

The Voice - what is it and why is it controversial?

Frances Cowell
8 October, 2023

On Saturday, 14 October, Australians will vote on a seemingly inoffensive change to their Constitution. Why is it meeting such opposition?

In 1770, James Cook mapped the east coast of the Australian continent, landing in Botany Bay, just south of what is now Sydney. In 1853, the NSW governor of the British settlement founded there would proclaim the continent “terra nullius”, or owned by nobody, despite the obvious presence of human civilisation.

Thus began a tradition of contradiction toward Aboriginals in Australia. As well as being massacred and decimated by disease, Aboriginals were also employed by white settlers. They were thus liable for income and other taxes, military service and other obligations, but were not granted the right to vote in federal elections until 1962. A misguided mid-nineteenth century effort to improve their prospects took Aboriginal children from their families to be raised by white Australians, the idea being to “breed out” their Aboriginal traits and assimilate them into the white community. While this policy persisted well into the 1960s, nobody knows how many children were affected, as Aboriginals were included in national population figures only from 1967.

Demands by Aboriginal groups for more recognition have been sporadic and mild, and consistently conducted through legal channels. Government and societal responses have been similarly sporadic, even halting. A well-cited example is the historic overturning by the Australian High Court in 1992 of *terra nullius*, when it recognised the principle of Native Title in parallel with European-style ownership. Known as the Mabo ruling, it recognised that Indigenous rights to land existed by virtue of traditional customs and laws, and that those rights had not been wholly lost upon colonisation. Yet no treaty has ever been concluded between Aboriginal groups and the heirs of the eighteenth-century British settlers, as it was with New Zealand’s Maoris in the 1840 Treaty of Waitangi.

Meanwhile, the rights of Aboriginal groups have frequently been trampled on. For example, in May 2020, when, despite vocal protests by the Aboriginal groups concerned, ancient rock shelters at Juukan Gorge in Western Australia were destroyed to expand an iron ore mine. The public back-lash led to the resignation of the CEO of the firm involved, but the damage was done.

The legal destruction at Juukan Gorge is a high-profile example how cultural heritage laws at the Commonwealth, state and territory levels have failed to incorporate recognition of the rights of Aboriginals to land and waters. So, it is understandable that Aborigines want some formal assurance that their views will be heard on matters that affect them. In a referendum on 14 October, 2023, Australians are being asked to alter the Constitution to grant Aboriginal groups the right to put forward their point of view on legislation or policies that would affect

them. Demands for a say in their affairs is not new, having been sought since at least May, 2017.

Referendums have a hard time passing in Australia, as they need a clear majority of valid votes cast in favour, both overall and in a majority of the federation's six states. Of 44 referendums conducted since Federation in 1901, only eight have been successful.

While the proposed change to the Constitution is for a purely advisory body, with no veto power, it is meeting surprising levels of opposition. As with many democratic processes around the world these days, the core arguments are being clouded by misinformation and propaganda, often emanating from beyond Australian shores.

Sifting through this can be tricky, as few people have enough direct experience with Aboriginal issues to make considered and informed choices. But some thought can help decipher arguments from hysteria.

One issue is who should count as an Aboriginal, to which there is no infallible answer, not least because the policy of removal from their families has left few who are not of mixed race. But the proposed wording in the constitution:

The Voice will be chosen by Aboriginal and Torres Strait Islander people based on the wishes of local communities

- *Members of the Voice would be selected by Aboriginal and Torres Strait Islander communities, not appointed by the Executive Government.*
- *Members would serve on the Voice for a fixed period of time, to ensure regular accountability to their communities.*
- *To ensure cultural legitimacy, the way that members of the Voice are chosen would suit the wishes of local communities and would be determined through the post-referendum process.*

is a laudable attempt that would probably satisfy most courts. Indeed, it is not dissimilar to the principles laid down in the 1992 Mabo ruling, and is not inconsistent with common law principles of natural justice and custom in international law.

