal and Torres Strait Islander people. Indeed, the intention of the Voice is that it will provide a vehicle through which those views can be more accurately ascertained, and communicated to Government and the Parliament.

The Uluru Statement from the Heart seeks an immediate and prioritised reform of a constitutionally enshrined First Nations Voice. It also seeks future engagement on agreement-making and truth-telling. The Voice will deal with many pressing, and immediate issues affecting Aboriginal and Torres Strait Islander people, and may also engage with government on longer term objectives.

This ignores the existence of modern agreement-making processes between government and first peoples in British Columbia (Canada), for example. At a

<p style="text-align: center;">***</p> <p>A member of the Government’s Referendum Working Group has described “truth” as “leverage” to lead to “the abolishment of the old colonial institutions”.</p> <p>“It is a way to further what we need for our people in any negotiations for treaties and for other things like legislation, reform and abolishment of the institutions, the old colonial institutions that harm us.” (Thomas Mayo, Referendum Working Group)</p> <p style="text-align: center;">***</p> <p>Already, many activists are campaigning to abolish Australia Day, change our flag and other institutions and symbols important to Australians.</p> <p>“It’s always been #abolishAustraliaDay, changing the date is a cop out.” (Teela Reid, Referendum Engagement Group) Twitter, 24/1/2023</p> <p style="text-align: center;">***</p>	<p>State level in Australia, Victoria has already commenced steps towards such negotiations. Other States and Territories in Australia are at the early stages of exploring these possibilities for agreement-making processes with Aboriginal and Torres Strait islander people.</p> <p style="text-align: center;">***</p> <p>It is misleading and disingenuous to imply that this single statement from one individual means the Voice is likely to lead to radical changes. Abolition of government institutions cannot be achieved unilaterally by Aboriginal and Torres Strait Islander people. It would require a decision of the Parliament, or if it involved constitutional change, a decision of the Australian people through a referendum.</p> <p style="text-align: center;">***</p> <p>It is correct to say that a number of activists, both Indigenous and non-Indigenous, across Australia have advocated these changes. But it is misleading to omit the fact that any changes would not be able to be achieved unilaterally by the Voice. Action on such issues require a decision of the Commonwealth, State or Territory Parliaments or governments, or if it involves constitutional change, a decision of the Australian people through a referendum.</p> <p style="text-align: center;">***</p>
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<p>If there is a constitutionally enshrined Voice, these calls would grow louder.</p> <p style="text-align: center;">***</p> <p>"Australians need to understand that the Voice will be used to support the demands for recognition of coexisting sovereignty, a Makarrata commission designed to produce a treaty and monetary compensation, and a rewriting of Australian history... The potential for great irremediable harm to Australian society means the voice should never be incorporated into the Australian constitution..."</p> <p><i>(Terence Cole AO RFD KC, former NSW Supreme Court Judge)</i> Spectator Australia, 6/4/2023; Parliamentary Inquiry Submission, 19/4/2023</p>	<p>The Voice will prioritise the urgent concerns and priorities of Aboriginal and Torres Strait Islander people, which have been expressed by authoritative figures within local Aboriginal and Torres Strait Islander communities, including Aboriginal Land Councils, relating to health, education, employment, housing and services into communities.</p> <p style="text-align: center;">***</p> <p>It is important to place this statement in context, in that it is a statement from a non-Indigenous person, purporting to anticipate what the Voice will prioritise. What we know from Aboriginal and Torres Strait Islander people working in communities that there is a priority on addressing health, education, employment, housing and services into communities.</p>
<p>8. IT WILL BE COSTLY AND BUREAUCRATIC</p> <p>We don't know how much additional funding would be allocated to this Voice.</p> <p>That's another detail that would only be determined after the referendum.</p>	<p>The question of funding and resourcing, as with every other government body, including the Parliament and the Courts, will be an ongoing matter that is determined by government. This will allow, as part of the ordinary and democratic budgetary process, for the annual budget of the Voice to be</p>

