

Referendum Working Group

Referendum on an Aboriginal and Torres Strait Islander Voice

12 December 2022

Acknowledgement and welcome

Referendum on an Aboriginal and Torres Strait Islander Voice

Minister for Indigenous Australians the Hon Linda Burney MP

Update on the *Referendum (Machinery Provisions) Amendment Bill 2022*

Referendum on an Aboriginal and Torres Strait Islander Voice

Attorney-General the Hon Mark Dreyfus KC MP

Referendum (Machinery Provisions) Amendment Bill 2022



Process



Content

- Modernises referendums by aligning the Referendum Act with the Electoral Act to keep pace with recent efficiency, transparency and integrity reforms in our election process
- Suspends funding restrictions to enable public education campaigns
- Suspends the requirement for an ‘official pamphlet’ for the first referendum in the digital age
- Ensures that the financial disclosure regime for referendums is consistent with similar arrangements in the Electoral Act

Update on work of the Constitutional Expert Group

Referendum on an Aboriginal and Torres Strait Islander Voice

Attorney-General the Hon Mark Dreyfus KC MP

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

Constitutional Expert Group Members

Constitutional Expert Group – first tranche of questions

- The scope of the Voice's power to make representations
- Whether the draft provision addresses concerns that the Voice would have a "veto power"
- The location of the provision in the Constitution
- Dispelling the myth that the Voice would give Aboriginal and Torres Strait Islander Peoples "special rights"
- Combatting misinformation about the Voice



Is the summary of answers to these questions suitable for public release?

Constitutional Expert Group – second tranche of questions

- The use of 'First Nations Voice' or 'First Peoples Voice' as the name of the entity
- Including introductory language to draft provision that specifically refers to the recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia
- Whether the Prime Minister's draft provision, together with existing legislative heads of power empower the Parliament to make laws to establish and draw connections with sub-national Voices
- Whether enshrining a Voice has implications for matters relating to sovereignty

Voice

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*

Possible process for determining a Voice model

s 47C

Engagement Group Meeting Planning

Referendum on an Aboriginal and Torres Strait Islander Voice

Other business

Referendum on an Aboriginal and Torres Strait Islander Voice

Consideration of Communique

Referendum on an Aboriginal and Torres Strait Islander Voice

Meeting 5, 2 February 2023

9.00am – 02:30pm

Canberra, Australian Parliament House

ANNOTATED AGENDA

1 Acknowledgement of Country and welcome (5 min)

Minister for Indigenous Australians

[Slide 2: Acknowledgement and welcome]

- Acknowledgement, welcome – thank you for travelling or for joining us online.
- At the outset, I would like to congratulate Professor Calma for being awarded Senior Australian of the year 2023 and his outstanding contribution over many years, championing the rights of First Nations Australians. It is great to have you on this working group - we are fortunate to have you - thank you, on behalf of all of us, for all your work and dedication.
- 2023 has started as expected - with significantly more public engagement and more media coverage.
- Thank you for your contributions since we last met. Together with the work of the Prime Minister and Ministers, we are moving the public narrative towards a principles-based, First Nations led recognition which has historic importance.

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- Run through agenda – today:
 - Item 2: We will update you on progress since we last met.
 - Item 3: Members of the Constitutional Expert Group will join us to take us through their latest advice and next steps.
 - Item 4: We will seek your views on options for the referendum question.

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- Item 5: We will discuss how the Voice design principles could be further elaborated and seek your views on some possible options for consultations after the referendum.
- Item 6: We will settle the communiqué for this meeting.
- There will then need to be a break before we return.
- Item 7: We will be joined by the opposition leader, The Hon Peter Dutton MP and the shadow Attorney-General, The Hon Julian Leeser MP – with opportunity to brief the opposition and have a discussion.
- Item 8: Finally, there will be an opportunity to discuss any other business.

2 Update from Government (25 min)

Minister for Indigenous Australians

[Slide 3: Update from Government]

Objective:

- Briefly update group on developments and note there will be an opportunity to discuss at the REG tomorrow on 3 February.
 - Highlight we are entering decision-making couple of months.
- We are now well into our referendum preparation.
 - There have been developments on all fronts – campaign, education, and policy work on the constitutional amendment, question and voice.
 - I will only cover these briefly now, as there will be time tomorrow for more in depth discussion.

[Slide 4: Education and Engagement]

Week of Action

- As you know, the week of action commencing 18 February will be the official launch of the referendum yes campaigns.

