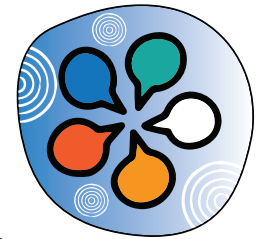


## National Voice Advice to the Australian Parliament and Government



**This paper outlines how the proposed National Voice could provide advice to the Australian Parliament and Government. This includes the possible pathways for referrals to the proposed National Voice and advice from the proposed National Voice.**

Work is continuing to refine these elements as part of stage two of the co-design process. Once complete, this will be included in the final report of the Indigenous Voice co-design process.

The proposed National Voice would be able to advise on any national matter of significance to Aboriginal and Torres Strait Islander people. The advice would be on matters of critical importance to the social, spiritual, and economic wellbeing, or which has a significant or particular impact on Aboriginal and Torres Strait Islander people. These matters would be determined and driven by the priorities of Aboriginal and Torres Strait Islander people.

There a number of ways in which the proposed National Voice could provide advice to the Australian Parliament and Government. In some cases, advice would be provided in response to a request from the Australian Parliament and Government. In other cases, the proposed National Voice would initiate advice – it would not need to wait for a request. This means there would be a two-way relationship. Government and the proposed National Voice would work together on issues in a partnership approach.

Under the proposal for a National Voice, the Australian Parliament and Government could ask the National Voice for advice on any matter related to Aboriginal and Torres Strait Islander people. On certain issues, the Australian Parliament and Government would be required to ask the National Voice for advice. This includes some issues where there is an obligation to ask, and some issues where there is an expectation to ask.

Complementary transparency mechanisms are also proposed. Together, this framework would work together as one system of consultation and transparency.

The system of consultation and transparency would be non-justiciable. This means compliance with the requirements could not be subject to challenge in a court, and could not affect the validity of the relevant law or policy. Establishing legislation for the National Voice would be drafted to set out these aspects.



### Proposed requirements for the Australian Parliament and Government to ask the National Voice for advice





## What matters would be covered by the obligation and expectation?

The success of the proposed National Voice would depend on its relationship with the Australian Parliament and Government. This can't be manufactured by setting prescriptive requirements. However, formal requirements play a role, including providing clarity to the Australian Parliament and Government, and raising the standing of the proposed National Voice.

### What would be covered by the *obligation*?

The proposed obligation on the Australian Parliament and Government to consult would cover a very narrow range of proposed laws which exclusively relate to Aboriginal and Torres Strait Islander Australians. It is only fair that Aboriginal and Torres Strait Islander people are consulted on matters which the Parliament has an ability to make laws that exclusively impact them.

The exact definition of this is still being developed. Some of the ideas that have been put forward include:

- Proposed laws which rely on section 51(xxvi) of the Constitution, which allows Parliament to make special laws for certain 'races'. This power is mainly used to make laws applying to Aboriginal and Torres Strait Islander Australians.
- Laws which are "special measures" under the *Racial Discrimination Act 1975*. Special measures are laws which treat a group of people differently, and which are made for the benefit of that group.

### What would be covered by the *expectation*?

As outlined above, the proposed National Voice could advise on any national issue related to Aboriginal and Torres Strait Islander people.

But the proposed National Voice would not advise on every national issue – it would prioritise to focus on matters that are important to Aboriginal and Torres Strait Islander people. The proposal for the National Voice has not tried to prescribe those matters. The priorities of Aboriginal and Torres Strait Islander people are diverse and change over time.

The Australian Parliament and Government would refer issues to the proposed National Voice if they have significant or particular impacts on Aboriginal or Torres Strait Islander Australians. They would also refer issues that are within an area that the proposed National Voice has identified as a priority. The Australian Parliament and Government would be able to come to a common understanding with the National Voice about what the priority areas are.



## How would the Australian Parliament and Government ask the National Voice for advice?

The Australian Parliament and Government would have a range of different channels to ask the proposed National Voice for advice. These include:

- **Informal discussions**

The Australian Parliament and Government would be able to have informal conversations with the proposed National Voice. This might be appropriate for early stages of policy development. These discussions could be confidential where appropriate.



- **Formal requests for advice on policies or programs**

The Government could make a formal request for the proposed National Voice to advise on some aspect of policy or program delivery.

A parliamentary committee could make a formal request for the proposed National Voice to give evidence or provide a submission to them.



- **Formal requests for advice on proposed legislation**

The Australian Parliament and Government would be able to formally request the proposed National Voice provide advice on a piece of proposed legislation. The advice of the proposed National Voice could be tabled in the Australian Parliament, which would make it part of the official public record.



- **Advice initiated by the National Voice**

The proposed National Voice would be able to provide advice to the Australian Parliament and Government on its own initiative, and would not have to wait for a request.



## Transparency mechanisms

Proposed transparency mechanisms would ensure a public record of whether the proposed National Voice has been consulted. Three complementary transparency mechanisms are proposed:

- When Members of Parliament propose new legislation, they could be required to provide a statement explaining whether they have asked the National Voice for advice.
- A committee of Parliament could be established to examine consultation with the National Voice.
- Certain formal advice of the National Voice could be tabled in the Australian Parliament, which would make it part of the official record.

These transparency mechanisms will be refined during the consultation stage of the co-design process.