

4

The 2023 Voice to Parliament referendum

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In October 2023, the Labor government called a nationwide referendum on its Voice to Parliament proposal. This continued a longstanding effort to pursue reconciliation with First Nations peoples at the federal level by establishing a special representative chamber, called the Voice to Parliament, that would be consulted on legislation and other matters. The proposal needed to secure majority support in at least four of the six states and be endorsed by a majority of voters nationally. After a vigorous campaign, however, the Voice vote resulted in the proposal's convincing rejection by a margin of 60 per cent to 40 per cent nationally, with majorities against it in every state and territory except the small Australian Capital Territory.

After outlining the criteria that applies to holding national referenda in liberal democracies, this chapter looks at the background to the Voice to Parliament proposal and the national campaign around it, explaining the resounding 'No' vote and why First Nations peoples themselves were divided on the issue. A short section then provides a strengths, weakness, opportunities and threats (SWOT) analysis of the process. The concluding section explores some potential prospects for rebuilding trust between the Commonwealth government and First Nations peoples.

How should referenda be conducted in a liberal democracy?

- ◆ Since the heart of liberal democracy is representative government, and this involves using a legislature and executive to settle policy after elections and consultations, national referenda should only be used carefully, and in contexts where the civil rights of all citizens and the rule of law are protected.
- ◆ National referenda are most suitable for considering major constitutional changes and, perhaps, other alterations of longstanding legal or policy arrangements, after the issues involved have been extensively debated.
- ◆ A dichotomous (Yes versus No) referendum question should be defined only after a long process of public consultation and preparation, and sustained search for consensual agreement on the precise wording of the question choices to be put to voters. Ideally, there will be a neutral public campaign of clarification of the exact implications of the choice for voters.

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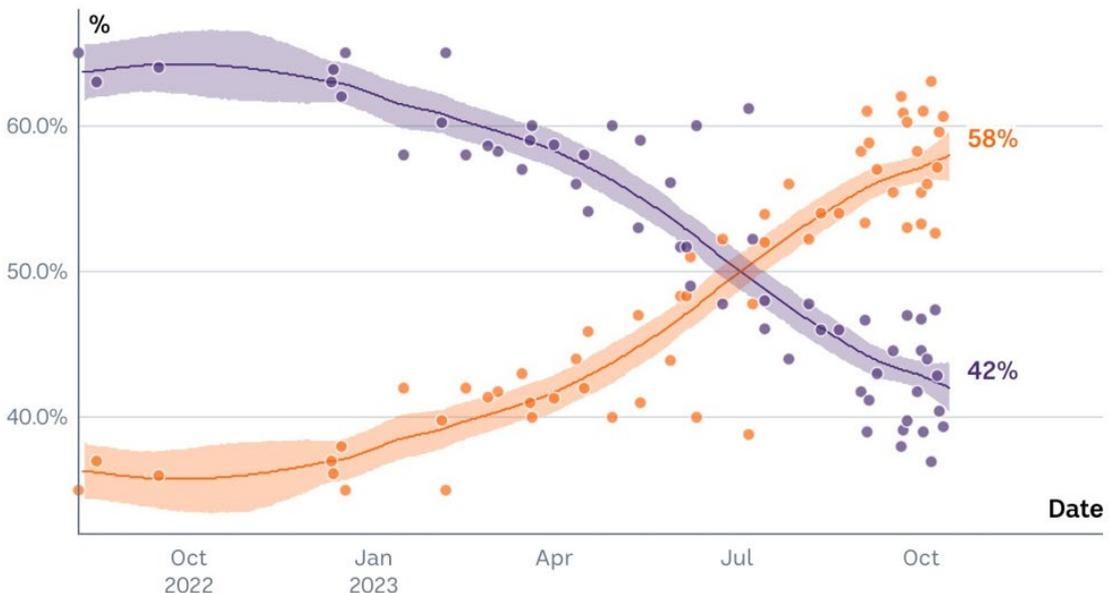
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- ◆ The final campaign arrangements and implementation of the referendum should be regulated impartially by the normal election integrity agency in a non-partisan and neutral way.
- ◆ Ideally, the two 'sides' in the campaign will not be political parties directly, but special campaign committees/organisations spanning across multiple parties and operating inclusively to showcase diverse opinions or rationale for Yes or No voting.
- ◆ For a referendum outcome to be binding, the requirements must be constitutionally specified in a clearcut way.