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- This is an important opportunity to galvanise community support for the Voice and the Referendum.
- My office is happy to hear of plans you may have for activities in this week or answer any questions.

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Civics awareness/ Factsheets

- The Government is exploring options for the development and delivery of a Voice and Referendum civics education and awareness raising program to address public knowledge of the referendum process, the Voice proposal, and understanding of the Constitution.
- [We will discuss this in more detail tomorrow at our Referendum Engagement Group meeting – and will provide you with two factsheets – The Voice principles and the journey to date].

Voice website

- Traffic on the Voice website is has significantly increased since the start of the year. It doubled last week from the previous week (views last week were over 17,000).
- This is positive as research conducted by NIAA in November found 37 per cent of people would look at Government websites to inform their decision-making on how to vote in the referendum. More than 1 in 4 First Nations people surveyed (27 per cent) reported they would look at Government websites.
- The NIAA has updated content on the Voice website last month, including adding the principles to the homepage. It also published its first monthly newsletter.
- A project is underway to enhance the Voice website and deliver a more user friendly, engaging, modern platform to help inform the public about the Voice. We anticipate the new site will be live by March.

[Slide 5: Referendum Milestones]

Referendum Milestones

- This slide shows the key legislative steps to the referendum. s 47C
- The Joint Standing Committee on Electoral Matters (JSCEM) will report back to Parliament in just over a week on 10 February. The report will inform parliamentary debate and – we expect – passage of the referendum machinery provisions amendment bill in the first week of March.
- Passage of the referendum machinery provisions bill in early March will allow us to introduce the constitutional amendment bill in late March.

- Our discussion in the next agenda items - on the amendment and the question – will not be the last occasion we have to discuss these matters. We are meeting again on either the 16 or 17 February – we will confirm the date with you shortly.
- That said, both the expert group and government is commencing consideration of the amendment and question and this is an important opportunity to shape the eventual wording.
- As you can appreciate given the timelines, we don't have a lot of time for these steps if we want to hold the Referendum this year.

Ask members, including those participating virtually, if they have any questions or comments.

3 Expert Group update (1 hour)

Attorney-General, members of the Constitutional Expert Group

[Slide 6: Expert Group update]

Objectives:

- Update from CEG members on outstanding questions.

■ s 47C

Paper:

- CEG Advice on second tranche of questions.

- I will now provide you with an update on the work of the Constitutional Expert Group.

[Slide 7: Constitutional Expert Group – second tranche of questions]

- The Expert Group has considered the second tranche of questions referred from the Working Group, and has settled a summary of its views in advance of the meeting.
- Members of the Expert Group are in attendance to answer the Working Group's questions.
- On including a preamble to the provision, the Group considered that there would be no unintended legal consequences to including a brief preamble to the new provisions, including one that specifically referred to the recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia.
- On the name of the Voice, the majority of the group expressed a preference for 'Aboriginal and Torres Strait Islander Voice' or 'First Peoples Voice', as these were well established and understood concepts s 47C, s 42

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- s 47C, s 42 [REDACTED]
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s 47C, s 42 [REDACTED]

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[Slide 8: Constitutional Expert Group s 47C, s 42 [REDACTED]

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- s 47C [REDACTED]
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Morning tea – 15 minutes, 10.30 – 10.45am

4 Referendum question (30 minutes)

[Slide 10: Referendum question]

Objective:

- Discussion and advice on options for long-title of Bill/ballot paper question.

Paper:

- Referendum Question options paper.

- We are now seeking your advice on the question to put to the Australian voters on referendum day.

- s47C [REDACTED]

- The referendum question must follow the rules set out by the Constitution and the Referendum (Machinery Provisions) Act, and incorporates the long title of the Constitution Alteration Bill.
- We have previously discussed the rules that the Constitution and Referendum Act place on the question. They are:
 - The question must refer to the long or short title of the proposed law (which is the Bill to alter the Constitution).
 - Voters must be asked to 'approve' the proposed law.
 - The Referendum Act then sets out a particular format for the question, based on the long title of the proposed law to change the Constitution. s47C [REDACTED]
- Since we will be introducing that Bill to Parliament in March, the Government needs to settle the long title soon, and therefore the referendum question itself.
 - The long title will be the subject of review and discussion when the Bill is in Parliament. There is the capacity for a committee to recommend that it be changed.

