



National  
Native Title  
Council



## **THE VOICE, NATIVE TITLE & SOVEREIGNTY RESOURCE GUIDE**

## Overview

The National Native Title Council (NNTC) held a webinar on 2 March 2023, that brought together leading First Nations expert voices to discuss the relationship between the Voice, Native Title, sovereignty, and misinformation. The webinar was targeted at the Native Title sector, and encouraged PBCs, NTRBs, and TOCs to register, ask questions and continue to stay informed through resources such as those recommended throughout this document.

Some of the key areas identified include:

- The Voice and the proposed structure;
- The Voice and its powers;
- The impact of the Voice's structure and power on Native Title rights holders; and
- The Voice and its impact on sovereignty.

## A Resource List for the Native Title Sector

A list of resources relating to the native title sector and the Voice has been created and will continue to be updated on a regular basis. These resources will assist in addressing the circulation of misinformation and increasing members awareness in the lead up to the referendum and the establishment of the Voice to Parliament.

As endorsed by the panel during the webinar – Tony McAvoy SC, Dr Hannah McGlade, Dr Eddie Cubillo, Rachel Perkins, Jamie Lowe and Clinton Benjamin – the following are additional recommended materials.

[View The Statement - Uluru Statement from the Heart](#)

[NIAA - Working & Engagement Group membership and communiques](#)

## The Voice and a proposed structure

The Indigenous Voice Co-design Process interim and final report both contain extensive details on what the structure of a Voice could look like. Whilst the detail of the Voices structure is to be deliberated following a successful referendum, these reports set out key principles which will guide the Voices establishment. The chosen sections provide some key information relevant to the Voice, Native Title and principles.

[What is a Voice to Parliament?](#) - From the Heart

[What is 'A Voice to Parliament'? - Learning From the Heart](#)

[What is the Voice to Parliament? | SBS NITV](#)

[Indigenous Voice Co-Design Process: Interim Report to the Australian Government](#) (2020)

- Local and Regional Voice engagement with Aboriginal and Torres Strait Islander organisations and stakeholders (p. 136-140)
- Appendix D: Environmental Scan (p. 190-231)

[Indigenous Voice Co-design Process: Final Report to the Australian Government](#) (2021)

**Please Note:** Zoom in on document to read.

- Executive Summary and visual tables (p. 9-19)

#### **Chapter 1: Local & Regional Voices**

- 1.2 Key Features (p. 23-24)
- 1.6.3 Principles (p. 40-46)
- 1.7 Governance Structures (p. 54-64)
- Scenario's 1, 2, and 3 (p. 94-101)

#### **Chapter 2: National Voice**

- 2.3 Membership model (p. 112-115)

2.4 Membership structure: 2.4.10 Specific representation within National Voice membership structure

- Traditional Owners (p. 129)

**Appendix D:** Consultation products (p. 250 – 261)

## **The Voice and its powers**

[Will the proposed Indigenous Voice to Parliament become a third chamber? - RMIT University](#)

[Voice to Parliament: Debunking 10 myths and misconceptions – Monash Lens](#)

## The impact of the Voice's structure and power on Native Title rights holders

Where the Voice provides the opportunity to increase the representation and participation of First Nations people in decision-making processes, consideration must be given to ensuring that the Voice does not undermine or attempt to override the cultural authority held by Traditional Owners, PBCs and NTRBs who have already undergone the required processes to navigate the red tape which allows them to speak on matters relating to their Country. This aspect has been highlighted in both the interim and final co-design reports.

There is currently a need for the comprehensive review of the Native Title Act 1993 (NTA) to address the challenges that have been identified since its inception nearly 30 years ago. The Voice provides an opportunity to highlight the native title sector as a priority area in need of reform due to the nature of native title holders *in rem* rights. A key principle in the Co-Design Final Report is the 'non-duplication and links with existing bodies' which will likely see the Native Title sector emerge as a key player where those who hold culturally authoritative positions will form a part of the Voice infrastructure at a local and regional level.

[Lidia Thorpe Greens departure a win for party influence \(theage.com.au\)](#)

[Thomas Mayo responds to the launch of the No campaign](#) - From the Heart

## The Voice and its impact on sovereignty

### PRELIMINARY ADVICE REGARDING ANY AFFECT OF THE PROPOSED VOICE TO PARLIAMENT ON FIRST NATIONS SOVEREIGNTY

To read the full preliminary report please [click here](#).