Recent developments: the lead-up and the campaign

The Voice to Parliament referendum was always a gamble against the odds of history. Only 8 of the previous 44 referendum questions had been passed. None had succeeded where there was a split between the major parties, and it was always likely that the right-wing leader of the Liberal-National opposition, Peter Dutton, would make a fight of the issue. For Prime Minister (PM) Anthony Albanese, on many fronts a cautious leader, this was a major roll of the political dice. And for First Nations peoples, too, the referendum was yet another test of their faith in the ability of Australia's democratic settlement to right historic wrongs.

Figure 4.1: The opinion polls during the campaign for a Voice to Parliament



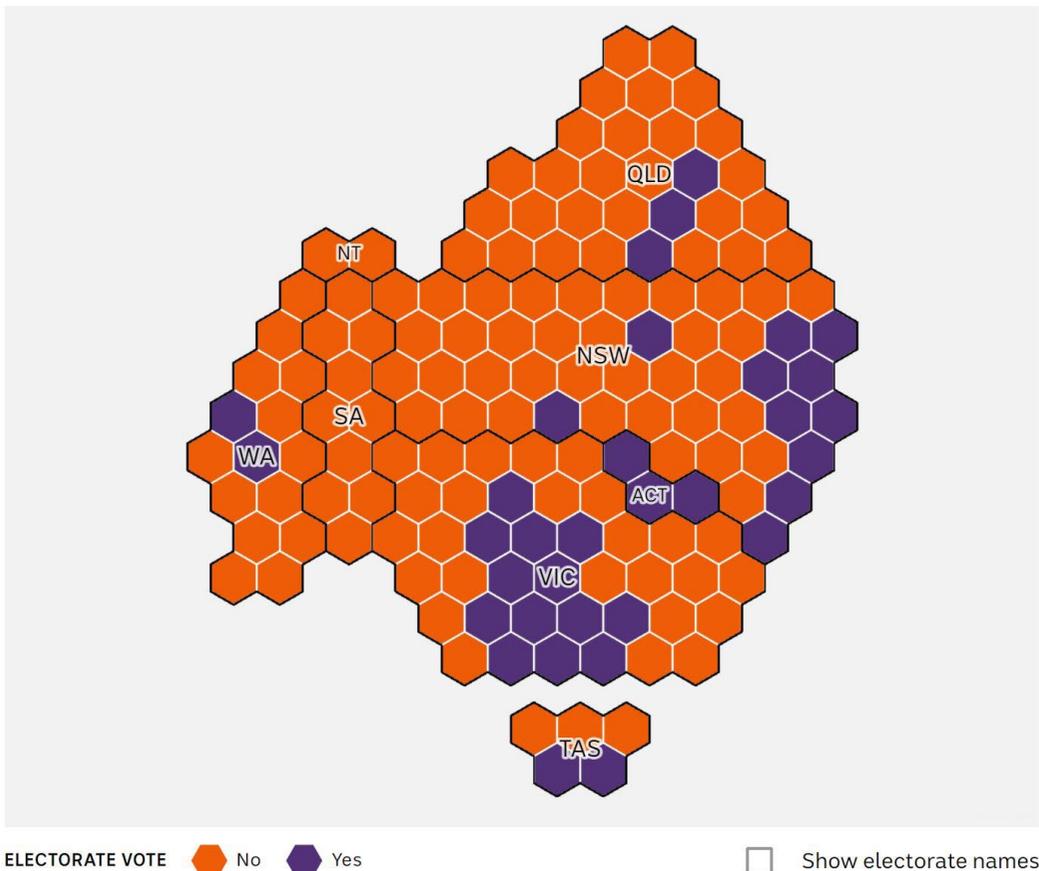
Source: Professor Simon Jackman and ABC News.

Notes: The solid purple line shows the estimated mean % support for 'Yes' at each date, and the solid orange line shows that for 'No'. The lighter shaded areas along each line show the 95 per cent credible intervals for these estimates. The dots show the results for individual polls. The last polls were on 15 October.

On federal election night in May 2022, Albanese recommitted himself to the 2017 Uluru Statement from the Heart, which called for a Voice to be embedded in the Constitution, as well as ‘a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history’ ([Uluru Statement, 2017](#)). Prime Minister Albanese hoped that the Voice would be the big social reform of his first term in government. For a time in 2022, polling suggested that his optimism might be vindicated (see [Figure 4.1](#)). However, the Australian electorate’s long-standing conservatism about constitutional change was increased by Liberal-National opposition raising concerns about the nature and consequences of the proposed body, fanned by a populist scare campaign. As 2023 progressed, these changes decisively sank the Voice.