- s47C [REDACTED]

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■ s 47C [REDACTED]
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5 s 47C [REDACTED]
[REDACTED] (1 hour)

Minister for Indigenous Australians / Senator Dodson

[Slide 11: s 47C [REDACTED]]

s 47C [REDACTED]

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6 Consideration of communiqué – 15 min

Minister for Indigenous Australians / Senator Dodson

[Slide 16: Consideration of Communiqué]

Discuss draft communiqué – distribute in the room and share on the screen.

- A key question for the draft communicate is whether to include the summary of advice on the second tranche of questions referred to the Constitutional Expert Group.

Ask members including those participating virtually if they have any questions or comments.

Lunch – 30 minutes, 12.30 – 1.00pm

7 Opposition briefing – (1 hour)

Minister for Indigenous Australians

[Slide 18: Opposition briefing]

- Welcome the opposition leader, The Hon. Peter Dutton MP and the shadow Attorney-General, The Hon. Julian Leeser MP, to the fifth Referendum Working Group.
- Introduce the agenda item.
- Offer Mr Dutton and Mr Leeser the opportunity to respond.

Ask members including those participating virtually if they have any questions or comments.

Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

- Thank the leader of the opposition, Mr Dutton, and the shadow Attorney-General, Mr Leaser, for joining the Referendum Working Group meeting and for their contributions to the discussion.

8 Other business – (30 minutes)

Minister for Indigenous Australians

[Slide 19: Other business]

OPPORTUNITY FOR QUESTIONS/DISCUSSION/REFLECTIONS

- Ask members including those participating virtually if they have any other business, questions or comments.
- Thank members for their contribution and close the meeting.