#### SUMMARY

*Preliminary advice provided by Tony McAvoy SC, Barrister at Frederick Jordan Chambers to the National Native Title Council (NNTC) concludes that within the understanding of international law First Nations sovereignty will not be impacted by the referendum for, and subsequent constitutional enshrinement of, an Aboriginal and Torres Strait Islander Voice.*

#### Key points:

- *Under international law, the acquisition of sovereignty over occupied territories may only occur by conquest or cession. 'Sovereignty' is used in Australia by First Nations representatives to mean that sovereignty was possessed by the First Peoples over their respective territories and has never been ceded and continues to be possessed. The High Court in the Mabo No 2 decision acknowledged the false basis of the acquisition of sovereignty by the British.*

- *The proposal for a Voice was not put to the government by the entities which hold Indigenous sovereignty, the First Nations. Despite the inclusion of 250 First Nations individuals at the Uluru Statement from the Heart convention in 2017, without the specific representative from each First Nation across Australia, sovereignty would not be affected.*
- *A government official has rejected the proposition that the Voice reform will affect First Nations sovereignty. The expert group advising the government has advised that there will be no effect on any rights.*
- *The commitment by the Government to the Uluru Statement from the Heart, including the establishment of a treaty and truth telling commission, is more consistent with the recognition of ongoing sovereignty and not the cession of sovereignty.*
- *Consideration of the principles of free prior and informed consent (FPIC), and failure of the government to seek consent would undo any claim by the Australian state that sovereignty has been ceded through an amendment to the Constitution or that a failure to respond by First Nations may be relied upon as acquiescence.*
- *The draft wording for the amendment to the Constitution does not contain express words or meanings that could affect sovereignty, nor is there the basis for inferring of implying any impact on the assertion of sovereignty by First Nations. If the acquisition of sovereignty could occur by any means other than conquest or cession, it would have occurred as a result of the 1967 referendum to amend section 51(xxvi) of the Constitution or the passage of the Native Title Act 1993 (Cth).*

*In conclusion, it is suggested that greater clarity and understanding may come from the release of a public statement by the Federal Government to the effect that the referendum does not have any impact or affect upon First Nations sovereignty, although such a statement is not necessary for legal purposes.*

#### Related articles

[Voice will empower us, not undermine Sovereignty](#) – National Indigenous Times.

[‘No way’: Malarndirri McCarthy says Voice won’t cede sovereignty as Thorpe maintains criticism](#) – NITV.

[Albanese declares Indigenous voice won’t impact First Nations sovereignty](#) - The Guardian.

[Referendum Working Group - Summary of second tranche of advice \(pmc.gov.au\)](#)

[Why a voice to parliament won’t affect First Nations sovereignty as Lidia Thorpe fears | Indigenous voice to parliament | The Guardian](#)

## Additional useful resources & articles

[Voice to Parliament: Leaders behind prototype Empowered Communities say it is already working \(afr.com\)](#)

<https://www.theguardian.com/australia-news/commentisfree/2023/mar/01/framing-the-voice-debate-in-terms-of-special-treatment-is-race-baiting-we-must-call-it-out>

<https://lens.monash.edu/@politics-society/2023/02/27/1385518/voice-to-parliament-debunking-10-myths-and-misconceptions>

<https://www.abc.net.au/news/2023-02-01/what-are-aboriginal-people-saying-about-the-voice-to-parliament/101912918>

[90 years ago, Yorta Yorta leader William Cooper petitioned the king for Aboriginal representation in parliament \(theconversation.com\)](#)

[Our research has shown Indigenous peoples' needs cannot be understood and met, without Indigenous voices \(ampproject.org\)](#)

[Calls to boost Indigenous voter numbers before Voice referendum | SBS NITV](#)

[UN Declaration on the Rights of Indigenous Peoples | Australian Human Rights Commission \(Article 18 & 19\)](#)

[Chile new constitution: Voters overwhelmingly reject proposal in referendum | CNN](#)

[Final report of the Council for Aboriginal Reconciliation \(austlii.edu.au\)](#)

[Aboriginal Customary Laws | ALRC \(1986\) – Australian Law Reform Commission.](#)

[Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture. Final Report \(2006\)](#)

[Meriba Omasker Kaziw Kazipa \(Torres Strait Islander Traditional Child Rearing Practice\) Act 2020 - Queensland Legislation - Queensland Government](#)

[Thirty years on, the Uluru Statement from the Heart campaign can draw inspiration from Mabo | Michael Lavarch | The Guardian](#)

[Recognising Indigenous peoples in the Australian Constitution: What the Constitution should say and how the referendum can be won \(aiatsis.gov.au\) – 1999 referendum](#)

[No, Indigenous Australians don't already have a Voice to Parliament - ABC News](#)

[ABC Radio Newcastle – Jenny Marchant | Our ministers – Attorney-General's portfolio \(ag.gov.au\)](#)

[Voice to parliament: Indigenous Gulf leaders warn on Voice \(brisbanetimes.com.au\)](#)

## Acknowledgements

With special thanks to the following people who gave their time and expertise:

- Jamie Lowe – CEO National Native Title Council,
- Tony McAvoy SC – Barrister - Federick Jordan Chambers
- Dr Hannah McGlade - member of the UN Permanent Forum for Indigenous Issues and Senior Indigenous Research Fellow, Curtin University (Perth)
- Dr Eddie Cubillo - Associate Dean (Indigenous Programs), Senior Indigenous Fellow, University of Melbourne (Law School)
- Clinton Benjamin – Senior Policy Office - National Native Title Council
- Rachel Perkins – Cultural Heritage Director - First Nations Heritage Protection Alliance



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