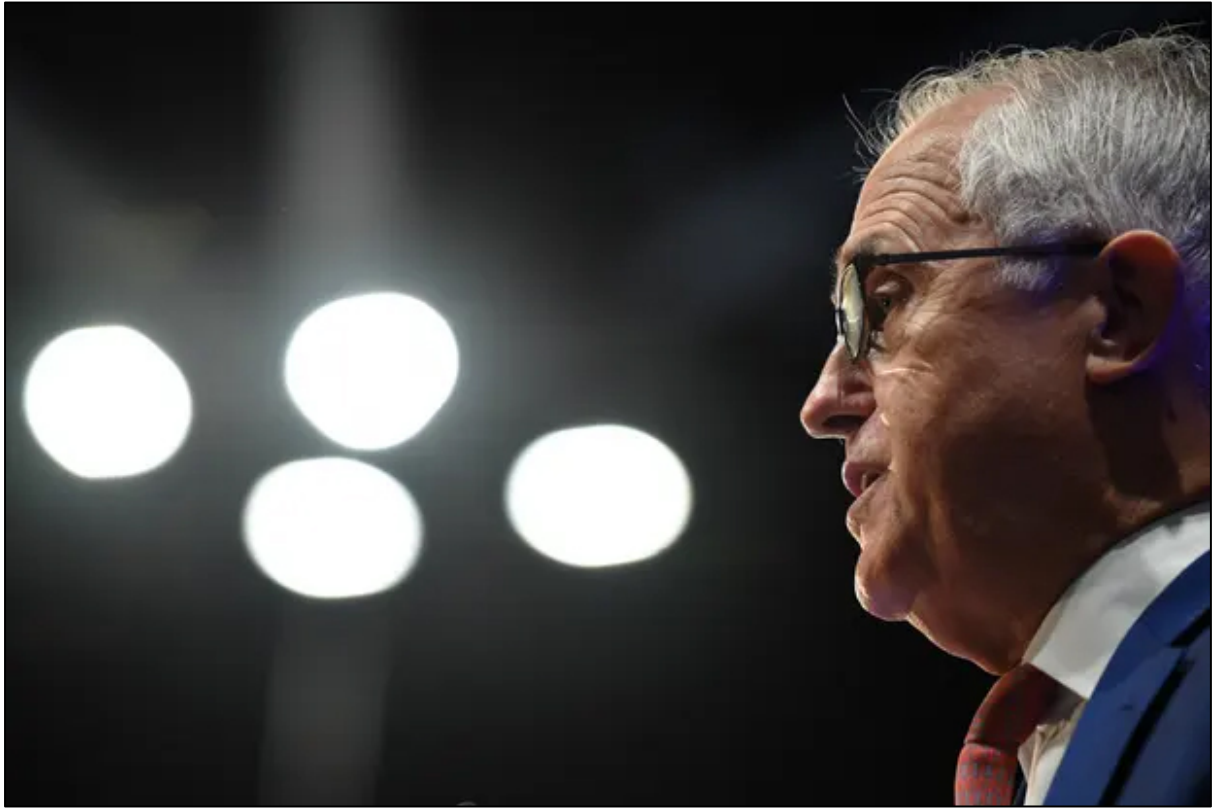


## **I will be voting yes to establish an Indigenous voice to parliament**

*Malcolm Turnbull*

*Despite my previous concerns, the voice as proposed by Anthony Albanese won't be a third chamber, and it has sufficient public support*



*'The proposed constitutional amendment only empowers the voice to give advice and make representations,' writes Malcolm Turnbull.*

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If federal parliament proposes an amendment to the constitution to establish an Indigenous voice in the terms set out by Anthony Albanese at Garma, I will vote for it.

While I have some misgivings, I am satisfied that on balance as a nation we are better advised to approve the proposal than reject it.

In May 2017, at Uluru an assembly of Indigenous delegates from around Australia signed the Uluru Statement from the Heart. It was a powerful cry for a say, for agency, for respect.

It spoke of the torment of Indigenous powerlessness and it proposed the establishment of a “First Nations voice enshrined in our constitution”.