<p style="text-align: center;">***</p> <p>There are currently hundreds of Aboriginal and Torres Strait Islander representative bodies at all levels of government.</p> <p style="text-align: center;">***</p>	<p>determined, and varied, as the operations of the Voice, and the broader budgetary context, requires. The exact allocation of funding will depend on the final design of the Voice, following a successful referendum. It is also likely that the initial set-up of the Voice will require more investment than its ongoing operation. Further, once established, the evidence suggests that the Voice will start to result in better outcomes, and more efficient allocation of government funding, resulting in net funding gains from the establishment of the Voice.</p> <p style="text-align: center;">***</p> <p>There are many and Aboriginal and Torres Strait Islander corporations in areas like health, land management and legal services, and there are some bodies in the States and Territories that have some kind of representative function. However, it is misleading to imply that they are performing the intended role of the Voice. There is currently no national representative body that is available to provide advice to Parliament and the Executive on the full suite of laws, policies and decisions that affect Aboriginal and Torres Strait Islander people.</p> <p style="text-align: center;">***</p>
<p>This year, the Government has allocated \$4.3 billion for the National Indigenous Australians Agency, which has 1,400 staff.</p>	<p>This is correct, according to the Portfolio Budget Statements 2023-2024, \$4.3 billion is available to the NIAA for its operations and to deliver programs and services on behalf of the Government.</p>

<p style="text-align: center;">***</p> <p>This Agency’s website and corporate plan says: “We... ensure Aboriginal and Torres Strait Islander peoples have a say in the decisions that affect them.”</p>	<p style="text-align: center;">***</p> <p>This statement is correct, but it is misleading in that it implies the NIAA performs the same role as the proposed Voice. The NIAA is a public service department. It is not a representative body, but the department that provides advice to the Minister and delivers the policies and programs of the department. It may consult with and report to the government the views of Aboriginal and Torres Strait Islander people, but it is not a representative body, and it is not directly accountable back to Aboriginal and Torres Strait Islander people.</p>
<p style="text-align: center;">***</p> <p>There is no suggestion this Voice will replace any of these. It will operate as one bureaucracy among many.</p>	<p style="text-align: center;">***</p> <p>It is misleading to claim that the Voice is equivalent to ‘bureaucracy’, which does not reflect the intended representative nature of the Voice. It would not be the creation of another department. It would not develop or administer programs. It would be a new representative institution.</p> <p>The exact relationship between the Voice and the NIAA (as well as other government departments) will be determined after the referendum, and will evolve according to considerations of effectiveness and efficiency. Given the NIAA’s current role in providing advice to the government on the views of Aboriginal and Torres Strait Islander people, the Voice will be able to enhance, and make more efficient and effective, the work of the NIAA in this respect.</p>

<p>9. THIS VOICE WILL BE PERMANENT</p> <p>This Voice is not a trial or pilot program.</p> <p style="text-align: center;">***</p>	<p>To say that the Voice is permanent and is "not a trial or pilot program" is misleading in two respects. First, it could be removed by a future constitutional referendum. Second, the constitutional amendment has been carefully drafted so that the creation of the Voice and its core function are constitutionally entrenched, but its detailed design will be set by the Parliament through the normal, public law-making process, and can be changed, adapted and improved through the normal, public law-making process.</p> <p style="text-align: center;">***</p>
<p>It will not be in legislation that can be reversed.</p> <p style="text-align: center;">***</p>	<p>This statement is misleading, in that the constitutional amendment has intentionally left the details of the design of the Voice to legislation that can be reversed, amended, and improved. This is a key part of the design of the Voice.</p> <p style="text-align: center;">***</p>
<p>Once it is in the Constitution it won't be undone.</p> <p style="text-align: center;">***</p>	<p>This is misleading, in that any part of the Constitution can be changed by a future referendum.</p> <p style="text-align: center;">***</p>
<p>Once the High Court makes an interpretation, Parliament can't overrule it.</p>	<p>It is correct that the High Court's interpretation of the Constitution is the final word on that interpretation, subject to a future referendum, or a change in decision by the High Court.</p>

<p style="text-align: center;">***</p> <p>We will be stuck with the negative consequences forever.</p>	<p style="text-align: center;">***</p> <p>This is misleading and an exaggeration. The Voice could be removed by a future constitutional referendum. Further, the constitutional amendment has been carefully drafted so that the creation of the Voice and its core function are constitutionally entrenched, but its detailed design will be set by the Parliament through the normal, public law-making process, and can be changed, adapted and improved through the normal, public law-making process.</p>
<p style="text-align: center;">***</p> <p>10. THERE ARE BETTER WAYS FORWARD</p> <p style="text-align: center;">***</p> <p>This referendum is not about simply recognising Indigenous Australians in the Constitution.</p> <p style="text-align: center;">***</p> <p>That can be achieved without tying it to a risky, unknown and permanent Voice.</p> <p>Recognition has the widespread support of Australians. However, this Voice proposal is the problem.</p>	<p style="text-align: center;">***</p> <p>There is no concrete proposal put forward to address the issues that the Voice is directed at provided under this 'reason'.</p> <p style="text-align: center;">***</p> <p>It is correct that the Voice is about both recognition and practical reform, which is why it is referred to as recognition 'through' the Voice.</p> <p style="text-align: center;">***</p> <p>This is misleading. Constitutional recognition of the place of Aboriginal and Torres Strait Islander in another way – such as a symbolic statement or preamble in the Constitution – would be a form of recognition that has been rejected by Aboriginal and Torres Strait Islander people. Any other form of constitutional recognition would be one-way recognition: a form of recognition that is not asked for or wanted by Aboriginal and Torres Strait</p>

