

Referendum Working Group

Meeting 2, 28 October 2022

10.30am – 2.00pm

Canberra/Online

ANNOTATED AGENDA

1 Acknowledgement of Country and welcome – 5 min

Minister for Indigenous Australians to lead

[Slide 3: Acknowledgement & welcome]

- Acknowledgement, welcome.
- Run through agenda – today we:
 - ask the Referendum Working Group to settle its position in the format of the referendum question, the pamphlet, and the approach to government spending
 - commence the work with the Constitutional Expert Group
 - take forward thinking regarding what information on the Voice for a successful referendum.

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2 Referendum preparation – 30 min

Minister for Indigenous Australians & Special Envoy to lead

[Slide 4: Referendum preparation]

Objectives:

- Ensure members are clear on:
 - Government and First Nations roles in the campaign, and
 - status of preparations for the yes campaign.

[Slide 5: Preparation – progress and roles]

Update on progress

- We have made a lot of progress on the pathway towards referendum. We want to share the key recent developments with you.
- The Government has committed \$59.1 million in the Budget over the next year to prepare for the referendum, including operational preparations by the AEC, legal advice, staff and stakeholder engagement.
- We have also committed \$5.8 million to work towards establishing an independent Makarrata Commission.
- We are close to finalising the proposed amendments to modernise the *Referendum (Machinery Provisions) Act* with a view to introducing to Parliament this year.
 - We will discuss the outstanding issues at the next item - the provisions relating to the ballot paper question, the official pamphlet and campaign spending restrictions.
- The Constitutional Expert Group has now been stood up. They will meet for the first time immediately following this meeting to begin formulating their advice to this group on the constitutional amendment.

Roles and responsibilities going forward

- The Government will support understanding of the referendum proposal and process amongst the broader Australian community. This means:
 - Engaging with stakeholders to help mobilise goodwill and provide information (e.g. business, local government)
 - Providing \$16.1 million over two years to the AEC to increase Indigenous electoral participation and enrolment
- We are considering providing information through a civics education campaign – but this would require an amendment to the Referendum Act – to be discussed in the next item.

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- The Government will not provide funding for yes/no campaigns – instead we propose to complement a ‘yes’ campaign led by First Nations people by mobilising support from the broader community.
- The Assistant Minister for Competition, Charities and Treasury has listed the Australians for Indigenous Constitutional Recognition organisation as a deductible gift recipient for donations made between July 2022 and June 2025.
 - This will kick-start funding to non-government organisations to support the ‘yes’ campaign.
- We are keen to hear your views on how the campaign can be progressed going forward:
 - What campaign activities are happening already?
 - How could a First Nations-led campaign be organised and resourced?
 - What do First Nations leaders need from Government?
 - Is there value in a Government funded civics education campaign?

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3 Referendum (Machinery Provisions) Act 1984 – 30 min

Attorney-General lead

[Slide 6: Referendum (Machinery Provisions) Act]

Objectives:

- Settle a position from members on whether changes are needed to the Referendum Act on:
 - the form of the question
 - the pamphlet and
 - to allow Government expenditure on education and engagement.

Paper: Modernising the Referendum process

[Slide 7: Seeking your advice]

- The purpose of this part of the meeting is to finalise the Working Group's advice to Government on options for the referendum question and the pamphlet. This advice will inform the Government's proposed amendments to the *Referendum (Machinery Provisions) Act*.

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[Slide 8: Issue 1 – form of the question - constitutional requirements for question]

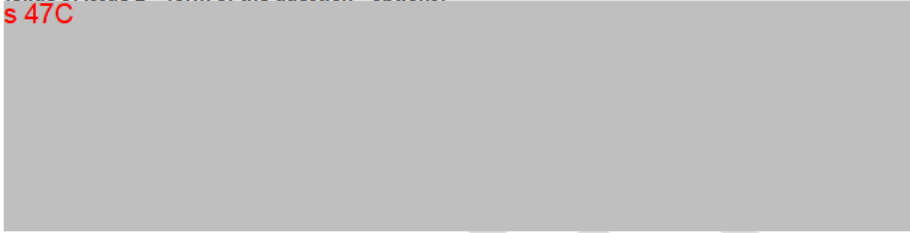
- Section 128 of the Constitution says how the Constitution can be altered. The *Referendum (Machinery Provisions) Act* sets out the detail of how can happen.
- Any amendments to the form of ballot paper under the *Referendum (Machinery Provisions) Act* must comply with the Constitution. Under the Constitution:

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- 1 The question must refer to the long or short title of the proposed law (which is the Bill to alter the Constitution).
 - 2 Voters must be asked to ‘approve’ the proposed law.
- The constitutional requirements allow for options based on precedent or alternative formulations.
 - **If asked:** The long title is the full title of a law that sets out in general terms the purpose of the law. The short title is the name for the Bill.

[Slide 9: Issue 1 – form of the question - options]
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[Slide 10: Issue 2 – official yes/no pamphlet]

- The focus of this item is to finalise the Working Group's advice to Government to suspend the requirement for a yes/no pamphlet in this referendum.
- The pamphlet for the 1999 referendum included the case for voting 'yes' and 'no' to the constitutional amendment on alternate pages. It ran to 38 pages, with 18 pages on the arguments for/against the republic, and 18 on the preamble.

[Slide 11: official yes/no pamphlet slide - options]

- The Prime Minister stated at the informal meeting on 9 September that the Government would not fund a yes or no campaign for the Voice referendum.
- However, the *Referendum (Machinery Provisions) Act* currently requires publication of a pamphlet setting out the arguments for and against the constitutional change. The parliamentarians who vote for and against the constitution alteration bill approve these arguments.
- The options for dealing with the pamphlet are set out in the slide.

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- The consequence of suspending the requirement for the pamphlet will be that no official yes/no pamphlet is prepared or distributed for this referendum, electronically or in paper form.

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[Slide 12: Impact of section 11(4)]

- Section 11(4) of the *Referendum (Machinery Provisions) Act 1984* currently restricts Commonwealth spending on arguments for or against the proposed constitutional amendment.
- It may apply once the constitution alteration bill is introduced into Parliament.
- It also limits the Government's ability to spend on:
 - 1 factual information about the arguments for and against the proposed constitution amendment, and
 - 2 engagement and awareness-raising activities. *(NB: the AEC's normal operations, including education and information programs on electoral and referendum matters are exempted from this restriction).*

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DISCUSSION

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4 Constitutional Expert Group – 30 min

Attorney-General to lead

[Slide 13: Constitutional Expert Group]

Objectives:

- Members agree Constitutional Expert Group terms of reference
- Members agree initial questions for the Expert Group

Papers: Constitutional Expert Group terms of reference & Possible questions for the Constitutional Expert Group

[Slide 14: Terms of reference – Constitutional Expert Group]

Overview of Expert Group

- The Constitutional Expert Group will convene for the first time this afternoon. Its role will be to support this Working Group.
 - 1 The Constitutional Expert Group is a resource that is available to you for advice and information on legal issues relating to the draft amendment suggested by the Prime Minister at Garma.
 - 2 Including 2 members from this Working Group (Professor Megan Davis and Mr Noel Pearson) and 1 member from the Engagement Group (Professor Asmi Wood), the Constitutional Expert Group consists of some of Australia's most eminent lawyers and constitutional law academics.
 - 3 Their advice is intended to assist you throughout your deliberations. So it will be tasked and guided by you to ensure it's providing the advice that you want.

Terms of reference

- The Expert Group's role is described in the draft terms of reference.
 - 1 Draft terms of reference were sent to members before this meeting.
 - 2 Do you approve the draft terms of reference?

DISCUSSION

How Expert Group and Working Group will work together

- The Expert Group is expected to meet 3 times before the end of the year, including the meeting this afternoon.
- The Expert Group and the Working Group will need to work together to settle the advice to Government regarding the constitutional amendment.

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- Do you have any comments on how the Expert Group and Working Group should work together? How do you think it would be best to receive the Expert Group's advice?