A month later, the referendum council abandoned all other proposals for constitutional recognition and adopted the Uluru Statement from the Heart recommending that the constitution be amended to establish the voice to parliament – a national Indigenous representative assembly composed of and chosen exclusively by Indigenous Australians.

It was a very big idea, very short on detail and in October 2017 my government announced that it “does not believe such an addition to our national representative institutions is either desirable or capable of winning acceptance in a referendum”.

However, we did establish, with the support of the opposition, a joint select committee co-chaired by Julian Leeser and Patrick Dodson to examine this very big idea, and report back to parliament. The committee subsequently recommended a process of voice co-design between government and Aboriginal and Torres Strait Islander peoples to determine the detail.

The co-design process by professors Marcia Langton and Tom Calma resulted in extensive consultation and consideration of how a voice should be designed and work.

In the intervening five years, the voice has remained the singular focus of Indigenous Australians’ ambition for constitutional recognition to the exclusion of all other options. In those circumstances, we need very strong reasons to say no to the change.

In addition, there now appears to be sufficient public support for the voice to enable it to be approved in a constitutional referendum. I say that with some trepidation. The debate has not yet begun and the vast majority of people have no idea what it involves.

Polling into an information vacuum is not reliable. But certainly it is winnable. In 2017 we thought it had no chance at all.

But what about my, and others’, concern that it will “inevitably become seen as a third chamber” – that it will not be practically possible for parliament to pass laws that affect Indigenous Australians without the concurrence of the voice?

The technical answer to this is that the proposed constitutional amendment only empowers the voice to give advice and make representations.

Langton and Calma's recent report on voice design proposes that parliament will be obliged to refer to the voice legislation which overwhelmingly affects Indigenous Australians.

This could include amendments to the Native Title Act, for example. However, where there is legislation which has a significant or distinctive impact on Indigenous Australians, parliament would be expected to consult with the voice.

Langton and Calma recommend the voice should not be limited on the matters upon which it can offer advice.

"While government has an important role to proactively consider which issues need to be referred to the national voice, this should be informed by what Aboriginal and Torres Strait Islander peoples view as significant," they wrote in the final report.

The government would be obliged to explain with respect to every bill whether it was necessary to consult the voice and if so, whether the consultation took place and what form it took.

Any advice received would have to be tabled. The voice would have the right, on its own initiative, to provide advice on any matter which would have to be tabled in parliament.

In late July, ABC host David Speers asked the prime minister about the alcohol bans that are, controversially, coming to an end in the Northern Territory. If the voice were to say those bans should continue, the PM was asked on *Insiders*, would that happen?

Albanese replied: "Well, it would be a very brave government that said it shouldn't."

The voice will become a very influential and politically powerful part of our democracy

And in that response, the prime minister answered the question. The voice will not be a third chamber of parliament in the way the Senate is the second chamber, but on matters relating to Indigenous Australians, it will be politically very challenging, although legally possible, to pass a law that the voice opposes especially when its members are united.

The voice will become a very influential and politically powerful part of our democracy – that is the whole point of the exercise.

Its constitutional status will mean it cannot be abolished, as Atsic was, and it cannot be ignored or its advice put on a shelf to gather dust. The voice will be heard and it will be heeded.

Its influence will be founded in its constitutional status and it will be enhanced, or diminished, by the extent of its perceived political legitimacy which will, in turn, depend on how genuinely representative it is seen to be and especially by Indigenous Australians.

Langton and Calma do not propose that the voice will be directly elected in the way our parliaments are with voters drawn from an Indigenous-only electoral roll.

They propose that the national voice will be chosen by the local and regional voices which will be established in a variety of ways that suit local communities and work with established representative bodies, including state and territory land councils and empowered communities established under the previous government

These local and regional voices must be designed by Indigenous people to suit their needs. As Dr Chris Sarra told me when I became prime minister: we have to stop doing things to Indigenous Australians and start doing things with them, and if this voice is to be an Indigenous voice it must be designed by Indigenous Australians.

This approach will address one of the concerns we had at the time with a directly elected national voice – how could small remote communities be represented in a national voice when most Indigenous Australians live in big cities? On the other hand, if the national voice (and the local and regional voices) are not directly elected, their democratic legitimacy will be challenged both from within and without the Indigenous communities.