	<p>Islander people. The only form of mutual recognition is through the Voice. It is the form of recognition that was asked for by Aboriginal and Torres Strait Islander people after a series of deliberative consultations that resulted in the Uluru Statement from the Heart.</p> <p>The conclusion of the eminent Referendum Council appointed by the Turnbull Government was that the Voice was “the only option for a referendum proposal that accords with the wishes of Aboriginal and Torres Strait Islander peoples”. The Council said it was “an appropriate form of recognition, of both substantive and symbolic value, of the unique place of Aboriginal and Torres Strait Islander peoples in Australian history and in contemporary Australian society”.</p>
<p style="text-align: center;">***</p> <p>There are many Australians who oppose a Voice on principle.</p>	<p style="text-align: center;">***</p> <p>This reflects the polling that many Australians are intending to vote No to the referendum at present. Their intentions are informed by a number of reasons, including that they oppose the Voice on principle.</p>
<p style="text-align: center;">***</p> <p>Others might be willing to consider a less risky Voice option, but the Government has not given you this choice.</p>	<p style="text-align: center;">***</p> <p>It is unclear what is referred to here in relation to the ‘less risky Voice option’. The current Voice proposal contained in the constitutional amendment has been reviewed by constitutional and legal experts across the country and an overwhelming majority of these experts agree that this option is constitutionally and legally sound.</p>

<p style="text-align: center;">***</p> <p>When previous changes to the Constitution have been proposed, there has been a Constitutional Convention to properly consider options and details.</p>	<p style="text-align: center;">***</p> <p>This is incorrect. There is no usual practice in Australia of a constitutional convention preceding proposed constitutional changes in Australia. Australian voters have gone to the polls on a referendum day 19 times to vote on a total of 44 proposals. A convention has been used on three occasions beforehand (in 1942, 1973 and 1998).</p>
<p style="text-align: center;">***</p> <p>No such process happened here. This process was rushed and heavy-handed.</p>	<p style="text-align: center;">***</p> <p>It is not correct to say that there has been no Constitutional Convention here, for two reasons. First, there has been the 2016-2017 Regional Dialogues and First Nations Constitutional Convention, involving more than 1000 Aboriginal and Torres Strait Islander people across the country that delivered the Uluru Statement from the Heart. Who attends a constitutional convention, and how they are selected, will depend on the nature of the constitutional issues involved. Given the First Nations Constitutional Convention was convened with the specific task of considering the question of what form of constitutional recognition was sought by Aboriginal and Torres Strait Islander people, it was comprised of First Nations delegates only.</p> <p>Second, the current referendum has involved one of the longest and most consultative processes in Australian history, overseen by governments from both sides of politics. Since 2010, there have been more than 10 inquiries and</p>