DISCUSSION

[Slide 15: Tasking – Constitutional Expert Group]

First Expert Group meeting – tasking

- The Expert Group meeting this afternoon will be an opportunity for its members to meet each other and discuss how the Group will work.
- It will also be an opportunity to task the Expert Group with some of the issues the Working Group would like it to consider.
- The starting point for the Expert Group is the draft amendment announced by the Prime Minister at Garma. The Expert Group should be asked for their views on this.

[Slide 16: potential issues – Constitutional Expert Group]

- The handout distributed prior to the meeting contained a list of potential additional questions. These have been drawn from issues raised in public, and the principles the Working Group identified at its previous meeting:
 - The scope of the Voice's power to make representations – the meaning of "matters relating to Aboriginal and Torres Strait Islander Peoples"
 - The scope of the Voice's power to make representations – that is, the meaning of "matters relating to Aboriginal and Torres Strait Islander Peoples"
 - Whether the draft provision adequately addresses concerns that the Voice would have a "veto power"
 - The power of the Parliament to establish regional Voices
 - The location of the provision in the Constitution
 - Any other matters the Working Group has identified

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- 2 It would be appropriate for the Expert Group to provide advice to the Working Group about this issue, potential consequences and responses.

Next steps

- After its first meeting this afternoon, it is expected that the Constitutional Expert Group will next meet [in November].
- The Attorney-General and Special Envoy are expected to update the Working Group on the Expert Group's deliberations at the next Working Group meeting [in November].

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Break 15 minutes

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5 Emerging Themes in the public debate – working lunch – 40 min

Minister for Indigenous Australians, Attorney-General & Special Envoy to lead

[Slide 17: Emerging Themes in public debate intro]

Objectives:

- Hear from the group regarding what they are hearing on the ground and an appropriate approach to address public concerns.
 - Lead into discussion regarding pre-referendum detail by identifying key concerns.
-
- We are interested in your views on community sentiment regarding the referendum and how to respond. What are people saying to you?

[Slide 18: Emerging themes in the public debate]

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- The slide sets out what we've identified as some key themes that have come through in the public commentary:
 - A desire for more information to understand what the Voice is
 - Questioning how the Voice would have a practical impact
 - Concern about the Voice being too broad or disruptive
- Our message on the Voice should be crafted to address the questions that the public have on the proposal.
- Invite views from the Working Group on:
 - What are you hearing from your communities and networks?
 - How could these concerns be addressed?

DISCUSSION

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6 Pre-referendum detail – 45 min

Minister for Indigenous Australians & Special Envoy to lead

[Slide 19:Pre-referendum detail]

Objectives:

- An initial discussion on the level of detail required on the voice prior to the referendum and discussion of process and timing for finalising a voice.
- At the last meeting we identified some key principles on the voice.
- Media coverage has identified a range of issues such as the form and function of a voice, how does it connect to communities and how will it impact on me and existing arrangements.
- These are a complex range of issues.

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[Slide 22: Determining the Voice Model – Potential process and sequencing]

- Deciding how the final model will be determined will be key to successful constitutional enshrinement.
- First Nations people, and voters more generally, will want to have a clear understanding of the Government's plan to implement the voice.
- The slide shows a potential sequencing.

[Slide 23: Questions for Working Group discussion]

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DISCUSSION

[Slide 24: Consideration of communique]

7 Wrap up and consideration of communique – 15 min

Minister for Indigenous Australians and Special Envoy to lead

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FOI2425/060

Referendum Working Group Meeting

Referendum on an Aboriginal and Torres Strait Islander Voice

28 October 2022

Acknowledgement and welcome

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP

Referendum preparation

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP

Referendum (Machinery Provisions) Act

Referendum on an Aboriginal and Torres Strait Islander Voice

Attorney-General the Hon Mark Dreyfus KC MP

We are seeking your advice on:

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Issue 1:

Form of the question – constitutional requirement

- The Constitution has two minimum requirements for the question on the referendum ballot paper:

1

- **The question must include the title of the proposed law**

2

- **Voters must be asked to “approve” the proposed law**

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Issue 1: Form of the question – options

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Issue 2: Official yes/no pamphlet