It is of course, unfortunate that there seems a need to distinguish between Aboriginals and other Australians, and we would love to pretend that all Australians are treated equally. But that patently is not the case: rates of conviction for petty crime tell a story of deprivation and discrimination. Look further to education and health services available to Aboriginals and the same story emerges.

Could The Voice be a wedge issue: a benign question that opens the way to bigger, less reasonable demands? It is hard to see how, as the proposed wording embeds the principle of an advisory opinion and expressly rules out any veto power.

So, what are the real issues here? The case of the destroyed site at Juukan Gorge offers a hint. A glance at a map of Australia shows that many of the most important deposits of nickel, chromium, vanadium, molybdenum and manganese, as well as iron ore and precious metals, such as gold and silver, coincide with remote areas where Aboriginals make up a large proportion of the population, especially in western and north-western Australia.

As demand for those minerals explodes with the transition to clean energy, some are bound to see accommodating Aboriginal interests as a sure way to slow down projects and even to reduce their profitability. In some cases, it could also sway public opinion, which may result in popular demands for more recognition or even compensation by mining groups to those Aboriginals. In view of mining firms' generally poor record to date in respecting their engagements, compensating Aboriginal groups and meeting promises to restore land to its previous condition, this could pose problems for mining firms seeking leases in the future.

The source of opposition to this referendum proposal now could look rather different, especially in the context of great-power rivalry for control of supply chains of critical minerals. Will Australians be able to see through the disinformation to what is really at stake?

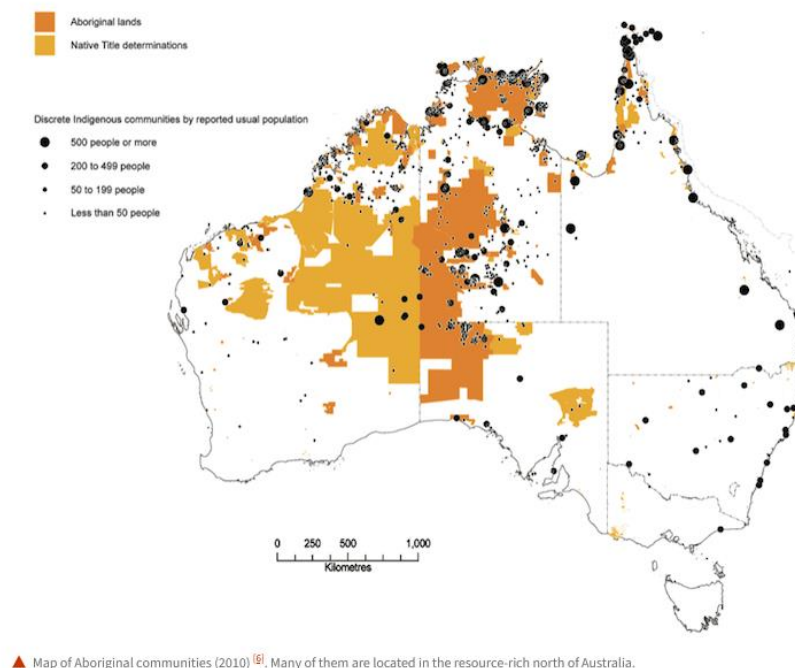


Image retrieved from :

<https://www.creativespirits.info/aboriginalculture/land/aboriginal-homelands-outstations>

'Survey Analysis for Indigenous Policy in Australia', Chapter 9: 'The Indigenous hybrid economy: Can the NATSISS adequately recognise difference?', Boyd Hunter and Nicholas Biddle (Editors), Australian National University 2012,

press.anu.edu.au/apps/bookworm/view/Survey+Analysis+for+Indigenous+Policy+in
+Australia/10101/ch09.html, retrieved 8/4/2015

Source: Aboriginal homelands & outstations - Creative Spirits, retrieved from
<https://www.creativespirits.info/aboriginalculture/land/aboriginal-homelands-outstations>