<p style="text-align: center;">***</p> <p>This approach isn't unifying, or effective. It's divisive.</p>	<p>reports into the question of constitutional recognition of Aboriginal and Torres Strait Islander people, which have engaged both First Nations and non-Indigenous Australians. These have included:</p> <ul style="list-style-type: none"> - The Referendum Council's consultations, including digital and public submissions. This revealed the strongest support (more than 90%) for Aboriginal and Torres Strait Islander people having a say when parliament makes laws and policies relating to Indigenous affairs. - The 2018 Joint Parliamentary Inquiry, which looked at the question of constitutional recognition, and received more than 500 public submissions. The Committee concluded that the Uluru Statement "was a major turning point in the debate", and focused all of its attention on the Voice proposal. - The 2021 Indigenous Voice Co-Design Process, which noted in its final report that 90% of the thousands of public submissions made to the process expressed support for a constitutional First Nations Voice. <p style="text-align: center;">***</p> <p>This is largely a subjective statement, but is misleading in that it refers to "this approach" which does not acknowledge the significant processes surrounding constitutional recognition that have involved Aboriginal and Torres Strait Islander people and non-Indigenous Australians for more than two decades.</p>
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<p>THIS DECISION IS YOURS</p> <p style="text-align: center;">***</p> <p>This is a very important decision. Unfortunately, the legitimate questions and concerns of many Australians have been dismissed.</p> <p style="text-align: center;">***</p> <p>Fortunately, this referendum won't be decided by politicians, corporations or celebrities.</p> <p>It will be decided by every Australian. It affects every Australian.</p> <p style="text-align: center;">***</p> <p>If you don't know, vote no.</p>	<p>This is correct, in that to change the Constitution requires a referendum of the Australian people.</p> <p style="text-align: center;">***</p> <p>The questions and concerns that have been articulated in the No case are predominantly misleading in that there are answers and details available that are not being provided to the Australian people by the No case.</p> <p style="text-align: center;">***</p> <p>It is correct that to change the Constitution requires a referendum of the Australian people.</p> <p style="text-align: center;">***</p> <p>This statement is a matter of opinion about how Australians should exercise their constitutional responsibility to determine whether to vote in favour of a constitutional change under s 128.</p>
<p>MORE INFORMATION</p> <p>For information and updates go to:</p> <ul style="list-style-type: none"> ■ www.riskyvoice.com ■ www.oneandfree.au ■ www.australiansforunity.com.au 	<p>The website links that are provided are all campaign websites, and are not authorised by the Australian Electoral Commission, or official government statements. While they are separate websites, they do not represent a diversity of views. The first two sites are authorised by the Liberal Party of Australia and the National Party of Australia respectively, both of which have party positions opposing the Voice. The third site says it is supporting the No campaign led by Country Liberal Party Senator Jacinta Nampijinpa Price and Nyunggai Warren Mundine. One of</p>

	the three Directors of the site's host was a Liberal parliamentarian for 19 years.
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Biographies of Report Authors

Gabrielle Appleby is a Professor at the Law Faculty of University of New South Wales (Sydney). She researches and teaches in public law, with her areas of expertise including the role, powers and accountability of the Executive; parliamentary law and practice; the role of government lawyers; the integrity of the judicial branch and First Nations constitutional recognition. Professor Appleby is a Fellow of the Australian Academy of Law, the Director of The Judiciary Project and the Gender + Public Law Project at the Gilbert + Tobin Centre of Public Law, the constitutional consultant to the Clerk of the Australian House of Representatives, a Board Member of the Centre for Public Integrity, and a member of the Indigenous Law Centre. Professor Appleby was the founding editor of Australia's national public law blog, AUSPUBLAW (www.auspublaw.org). In 2016-2017, she worked as a pro bono constitutional adviser to the Regional Dialogues and the First Nations Constitutional Convention that led to the Uluru Statement from the Heart. She has advised the Australian Law Reform Commission, and has undertaken research for the Australian Human Rights Commission, the Australasian Institute of Judicial Administration, and the Judicial Conference of Australia. Her books include *Australian Public Law* (4th ed, Oxford University Press, 2023), *The Judge, The Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia* (Cambridge University Press, 2021), *Judicial Federalism in Australia* (Federation Press, 2021), *The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest* (Hart Publishing, 2016); *The Critical Judgments Project: Re-reading *Monis v The Queen** (Federation Press, 2016) and *The Tim Carmody Affair* (NewSouth Publishing, 2016). Professor Appleby has also spent time working for the Queensland Crown Solicitor and the Victorian Government Solicitor's Office.

Sean Brennan is an Associate Professor at the UNSW Faculty of Law and Justice. He is Director of the Indigenous Legal Issues Project at the Gilbert + Tobin Centre of Public Law, and was the Centre's Director 2014-2019. Before joining UNSW in 2002, and since, he has worked with a variety of Aboriginal and other community organisations and his teaching, writing and external engagement focus on constitutional law, native title and land rights. He also worked in the Research Service of the Parliamentary Library in Canberra. Sean was a member of the pro bono legal team supporting the Regional Dialogues and First Nations Constitutional Convention that culminated in the Uluru Statement from the Heart. He is the co-author and co-editor of several books including *Blackshield & Williams Australian Constitutional Law and Theory* (Federation Press, 7th ed 2018).

Paul Kildea is an Associate Professor in the UNSW Faculty of Law and Justice. He teaches and researches in public law, with a particular interest in referendums, electoral law and federalism. Paul is the Director of the Elections & Referendums Project at the Gilbert + Tobin Centre of Public Law, and co-convenor of the NSW chapter of the Electoral Regulation Research Network. He is a co-editor of *Tomorrow's Federation: Reforming Australian Government* (Federation Press, 2012) and has published in various law and political science journals, both within Australia and internationally. Paul is currently undertaking research into state and territory referendums, referendum rules and electoral law reform.