

The Voice Referendum

Confused by the contradictory claims in the YES/NO Official pamphlet?
Here is a summary of three claims and what legal experts from both sides have to say.

Will the Voice unite or divide Australians?



Anne Twomey - Emeritus Professor of Constitutional Law, Director of the Constitutional Reform Unit at USYD Law School:

- Equality needs to be substantive, and this is not achieved by treating people the same when there are genuine differences.
- The Voice will achieve equality by providing additional support and opportunities to disadvantaged First Nations communities.

Robert French - Former Chief Justice of the High Court of Australia and Geoffrey Lindell - Emeritus Professor of Law at the University of Adelaide:

- By passing the referendum and enshrining the Voice into the Constitution, the Australian people, by voting Yes together, will perform a unifying act of recognition and acknowledgement of Aboriginal and Torres Strait Islander peoples.

James Allan - Garrick Professor of Law at the University of Queensland:

- The Voice is affording entitlements by group status and does not align with Australia's foundations in liberal democracy.
- By creating special rights based on group status, it is far more likely to lead to disunity, bitterness and a sense that some groups in Australian life get special treatment solely based on birth.

D.F Jackson KC - Barrister for King's Counsel and former Judge of the Federal Court of Australia:

- The amendment would mean Australia becomes a nation where, whenever our ancestors first came to this country, we are not all equal.



Will the Voice give advice only on Indigenous issues or will it have a broad scope?



Robert French - Former Chief Justice of the High Court of Australia and Geoffrey Lindell - Emeritus Professor of Law at the University of Adelaide:

- The Voice should be able to make representations relating to Aboriginal Torres Strait Islander education and training, family and social welfare, health, policing, Aboriginal art, cultural and heritage protection, traditional ownership of land and waters.

Megan Davis - Pro Vice-Chancellor Society (PVCS) at UNSW Sydney and Gabrielle Appleby - Professor of Law at UNSW Sydney:

- It's important that the voice speaks not just on matters that directly, or explicitly, affect Aboriginal and Torres Strait Islander people, but on matters that have an indirect but significant effect on them, so as to bring about the necessary connection.

Lorraine Finlay - Australian Human Rights Commissioner:

- It is difficult to think of an issue that would be beyond the scope of the voice in its proposed form, as surely every law or policy of general application would be considered to be "matters relating to" Indigenous Australians in the same way as they are matters relating to all other Australians.

Nicholas Aroney - Professor of UQ Law School, and Peter Gerangelos - Professor of USYD Law School:

- Given the lack of definition regarding the Voice's scope, its representations to the Executive could potentially extend to any agencies, boards or corporations established by Commonwealth law to undertake public law functions, such as the Australian Human Rights Commission and Australian Law Reform Commission.



Will the government be compelled to follow/consider the Voice's representations?



Mark Dreyfus KC - Attorney-General of Australia:

- The proposal imposes no obligations of any kind upon the Voice, the Parliament or the Executive Government. The current proposal would not impose any enforceable obligation upon the parliament to consider representations from the Voice, let alone follow such representations

Dr Stephen Donaghue KC - Solicitor-General of Australia:

- The amendment does not require Parliament to consult with the Voice before tabling or enacting legislation.

Nicholas Aroney - Professor of UQ Law School, and Peter Gerangelos - Professor of USYD Law School:

- The Indigenous Voice would have its own chapter. While distinct from Parliament, the Executive and the Courts, the Indigenous Voice would be accorded a similar constitutional status.

Ian Callinan AC KC - Former Justice of the High Court of Australia:

- Foresees that there will be "a decade or more of constitutional and administrative law litigation arising out of the Voice."
- "It is one thing to say the voice can make representations only, but in the real world of public affairs.. it would be a brave parliament that failed to give effect to representations of the Voice."