On 14 October 2023, six out of every 10 Australians voted ‘No’. The campaign was notable for being led by First Nations peoples on both sides. Particularly effective on the ‘No’ side was Northern Territory Senator Jacinta Nampijinpa Price, who entered the Senate only at the 2022 election. Ironically, she was catapulted into the post of Shadow Minister for Indigenous

Figure 4.2: The 2023 referendum outcome by seats



Source: ABC Election Analyst, Antony Green.

Note: [Figure 4.2](#) uses one dot for each House of Representatives seat, placed in the approximate geographic position of that district. It aims to produce a ‘map’ of Australia that avoids obscuring the densely populated east coast and main cities, and seeming to overweight the least populated (often desert) regions, as orthodox maps often do.

Australians because its previously occupant, Julian Leeser, quit the frontbench to campaign for the ‘Yes’ side. Having Price and another First Nations leader, Warren Mundine, front the ‘No’ campaign further polarised debate.

A striking feature of the result was how the ‘Yes’ attitudinal pattern broadly resembled that of the (unsuccessful) 1999 referendum for a republic. Both proposals had the strongest support among better educated, prosperous progressive voters, attracted to social change issues (see [Figure 4.2](#)). The ABC’s election analyst Antony Green noted

how much lower the Yes percentage vote was in many traditional Labor seats. The seats where the Yes percentage was higher are clustered in seats won by Greens and ‘teal’ independents at the 2022 election, and also several Liberal seats gained by Labor. (2023)

The results do not tell us anything about how people are likely to vote at the next general election, due by May 2025 (just as the 1999 referendum voting pattern was not a predictor of the 2001 election). However, they do suggest that if a Labor government was to be re-elected, its chances of going ahead with another referendum for a republic have been greatly reduced.

The steps leading up to a voice

Multiple attempts were made to build up national-level representative and advisory bodies for First Nations peoples before the Voice proposal. ([Chapters 16–24](#) on the individual states cover the state-level reconciliation processes.) The most important of these was the Aboriginal and Torres Strait Islander Commission (ATSIC), instituted in 1999 by the Hawke Labor government. It had a much more ambitious remit than the Voice, because it had both representative and executive functions ([Wikipedia, 2023](#)). It was abolished by the Howard government in 2004, despite calls for it to be reformed rather than scrapped. Before the 2007 election, the Liberal leader, John Howard, promised that if re-elected he would hold a referendum ‘to formally recognise Indigenous Australians in our Constitution’ ([Bragg, n.d.](#)). There was no suggestion of a Voice.

Over the subsequent decade, an enormous amount of work went into the question of how to achieve appropriate constitutional recognition. The work proceeded along several separate but interconnected tracks, including through parliamentary inquiries, by conservatives who favoured constitutional recognition and through a process of First Nations consultations. Ultimately the most important, the latter route resulted in the Uluru Statement from the Heart, issued at what its First Nations authors described as ‘the 2017 National Constitution Convention’ ([Uluru Statement, 2017](#)). Calling for a Constitutional Voice, the statement referred back to the landmark successful referendum of half a century before: ‘In 1967 we were counted, in 2017 we seek to be heard.’ The statement, however, received a cold reception from the Turnbull Cabinet, which rejected the Voice as a ‘third chamber’ of Parliament. The Morrison government commissioned an inquiry by First Nations leaders Marcia Langton and Tom Calma on the Voice, but opposed putting it in the Constitution and preferred local and regional voices to a national one. In the end, nothing was achieved.

The campaign

On 30 July, at the 2022 Garma Festival in the Northern Territory, the new Labor PM Albanese proposed draft wording for the Voice, which stated that the Voice ‘may make representations

to Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander Peoples' (NIAA, 2023). Parliament would have power to make laws on the 'composition, functions, powers and procedures' of the Voice. Over the year that followed, the argument about the Voice would involve many issues, including:

- ◆ the right of one group to have a special place in the Constitution
- ◆ the Voice's potential for dividing, or conversely uniting, the country
- ◆ the likely effectiveness of the Voice in helping to 'close the gap' of First Nations disadvantage
- ◆ whether the Voice would disrupt government and trigger legal challenges.

Legal experts Frank Brennan and Greg Craven, long-time participants in working for a Voice, were among those who warned of potential unintended legal consequences of the wording, although many other experts, including former Chief Justice Robert French, dismissed potential legal concerns. Attorney-General Mark Dreyfus did try to secure some recalibration; a minor wording change was made, but PM Albanese's advisory referendum working group would not go as far as Dreyfus had proposed. The government bolstered its argument against legal critics with advice from the Solicitor-General.