Referendum Working Group

Referendum on an Aboriginal and Torres Strait Islander Voice

2 February 2023

Acknowledgement and welcome

Referendum on an Aboriginal and Torres Strait Islander Voice

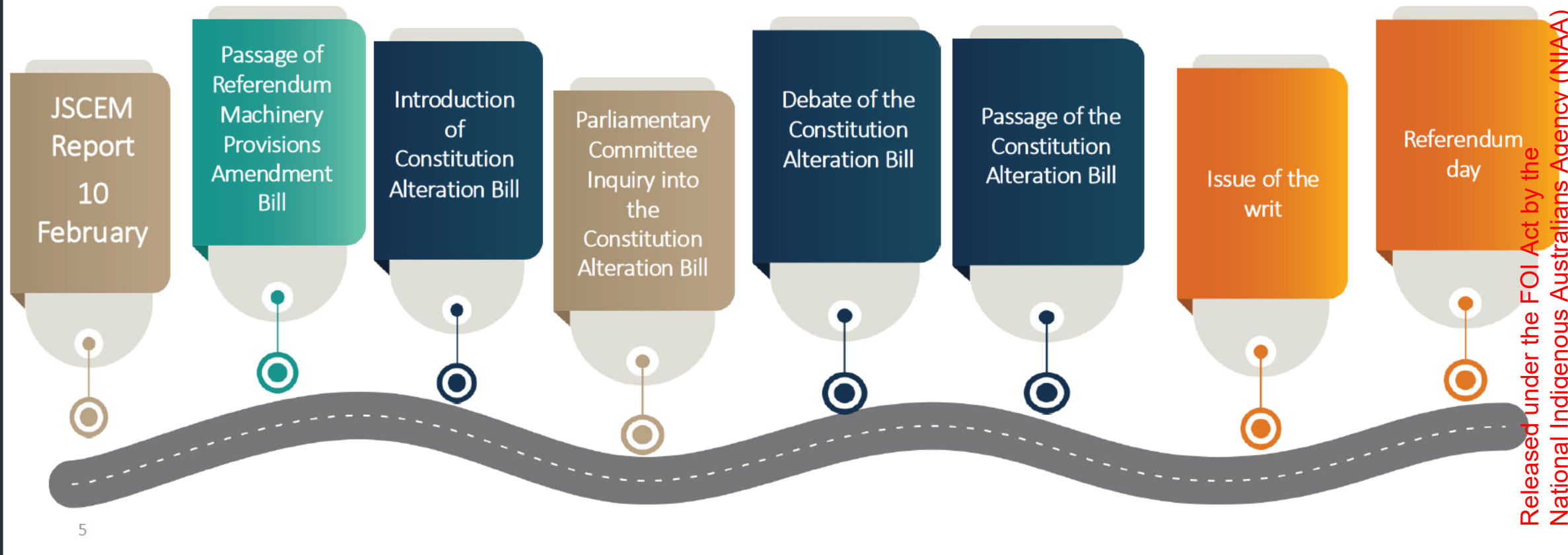
Update from Government

Referendum on an Aboriginal and Torres Strait Islander Voice

Education and Engagement

- Week of Action
- Civics awareness
- Factsheets
- Voice website

Referendum Milestones



Expert Group update

Referendum on an Aboriginal and Torres Strait Islander Voice

Constitutional Expert Group – second tranche of questions

- The use of 'Aboriginal and Torres Strait Islander Voice', 'First Nations Voice' or 'First Peoples Voice' as the name of the entity
- Including introductory language to the draft provision that specifically refers to the recognition of Aboriginal and Torres Strait Islander Peoples as the First Peoples of Australia

s 47C, s 42

Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

Constitutional Expert Group – third tranche of questions

s 47C, s 42



Released under the FOI Act by the
National Indigenous Australians Agency (NIAA)

Morning Tea

Referendum question

Possible ballot paper question

s 47C



s 47C

Referendum on an Aboriginal and Torres Strait Islander Voice

Consideration of Communiqué

Referendum on an Aboriginal and Torres Strait Islander Voice

Close

Referendum Working Group

Enshrining an Aboriginal and Torres Strait Islander Voice
in the Constitution

Elaborating on agreed Voice principles

Purpose

s 47C

Context

Potential models for the Voice have been in development since 2017 in three key processes:

1. The Regional Dialogues and the First Nations Constitutional Convention that delivered the Uluru Statement from the Heart.
2. The 2018 Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.
3. The 2019-2021 Indigenous Voice Co-Design Process.

These key processes have informed the development of a set of key **design principles** for the Voice, as previously agreed by the First Nations Referendum Working Group (Working Group):

The Voice would:

- provide independent advice to the Parliament and Government
- be chosen by First Nations people based on the wishes of local communities
- be representative of Aboriginal and Torres Strait Islander communities
- be empowering, community led, inclusive, respectful, culturally informed and gender balanced, and includes youth
- be accountable and transparent
- work alongside existing organisations and traditional structures.

The Voice would not:

- have a program delivery function
- have a veto power.

s 47C

Referendum Working Group

Attachment A

Discussion points – Elaborated Design Principles

A. The Voice will give independent advice to the Parliament and Government

Additional draft explanation for discussion:

- The Voice would make recommendations and give advice to the Parliament and the Government on matters relating to Aboriginal and Torres Strait Islander peoples.
- The Voice would be able to provide advice proactively.
- The Voice would be able to respond to requests for advice from the Parliament and the Government.
- The Voice would be independent and have its own resources to allow it to research, develop and provide advice.

B. Will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities

Additional draft explanation for discussion:

- Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by Government.
- Members would serve on the Voice for a fixed period of time, to ensure regular accountability to their communities.

C. Will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth

Additional draft explanation for discussion:

- 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.

Referendum Working Group**D. Will be empowering, community-led, inclusive, respectful and culturally informed****Additional draft explanation for discussion:**

- Members of the voice would be expected to connect with – and reflect the wishes of – their communities.
- The Voice would consult with grassroots communities and regional entities to ensure its advice is informed by their experience, including the experience of those who have been historically excluded from participation.

E. Will be accountable and transparent**Additional draft explanation for discussion:**

- 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.

F. Will work alongside existing organisations and traditional structures**Additional draft explanation for discussion:**

- The Voice would respect the work of existing organisations, including the Coalition of Peaks.

G. Will not have a program delivery function**Additional draft explanation for discussion:**

- The Voice would be able to provide advice about and propose efficiencies for programs and funding, but it will not manage money or deliver services.

H. Will not have a veto power**Additional draft explanation for discussion:**

- The Voice would not be able to prevent or delay Parliament passing laws or the Government making decisions.

Referendum Working Group

Enshrining an Aboriginal and Torres Strait Islander Voice
in the Constitution

Elaborating on agreed Voice principles

Purpose

s 47C

Context

Potential models for the Voice have been in development since 2017 in three key processes:

1. The Regional Dialogues and the First Nations Constitutional Convention that delivered the Uluru Statement from the Heart.
2. The 2018 Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.
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These key processes have informed the development of a set of key **design principles** for the Voice, as previously agreed by the First Nations Referendum Working Group (Working Group):

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- be representative of Aboriginal and Torres Strait Islander communities
- be empowering, community led, inclusive, respectful, culturally informed and gender balanced, and includes youth
- be accountable and transparent
- work alongside existing organisations and traditional structures.

