

## TasCOSS Background Paper on the Voice

A referendum will be held in 2023 to determine whether the Australian Constitution should be changed to include an [Aboriginal and Torres Strait Islander Voice \(the Voice\)](#). TasCOSS is encouraging non-Aboriginal people to vote 'Yes' at the referendum, as well as committing to continue and strengthen our advocacy on issues that impact the Tasmanian Aboriginal community.

The following background paper provides a brief overview of the proposed reforms and some history in relation to the concept of the Voice, as well as information about the process TasCOSS undertook to develop our position.

### The upcoming referendum

The Federal Labor Government has committed to a referendum on the Indigenous Voice to Parliament in 2023. This commitment is informed by the community consultations, research and materials relating to the [Uluru Statement from the Heart](#), which outlined three priority and sequenced reforms: Voice, Makarrata (treaty) and Truth.

The Government has confirmed a referendum on the Voice will be held in the second half of 2023.

The proposed wording for the referendum has been confirmed:

*A Proposed Law: to alter the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice. Do you approve this proposed alteration?*

The proposal is to alter the Constitution to include a new chapter, 'Recognition of Aboriginal and Torres Strait Islander Peoples,' with the following details:

*In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:*

- 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 the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples; and*
- 3. The Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.<sup>1</sup>*

National referendum is the only mechanism for changing our country's constitution and to be successful, the change requires not only a majority of 'Yes' votes nation-wide, but a majority in at least four states.<sup>2</sup>

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<sup>1</sup> [Voice to Parliament referendum question and constitutional amendment announced \(ABC News\)](#).

<sup>2</sup> [Why is a referendum needed? — Indigenous constitutional recognition through a Voice \(fromtheheart.com.au\)](#).

## What is the Voice?

The Voice is conceptualised to be a Constitutionally-enshrined body of First Nations people who will advise the Federal Government on laws and policies which affect or are likely to affect their communities.

There is no fixed model for what the Voice will look like — the intention is for the concept to be implemented and then the detail shaped through consultation with community. There are some key design principles which have been agreed upon in relation to the function of the Voice:

- The Voice will give independent advice to the Parliament and Government;
- The Voice will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities;
- The Voice will be representative of Aboriginal and Torres Strait Islander communities, gender balanced and include youth;
- The Voice will be empowering, community-led, inclusive, respectful and culturally informed;
- The Voice will be accountable and transparent;
- The Voice will work alongside existing organisations and traditional structures;
- The Voice will not have a program delivery function; and
- The Voice will not have a veto power.<sup>3</sup>

## What is treaty?

The Uluru Statement from the Heart does not use the word ‘treaty’ but calls for the establishment of a Makarrata Commission, an independent body responsible for overseeing truth-telling and agreement-making. Makarrata is a Yolngu word meaning to come together after a struggle.<sup>4</sup>

According to the official website of the Uluru Statement from the Heart, ‘[a] Makarrata Commission would have two roles: supervising a process of agreement-making, and overseeing a process of truth-telling.’<sup>5</sup> They note that there are several examples of negotiated agreements between Aboriginal and Torres Strait Islander peoples and governments, for example, the state-based native title and/or land rights legislation.

Many treaty-making processes have initiated positive systemic change for Indigenous peoples. For example, Canada has entered into 70 recognised treaties with its 364 First Nations, some of which have led to self-government, and the treaty of Waitangi in New Zealand (Aotearoa) and its associated tribunal are regarded as “central to Maori cultural and economic life, covering everything from the preservation of Maori language, to land and sea rights, and the protection of cultural artifacts and traditions.”<sup>6</sup> However, treaties alone may not heal colonial injustices — for example, the United States (US) negotiated more than 360 treaties with their Indigenous peoples between 1778 and 1868, most of which were either broken or never honoured by the US government.

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<sup>3</sup> [Design principles of the Aboriginal and Torres Strait Islander Voice \[ulurustatement.org\]](https://www.ulurustatement.org/).

<sup>4</sup> [Uluru Statement: a quick guide \[aph.gov.au\]](https://www.aph.gov.au/uluru-statement).

<sup>5</sup> [FAQs: Uluru Statement from the Heart \[ulurustatement.org\]](https://www.ulurustatement.org/).

<sup>6</sup> [Roundtable: The future of treaties \[ABC Radio National\]](https://www.abc.net.au/radionational/news/stories/2022/07/28/roundtable-the-future-of-treaties-1.1048484).

A recent review in the Northern Territory (NT) has resulted in a report with several recommendations outlining the recommended steps and framework towards an NT Treaty.<sup>7</sup> We understand the recommendations from the NT report are supported by the Tasmanian Aboriginal Centre,<sup>8</sup> which include the following:<sup>9</sup>

- The development of a process for Aboriginal communities to gain official recognition and transition to a First Nation Government;
- The creation of an Aboriginal Ombudsman position to respond to complaints regarding government participation in the Treaty process;
- The creation of an Aboriginal Treaty Tribunal to deal with disputes in relation to Aboriginal membership and boundary, and in relation to Treaty performance;
- Ensuring both the Aboriginal community/communities and the Northern Territory Government take concerted steps to become 'Treaty-ready' and in a position to negotiate and implement treaties on equal footing.