When public support seemed high, the government had considerable faith in a positive 'vibe' helping to carry the Voice through. They felt that people were recognising the justice of what PM Albanese referred to as First Nations peoples' 'generous invitation' and responding positively to it (Albanese, 2023). The government did not want to allow the debate to get bogged down in detail. But, especially after Peter Dutton, in April, joined the Nationals in declaring the Liberal Party's opposition to the Voice (Guardian, 2023a), it became clear that a lack of detail was a serious handicap for the 'Yes' campaigners. Even if it had wanted to, the government could not have provided full detail, because that was to be settled later in consultation with First Nations peoples, and only after a successful referendum.

The campaign presented a dilemma for the Labor government. It was not directly running or controlling the 'Yes' campaign, although this was its referendum and it was obviously campaigning hard for a 'Yes' vote. Another problem was that PM Albanese's messaging suffered from a lack of clarity. On the one hand, he presented the Voice as simply an opportunity for First Nations peoples to be heard; on the other, he suggested it would be a very powerful instrument in closing the disadvantage gap. His opponents took advantage of this ambiguity by adopting the high-impact campaign slogan 'If you don't know, vote no'. This simple bumper sticker made it easier for Australians to vote 'No'.

The 'No' side always had the easier task. It simply had to fan voters' doubts, and ask questions to which there were no answers. As the months dragged on, the campaign became nastier, bringing some evidence of racism to the surface. This was Australia's first referendum in the era of social media, and debate raged about 'misinformation' and 'disinformation'. Much information was hotly contested.

The Edelman Trust Barometer 2023 also suggested that Australia was already on a path to increased polarisation, driven by a series of macro forces (distrust in key societal institutions such as government and media, a lack of shared identity, systemic unfairness, heightened societal fears and economic pessimism) that had weakened the country's social fabric and created increasing division in society. The report found almost half of Australians (45 per cent) agreeing that the nation was more divided than before. Major dividing forces were identified

as ‘the rich and powerful’ (72 per cent), followed by hostile foreign governments (69 per cent), journalists (51 per cent) and government leaders (49 per cent) ([Edelman Trust, 2023](#)). Only just over two-fifths of Australians said that they trusted their government leaders – not a strong context for enacting a history-making reform.

The trust of First Nations peoples – hard to build, easy to lose

The Yindyamarra Nguluway research program at Charles Sturt University, led by Stan Grant Jnr, involved yarns with 24 Wiradjuri Elders before, during and after the referendum campaign.¹ The findings were worth noting, because they showed that despite the national polls reporting clear majority First Nations support for a ‘Yes’ vote ([Sydney Morning Herald, 2023](#)), some Elders were in fact initially divided on voting ‘Yes’, fatalistic about the prospects of change and distrusting of the process. Their comments included: ‘We’ve been here before countless times. Promises, promises but little has changed for my family and community.’ There was also deep disdain for the fact that the change process was couched in the context of giving a Voice to Parliament to nations that have never ceded sovereignty. ‘We have been nations for thousands of years. We don’t need to be granted a Voice to Parliament to be a nation. It has such a colonial feel to it.’ Although the Uluru Statement from the Heart was seen as an important step forward, many Elders viewed it as an elite invention: ‘As beautiful as it is, it didn’t involve us. It was designed by self-appointed leaders who don’t live on country. At the very least a grassroots process of reconciliation across all of our nations should have come first.’

Nonetheless, the general view that emerged by the end of the yarns was that the Voice was an imperfect but necessary gateway to a more detailed conversation about the future of Australian democracy. ‘I couldn’t look my Grandmother in the face if I didn’t vote Yes. All she’s struggled for lost in the stroke of a pencil’ [Quotes from yarns]. Across the yarning it became evident that despite misgivings, Wiradjuri Elders had become marginally more trusting, confident and future-focused. As one Elder put it: ‘We started to believe.’ Ultimately, local areas with the largest proportion of First Nations peoples in Australia heavily backed a ‘Yes’ vote ([ABC, 2023](#)).

Understanding ‘No’

Some commentators have argued that the ‘No’ vote was simply a matter of poor timing, with the referendum perceived by the ‘silent majority’ of voters as a tiresome distraction from cost-of-living problems. Certainly, zero-sum ultimatums do not tend to go well for governments calling them in times of economic uncertainty (as the case of Brexit in the UK shows). Others have pointed to a poor process, arguing that if the referendum question had been confined to constitutional recognition for Australia’s First Nations peoples it would have won. This claim is in keeping with the argument that Australians would have been more comfortable with a constitutional statement that recognised the historic claim of right of First Nations peoples and the need for them to have a ‘fair go’, rather than the ‘better go’ that may or may not have been delivered through a Voice. Of course, even consultative mechanisms with constitutional force can still be ignored by stealthy governments. Some critics on the left have argued that something more deep rooted was at play: continued commitment to assimilation and a latent discomfort with multiculturalism. As former PM John Howard said in a speech delivered in 2023: ‘I think one of the problems with multiculturalism is we try too hard to institutionalise differences, rather than celebrate what we have in [common].’ Hence, for Howard, the ‘No’ vote was a vote for ‘unity’ ([Guardian, 2023b](#)).