The Voice would not:

- have a program delivery function
- have a veto power.

s 47C

Referendum Working Group

Attachment A

s 47C

s Opening Remarks

s 47F(1)

NIAA comment: We suggest the following overarching response:

- Thank you for sharing your thoughts and ideas on this document.

s 47C

s 47C, s 47F(1)

A. The Voice will give independent advice to the Parliament and Government

Additional draft explanation for discussion:

- The Voice would make recommendations and give advice to the Parliament and the Government on matters relating to Aboriginal and Torres Strait Islander peoples.
- The Voice would be able to provide advice proactively.
- The Voice would be able to respond to requests for advice from the Parliament and the Government.
- The Voice would be independent and have its own resources to allow it to research, develop and provide advice.

s response:

s 47C

Referendum Working Group

s 47C

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[REDACTED]

[REDACTED]

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[REDACTED]

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NIAA comment:

- s 47C [REDACTED]
 - The scope and function of the Voice is to advise the Australian Parliament and Government on matters of national significance to First Nations peoples. Advice will be non-justiciable, with no parliamentary veto powers or administration of funding.

s 47C

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

B. Will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities**Additional draft explanation for discussion:**

- Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by Government.
- Members would serve on the Voice for a fixed period of time, to ensure regular accountability to their communities.

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s 47F(1) response:

s 47C

NIAA comment: s 47C

- Government proposes to consult with First Nations people and communities to finalise aspects of the model (including structure and membership) following the referendum.

s 47C

- The co-design model considered membership to be best determined by Aboriginal and Torres Strait Islander people in each region or local community to reflect the range of different styles and approaches needed to ensure legitimacy.
- Mechanisms considered included elections, communities nominating or selecting members, or drawing on or incorporating cultural leadership involved in traditional decision making and governance structures.

Referendum Working Group

C. Will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth

Additional draft explanation for discussion:

- Members of the Voice would be Aboriginal and/or Torres Strait Islander, according to the standard tri-part legislative definition.
- 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.

Will be empowering, community-led, inclusive, respectful and culturally informed

Additional draft explanation for discussion:

- Members of the Voice would be expected to connect with – and reflect the wishes of – their communities.
- The Voice would consult with grassroots communities and regional entities to ensure its advice is informed by their experience, including the experience of those who have been historically excluded from participation.

s 47F(1) response:

s 47C

NIAA comment:

s 47C

Referendum Working Group

D. Will be accountable and transparent

Additional draft explanation for discussion:

- 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.

E. Will work alongside existing organisations and traditional structures

Additional draft explanation for discussion:

- The Voice would respect the work of existing organisations, including the Coalition of Peaks.

s 47F(1) response:

s 47C

NIAA comment:

- The rationale that underpins this principle (drawn from past reports) is as follows:
 - There should be no duplication of the work of existing organisations.
 - The Voice should complement and support the work of existing organisations.

s 47C

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- s 47C [REDACTED]
- [REDACTED]

F. Will not have a program delivery function

Additional draft explanation for discussion:

- The Voice would be able to provide advice about and propose efficiencies for programs and funding, but it will not manage money or deliver services.

s 47F(1) response:

- s 47C [REDACTED]

NIAA comment: This principle is not incompatible with the Cape York Institute proposal, which proposed local and regional voices consulted on funding proposals, including a review power and a veto over proposed funding at a regional level. It is also consistent with the co-design proposal which Noel and other EC leaders were critical in drafting.

- s 47C [REDACTED]

Referendum Working Group

s 47C

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G. Will not have a veto power

Additional draft explanation for discussion:

- The Voice would not be able to prevent or delay Parliament passing laws or the Government making decisions.

s 47F(1) response:

s 47C

NIAA comment: The Constitutional Expert Group (Expert Group) is examining whether there could be a constitutional requirement that the Government take into account relevant representations from the Voice in some kinds of administrative decisions. s 47F(1)

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s 47C

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s 47C

s 47C

- The Expert Group is currently finalising its advice to the Working Group which will touch on this matter, as part of the third tranche of issues the Working Group referred on 12 December 2022.

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Referendum Working Group

s 47C

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