

How an Indigenous Voice would work

- An Indigenous Voice would consist of **Local & Regional Voices** and the **National Voice**
- The **35 Local & Regional Voices** would have membership and operating arrangements determined by local communities in their respective region
- Each Local & Regional Voice would **look different depending on local circumstances**, but would have to meet several minimum requirements across nine principles to be approved
- Each Local & Regional Voice would be supported by a secretariat or 'backbone' team
- The National Voice would be a national body with **the responsibility and right** to advise the Parliament and Australian Government on national matters of significance to Aboriginal and Torres Strait Islander people
- The **National Voice will have 24 Aboriginal and Torres Strait Islander members**, gender-balanced and predominantly selected by Local & Regional Voices
- Its operations would be supported by the **Office for the National Voice**
- Establishing legislation for the National Voice would specify **consultation standards** where the Australian Parliament and Government would be:
 - o **Obligated to ask the National Voice for advice** on a defined and limited number of proposed laws and policies that **overwhelmingly affect** Aboriginal and Torres Strait Islander peoples
 - o **Expected to consult** the National Voice on a wider group of policies and laws that **significantly affect** Aboriginal and Torres Strait Islander peoples
 - o Both the Australian Parliament and Government and the National Voice would be **able to request advice** or commence discussion from the other party around relevant policy matters, but the National Voice would not be required to respond
- In practice, **any proposed policy or legislation with broad effect could be considered "significant"** and create an expectation of consultation if the National Voice deemed it so
- By the time any significant bill is finalised, the proposal is that the National Voice should already have been engaged and given the opportunity to provide **considered formal advice**
- Transparency mechanisms would provide that:
 - o A **statement would be included with bills on consultations** with the National Voice
 - o The **National Voice would be able to table formal advice in Parliament**, a rare power only normally granted to Ministers and the Auditor-General
- All elements are proposed to be **non-justiciable**, ie laws would not be able to be challenged or invalidated in court if consultation standards or transparency mechanisms were not followed.

1. Background

From October 2019 to July 2021, a [co-design process](#) was co-chaired by Professor Dr Marcia Langton AO and Professor Tom Calma AO in order to determine a preferred proposal for an Indigenous Voice. The final proposals below represent a unanimous or clear majority view of the co-design groups.

Prime Minister Albanese has implicitly endorsed these proposals as what he intends to legislate if the referendum passes, [saying](#) "I don't want this to be a top down thing ... there's enormous detail [from] Marcia Langton and Tom Calma about what a structure of a Voice should be".

The Indigenous Voice is envisaged as a cohesive and integrated system comprised of Local & Regional Voices, and a National Voice.

Both types of Voice would connect to existing Aboriginal and Torres Strait Islander bodies. It is seen as essential that an Indigenous Voice be secure, enduring, and appropriately protected. Although consideration of legal form was outside the panel's co-design responsibility, there was strong support during consultation for enshrinement in the Australian Constitution.

Two options are proposed for progressing implementation if the referendum passes (it is not known if a legislative option would be considered instead if the referendum fails):

- A. Establish the National Voice once the majority of Local & Regional Voices are in place
- B. Establish an interim National Voice while Local & Regional Voices form.

Regardless of the establishment option adopted, implementation would also require:

- Negotiation of formal commitments from all levels of government as soon as practical
- Passage of enabling legislation to establish the National Voice as a new independent Commonwealth entity, including funding certainty and appropriate safeguards

2. Local & Regional Voices

Local & Regional Voices would be established in 35 regions across Australia. They are described as “community-led, community-designed and community-run, acting as an independent voice for Aboriginal and Torres Strait Islander people working with governments”.

Their function would be to:

- **Provide advice to all levels of government** and the non-government sector on community aspirations, priorities and challenges to influence policy, program and service responses (including mainstream)
- **Engage in shared decision making**, ie work in partnership with all levels of government to set strategic directions and advise on alignment of investment to local priorities
- **Provide advice to the National Voice** on systemic issues associated with national policies and programs, and matters of national importance
- Communicate with state/territory level representative bodies, where they exist
- **Establish a feedback loop with community members** (ie individuals, families, groups, organisations and traditional owners with ties to the local area)

Local & Community Voices would **not** administer programs & funding. Their functions may evolve over time, based on the preferences of communities and capabilities of partners.

Detailed boundaries for regions would be determined by communities and governments at the beginning of implementation, taking cultural groupings, existing regional arrangements, demographics and geography into consideration.

Local & Regional Voices would be set up in different ways and look different across the country. The only requirement would be for each Local & Regional Voice to meet several minimum requirements across nine principles.

Each region would be able to decide the membership of their Local & Regional Voice in whichever way best fits their context, including:

- Elections, for example at public meetings

- Communities, groups and organisations nominating or selecting members
- Self-nomination through an expression of interest process
- Building on or incorporating traditional decision-making and governance structures
- Hybrid arrangements drawing on any or all of these options

People would be eligible to serve on a Local & Regional Voice where they were:

- an Aboriginal and/or Torres Strait Islander person
- recognised/accepted by community as an Aboriginal and/or Torres Strait Islander person
- a resident of the region where they were seeking nomination, and
- a 'fit and proper' person.

Regions will also be able to agree additional requirements that reflect their specific circumstances, as long as these are consistent with the principles. There would be no set length of terms for members.