Michael Mansell of the Aboriginal Land Council of Tasmania has also broadly outlined that a Tasmania-specific treaty would need to contain land hand-backs, sharing of power and sharing of wealth.<sup>10</sup>

### What is truth-telling?

There are plenty of models for what the 'Truth' component of this proposal could look like. Processes of formal truth-telling as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples<sup>11</sup> have been held in more than 30 countries, usually taking the form of a royal commission; gathering and acknowledging First Nations peoples' lived experiences of injustice.<sup>12</sup>

At the state and territory level, there is a great deal of work already underway, in finding pathways to truth and mapping massacres and Frontier Wars.<sup>13</sup> An example of how truth-telling may work in practice can be found in Victoria, which has already enacted both the treaty and truth-telling components of the Statement from the Heart.<sup>14</sup> Yoorook is essentially a royal commission aiming to correct the public record on the true impacts of colonisation and the strength and resilience of First Peoples in Victoria. It also aims to "make recommendations for healing, system reform and practical changes to laws, policy and education, as well as matters to be included in future treaties."<sup>15</sup>

Palawa woman and Distinguished Professor of Sociology (Emerita) at the University of Tasmania, Maggie Walter, is one of the founding commissioners of Victoria's Yoorook Justice Commission and she advocates that a similar model may work for Tasmania's Aboriginal community.<sup>16</sup> Walter suggests a genuinely Aboriginal-led process is possible proposing the following:

1. *Establish palawa framed and led pre-requisite infrastructure:*
  - a. *Commissioners' Truth, Treaty, Voice and support office;*
  - b. *Formal pathways for Traditional Owner groups to establish; and*

<sup>7</sup> [Treaty Commission Final Report 2022 \[treatynt.com.au\]](https://treatynt.com.au).

<sup>8</sup> For example, see [Tasmanian Aboriginal Centre — Voice, Treaty, Truth \[tacinc.com.au\]](https://tacinc.com.au).

<sup>9</sup> [Treaty Commission Final Report 2022 \[treatynt.com.au\]](https://treatynt.com.au).

<sup>10</sup> [Michael Mansell: Truth-Telling and Treaty \[YouTube\]](#).

<sup>11</sup> [United Nations Declaration on the Rights of Indigenous Peoples \[un.org\]](https://www.un.org).

<sup>12</sup> [Victoria to establish truth and justice process as part of Aboriginal treaty process \[ABC News\]](#).

<sup>13</sup> [Voice, Treaty, Truth? The role of truth-telling in Australian, state and territory governments' reconciliation processes: a chronology from 2015 \[aph.gov.au\]](https://aph.gov.au).

<sup>14</sup> [Victoria passes landmark legislation to create First Nations treaty authority \[The Guardian\]](#); [Treaty in Victoria \[firstpeoplesrelations.vic.gov.au\]](https://firstpeoplesrelations.vic.gov.au).

<sup>15</sup> [FAQs: Yoorook Justice Commission \[yoorpokiusticecommission.org\]](https://yoorpokiusticecommission.org).

<sup>16</sup> [Time for Truth-Telling in Lutruwita \[YouTube\]](#).



In July 2023, a decision was made for TasCOSS to formally adopt a position on the Voice. In making this decision, we considered the role of TasCOSS as the peak body for community services in Tasmania and what the expectations were of our member organisations and the broader community in relation to the Voice. Although TasCOSS is not an Aboriginal organisation, we believe that our decision to adopt a position demonstrates leadership and we hope that it may encourage others to consider their position.

When deciding on the wording for our position, TasCOSS identified the following objectives for our messaging:

- TasCOSS acknowledges the work and expertise of First Nations leaders, academics and experts in relation to potential constitutional and legal reform in this area. In particular, we wanted to recognise the voice and expertise of our local Aboriginal community, Elders, organisations, experts, lawyers and scholars.
- The right to self-determination has been clearly articulated in international law (including in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), as well as explicitly included in the United Nations' Declaration on the Rights of Indigenous Peoples. As an organisation founded on Human Rights principles,<sup>18</sup> TasCOSS must therefore acknowledge the responsibility of the Australian Government, as well as our State and Territory Governments, to ensure our legal, social and political processes allow for the meaningful participation of our First Peoples in decision-making and lead towards self-governance and self-determination.
- TasCOSS strongly supports measures that increase accountability and public confidence in political and legal processes and recognise that there has been insufficient progress (at all levels of government) towards Closing the Gap.
- TasCOSS respects the ongoing dialogue stemming from the Uluru Statement from the Heart and support the right of our First People to explore and express their views on this important issue.
- TasCOSS accepts that there is a divergence of views on this issue within the Aboriginal community across Australia, and that differences of opinion are to be expected. TasCOSS also recognises that for many Tasmanian Aboriginal people, the Voice is not seen as a priority for reform, particularly in the context of the genocide, dispossession and ongoing disempowerment faced by our state's First People.
- As a community organisation, TasCOSS does not seek to influence, or speak on behalf of Tasmanian Aboriginal people. We deeply respect the unique and diverse perspectives held in the community.
- Irrespective of TasCOSS's position and the Voice referendum outcome, TasCOSS must continue to advocate for a range of social and legal reforms to address the ongoing inequalities and discrimination faced by Tasmanian Aboriginal people and remain accountable for our work. This includes (but is not limited to):
  - o Legislative reform to implement a treaty and truth-telling process in Tasmania;
  - o Review of existing laws and policies in key areas — for example, criminal justice and child protection — which continue to disproportionately impact Tasmanian Aboriginal families and communities;
  - o Consideration of measures which could increase formal representation of the Tasmanian Aboriginal community in existing political structures — for example, legislative reform to allocate certain State Parliament seats to members of the Tasmanian Aboriginal community.
- Any TasCOSS position must align to our Mission: "to challenge and change the systems, behaviours, and attitudes that create poverty, inequality and exclusion."
- As a peak body, TasCOSS must hold our dual roles of being member-led and providing leadership for or members.

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<sup>18</sup> For more information, please see [United Nation' Universal Declaration of Human Rights \(un.org\)](https://www.un.org/).