Why, it will be asked, are all Indigenous Australians able to vote in parliamentary elections but are not able to vote for the national voice?

However, the acid test is not whether the design of the voices – local and national – meets a precise or theoretical test of what is representative or democratic, but whether the overwhelming majority of Indigenous Australians are able to say: “That voice is accountable to us and it speaks for us.”

You could well imagine Indigenous members of parliament who disagree with advice from the voice pointing out that more Indigenous Australians had voted for them to be MPs or senators than had participated in the selection of the members of the national voice.

All of which underlines why, in my view, it would have been better to establish the voice both at the local and national levels first, get it up and running and then when everyone knows what it is and how it works, consider whether to seek to recognise it in the constitution.

But that is no longer an option. While it is fair to ask Albanese for the details, the truth is that he is not in control of all the details. The most influential input on design must come from Indigenous Australians and it would be unwise to assume that Langton and Calma's thorough report is the definitive last word on that topic.

Moreover, any legislation establishing the voice design will need the approval of the Senate and the support of either the Coalition on the one hand, or the Greens and Senator David Pocock on the other.

So when Albanese declines to provide "the detail" he is not being circumspect, he simply does not know what the voice will look like in all its detail because it is not for him, or his government, to dictate the design. The most he could do is set out some clear design parameters from which his government will not depart.

These parameters will need to have very broad support from Indigenous Australians.

While I will vote yes in a referendum on the voice I will do so with some misgivings. I am a republican and a democrat. I believe that all of the offices and institutions in our constitutional democracy should be open to any Australian citizen. That is why I believe our head of state should be an Australian citizen, not the monarch of another country.

I rejoice that there are now 11 Indigenous voices in parliament (MPs and senators who identify as Indigenous), a larger percentage of the parliament than Indigenous Australians are of the nation as a whole.

After centuries of dispossession and disempowerment, we should accept this offer of reconciliation

The voice, if it is established, is inconsistent with those republican, egalitarian principles. But after centuries of dispossession and disempowerment, we should accept this offer of reconciliation.

It could well be a wild ride. But I am confident that our parliamentary democracy can handle it. It may be that the first design of the voice does not work well enough, and its enabling legislation will have to be amended. After

all, if it is not seen as legitimately speaking for Indigenous Australians then it will not have the influence it seeks.

Unlike many of the commentators, and politicians, talking about this issue I do, regrettably, keenly understand the dynamics of a referendum. And I suppose I am, as a result, more cautious than most.

In my view, if there is concerted opposition to this referendum it will likely not succeed. There are powerful and legitimate arguments against it. This is a much more substantial change to our constitution than was envisaged in the 1999 republic referendum.

The voice proposal is about power. On the other hand, the fact that it is not simply a symbolic change will give many voters a stronger motive to support it. The history of referendums suggests that bipartisan support is not enough – you need to have overwhelming support and relatively little effective opposition.

The supporters of the voice should be very careful not to smear those who do not support it as being racist or bigoted. If it is rejected it will not be because Australia is racist, or does not respect Indigenous Australians.

In my view, there is enormous goodwill behind reconciliation and constitutional recognition in principle. A rejection of this proposal would be, once again, because a constitutionally conservative nation was not sufficiently persuaded of the merits of the change.

And to that end, it will be important for the government to set out the parameters of the voice design upon which it will insist and without which no voice will be established. These parameters will need to have overwhelming buy-in from Indigenous communities.

It is vitally important that before the referendum is held everybody, as far as possible, is expressly on the same page about what the voice will look like and what it will do.

The lesson from the 1999 referendums is not that a proposal is undone by detail. We lost in 1999 because the republican camp was divided, because those favouring direct election of the president allowed their conception of the perfect to be the enemy of the good.

Many of those who said, “Vote no and we will have another referendum in a few years’ time” are no longer with us. Referendums, once lost, take a very long time to revive.

So we have in the voice a moment in time when Australia as a nation can agree that the constitution which excluded Indigenous Australians can not just recognise but empower them in a way that cannot be abolished by any parliament or government.

We should find it in our hearts to vote yes.