Local & Regional Voices within each state and territory would collectively determine National Voice members from their respective jurisdictions. The approach to selection would not be prescriptive and could involve:

- reference to jurisdiction-level Aboriginal and Torres Strait Islander representative assemblies, where they exist
- elections, where the Local & Regional Voices and Aboriginal and Torres Strait Islander people of the relevant jurisdiction agree

Each Local & Regional Voices would be formally established through:

- A joint assessment process between a prospective Local & Regional Voice and relevant governments
- Evaluation against assessment criteria, as set out in legislation, with independent party verification of the assessment
- Final decisions to be made by the relevant ministers (both Commonwealth and relevant state/territory), based on the recommendation of the independent party

Key arrangements after approval would include:

- Set up of a 'partnership table': Structured, documented and transparent arrangements between a Local & Regional Voice and governments, consistent with the principles
- Agreed dispute resolution processes, including third party mediation as needed
- Support through a secretariat, or 'backbone', team in each region

The 'partnership table' would provide clear protocols for all levels of government to come together to share advice and decision making on community priorities.

3. National Voice

The National Voice would be a national body of Aboriginal and Torres Strait Islander members with the responsibility and right to advise the Parliament and Australian Government on national matters of significance to Aboriginal and Torres Strait Islander people.

It would be a new, independent Commonwealth entity, with policy and administrative support received from the Office of the National Voice. Its function would be to:

- Determine which issues to advise on, focused on national level issues.
- Ask for advice and information from the Parliament and Australian Government, and vice versa, respond to requests for advice if it wishes to

It would **not**:

- deliver Government programs
- provide mediation or facilitation between Aboriginal and Torres Strait Islander organisations, mediate between government and Local & Regional Voices, or be an escalation point for local and regional operational issues
- replace existing organisations
- be a clearing house for research or undertake program evaluation

The National Voice legislation would include consultation standards:

- The Australian Parliament and Government would be **obliged** to ask the National Voice for advice on a defined and limited number of proposed laws and policies that overwhelmingly affect Aboriginal and Torres Strait Islander peoples
- The Australian Parliament and Government would be **expected** to consult the National Voice on a wider group of policies and laws that “significantly affect” Aboriginal and Torres Strait Islander peoples
- Both the Australian Parliament and Government and the National Voice would be **able** to initiate advice or commence discussion around relevant policy matters

Policies and laws would be evaluated on whether they have a “significant effect” based on:

- if the proposed law or policy is a current priority of the National Voice
- if the proposed law or policy includes substantial measures that explicitly refer to Aboriginal or Torres Strait Islander peoples
- if the proposed law or policy would have a significant impact on the social, spiritual or economic wellbeing of a significant number of Aboriginal or Torres Strait Islander people
- if the proposed law or policy would impact Aboriginal or Torres Strait Islander peoples in a way that is different to the effects on other Australians.

Examples of changes to policies and laws that would meet the “significant effect” test include:

- amendments to the Racial Discrimination Act 1975 (Cth)
- changes to the Indigenous Procurement Policy
- changes to the National Disability Insurance Scheme where it significantly affects Aboriginal and Torres Strait Islander people
- changes to domestic violence measures, to the extent these significantly affect Aboriginal and Torres Strait Islander people

(Editor’s Note: In practical terms, this means that almost any legislation with broad effect could be considered “significant” if the National Voice deemed it so.)

In relation to advice and consultation:

- It is generally expected that Parliament and Government would engage the National Voice at the earliest opportunity when developing policies and proposed laws that have a significant impact on Aboriginal and Torres Strait Islander peoples

- By the time a bill is finalised, the National Voice should already have been engaged and given the opportunity to provide considered formal advice
- If legislative changes are time-sensitive, a shorter amount of time might be provided for consultation with the National Voice

Transparency mechanisms situated in the Parliament would provide that:

- A statement would be included with bills on consultations with the National Voice
- The National Voice would be able to table formal advice in Parliament
(Editor's Note: This is a rare power. Aside from Ministers, and possibly a few other rare exceptions, only the Auditor-General are authorised by legislation to table reports directly to the Parliament.)

A parliamentary committee would consider tabled advice and enable parliamentarians to hear directly from the National Voice.

All elements are proposed to be non-justiciable, ie laws would not be able to be challenged or invalidated in court if consultation standards or transparency mechanisms were not followed.

The National Voice would consist of:

- 24 members total
- 2 members for each state and the Northern Territory
- 1 additional remote representative for NSW, NT, QLD, WA and SA
- 1 member representing Torres Strait Islanders living on the mainland
- Up to 2 members may be appointed if a particular skill set is required and jointly agreed between the National Voice and relevant Minister
- ACT and Torres Strait Island would have one or two members each depending on if the special skill positions are appointed
- Gender balance would be structurally guaranteed

Members would:

- Select two full time co-chairs of different gender
- Serve up to two consecutive four year terms, with 50% replaced every two years for continuity
- Be subject to eligibility requirements (eg age, Indigenous identity, fit and proper person), reviewed on the advice of an independent Ethics Council
- Be able to be removed for misconduct after review and super-majority vote

Two permanent committees would be established, separate to the Voice membership:

- A Youth Permanent Advisory Group
- Disability Permanent Advisory Group

The National Voice could establish other committees and draw on expert advice at any time.