Extracts from 1999 official
yes/no pamphlet

The case for voting 'YES'

A PROPOSED LAW: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

An Australian Republic - it's all about our future

Australia has evolved and matured as an independent nation.
All Australians should be proud of our country and committed to its values.
Our Head of State should be chosen on merit and not by the privilege of birth.
Every Australian child should be able to aspire to be our Head of State.
As it stands today, no Australian, no matter how talented they are or how hard they work will ever be Australia's Head of State.
The past has served us well, but as a vibrant growing nation it's time to move on.
Our pride and stature as a truly independent nation are a vital part of our national unity.
An Australian President will represent our uniquely Australian identity as we face the world into the future.

Becoming a Republic simply means having an Australian as Head of State instead of the Queen

It's time to have our own Head of State.
Britain and the British monarchy have served us well and will always be part of our history.
However, the British monarchy is no longer relevant to our daily lives as Australians.
Now we need someone who will proudly promote Australia and our interests - someone who is one of us.

We should stand on our own two feet

From our beginnings as an ancient land and a British colony, we have progressed and grown.
We now come from many backgrounds and nationalities - our Head of State should represent all Australians.
Only an Australian can do that.

continued overleaf

Please note: The content of this argument was authorised by a majority of those members of the Parliament who voted for the proposed law and desire to forward such an argument. The text has been printed and presented without amendment by the Electoral Commissioner.

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The case for voting 'NO'

A PROPOSED LAW: To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

Vote 'NO' to the politicians' republic

This referendum is not just about whether Australia should become a republic. It is about the type of republic.

And the republic model being proposed is seriously flawed - it is untried, unworkable, undemocratic and elitist. The politicians will appoint the President, not the people. It removes the checks and balances from the current system.

Different people will be voting 'NO' for many different reasons:

Don't know? - Vote 'NO'

Those who don't know - should vote 'NO' - because that is the only safe way to go.

No say! - No way! - Vote 'NO'

Those who want to elect their President - should vote 'NO' - because under the proposed model, they will have no say in who their President will be.

A puppet for President! - Vote 'NO'

Those who want an appointed President - should vote 'NO' - because the proposed model is fatally flawed. The President will be a Prime Minister's puppet, subject to instant dismissal.

Keep the status quo! - Vote 'NO'

Those who value the certainty and stability of our current Constitution - should vote 'NO' - because any alternative has to be as good as or better than the current system. This proposal fails that fundamental test.

continued overleaf

Please note: The content of this argument was authorised by a majority of those members of Parliament who voted against the proposed law and desire to forward such an argument. The text has been printed and presented without amendment by the Electoral Commissioner.

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Issue 2: Official yes/no pamphlet – options

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Issue 3:

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Constitutional Expert Group

Referendum on an Aboriginal and Torres Strait Islander Voice

Attorney-General the Hon Mark Dreyfus KC MP

Terms of Reference

Referendum on an Aboriginal and Torres Strait Islander Voice

Attorney-General the Hon Mark Dreyfus KC MP

Starting point for Constitutional Expert Group Advice

The starting point is the Prime Minister's suggested draft amendment, announced at the Garma Festival:

- 1. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.*
- 2. The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander Peoples.*
- 3. The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers and procedures of the Aboriginal and Torres Strait Islander Voice.*

Constitutional Expert Group – potential issues

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- Are there any other questions that should be put to the Constitutional Expert Group?

Emerging themes in the public debate

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP

*Special Envoy for Reconciliation and the Implementation of the
Uluru Statement from the Heart, Senator Patrick Dodson*

Questions for Working Group discussion



- What are the questions that most need answering in the public debate?



- How do you suggest these are answered at this stage?

Pre-referendum detail

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP

*Special Envoy for Reconciliation and the Implementation of the
Uluru Statement from the Heart, Senator Patrick Dodson*

How much Voice detail pre-referendum will help the referendum succeed?

Spectrum of options

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Questions for Working Group discussion

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Consideration of Communiqué

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP
Special Envoy for Reconciliation and the Implementation of the
Uluru Statement from the Heart, Senator Patrick Dodson

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