In addition, the rights tradition in Australia has historically been good at protecting mainstream individual rights (especially perhaps those of the wealthy), but the state of human rights for many disadvantaged groups, particularly First Nations peoples, has long remained precarious. In 2017, the Australian government was subject to a damning critique of its human rights record by the United Nations Human Rights Committee ([Guardian, 2017](#); [UNHCR, 2017](#)) with regard to the rights of children, the treatment of refugees, domestic violence, transgender rights, the sterilisation of intellectually disabled women and girls and the impact of anti-terrorism laws on civil liberties (see [Chapter 3](#)). The Human Rights Measurement Initiative, in 2021, reported multiple issues for Australia ([SBS News, 2021](#)), ‘particularly in terms of who is most at risk of rights abuses’, such as Aboriginal and Torres Strait Islander peoples, people with disabilities, people with low socioeconomic status and refugees and asylum seekers ([Human Rights Watch, 2021](#)).

Strengths, weaknesses, opportunities and threats (SWOT) analysis

Current strengths	Current weaknesses
<p>Australia’s Constitution provides for amendments to be made to it via a referendum so long as (1) a national majority of voters vote ‘Yes’ and (2) the state parliaments of four of the six states also vote ‘Yes’. This double-majority criterion is clear and long established. There was a good chance that had condition (1) been obtained, condition (2) would have followed. But the ‘Yes’ vote could not muster a national majority of support.</p>	<p>Critics argue that the double-majority criterion is so hard to overcome that the Constitution is becoming immovable (see Chapter 3).</p>
<p>The referendum question was clear cut and agreed consensually. The Labor government saw their proposal as coming after a long process of previous consultation and action at state and federal levels. They sought an approval in principle for a national Voice, to be followed by detailed consultation on the precise arrangements involved.</p>	<p>Critics of the Voice proposal argued strongly that the actual make-up and powers of the consultative assembly proposed and how it would be integrated with legislative and government decision-making were still obscure, and that a ‘Yes’ vote would give the government too much of a blank cheque on the final set-up and powers of the proposed body.</p>
<p>The referendum was well conducted by the Australian Electoral Commission and most campaigning on both sides was conducted in considerate ways.</p>	<p>Critics from the ‘Yes’ campaign argue that the ‘No’ campaign was a ‘scare’ campaign, featuring disinformation and heavily funded by wealthy interests. Some social media messaging at times evoked past racist attitudes towards First Nations peoples and allowed the expression of threatening or discriminatory opinions.</p>
Future opportunities	Future threats
<p>The processes by which Australia reconciles past colonisation hurts suffered by First Nations peoples and seeks to remedy their current disadvantages will likely continue at state and local levels.</p>	<p>Efforts at reconciliation with First Nations peoples may become stalled or lose impetus, and their disadvantage even more entrenched.</p>

After the Voice's failure, what next?

Many First Nations peoples and others on the centre or left blamed the strong opposition of Liberal leader Peter Dutton for the referendum's defeat. While the Liberals' dissent was undoubtedly the nail in the Voice's coffin, it seems very doubtful that the 'Yes' case would have prevailed even if Dutton had taken a more benign attitude. The most that he could have delivered would have been a free vote for Liberal MPs; regardless of what he did, many Liberal MPs and others on the right would have run a fierce campaign against the Voice.

When the polling showed the Voice was heading for defeat, there were calls for PM Albanese to scrap or delay the referendum. This was never realistic, because the PM had by then gone too far. Indigenous peoples would have seen such a step as a betrayal. But more reasonable questions might be asked about whether PM Albanese should have promised a constitutional Voice in the first place, when it was obviously going to be extraordinarily difficult to deliver. The alternative would have been to create a Voice by ordinary legislation that could then be put into the Constitution at a later date, if and when there was a strong prospect of such an initiative succeeding. That approach would not have satisfied those driving and supporting the Uluru Statement. But other critics argue that achieving this much would have been better than nothing.

As it turned out, the referendum not only ended with no Voice being established, but also had other negative consequences for First Nations peoples. In particular, it opened the way for an unravelling of the bipartisan support for the treaty process that had been under way in Queensland. It has also led to some questioning of welcome-to-country ceremonies. On social media a great many disinformation messages were aired about the treatment of First Nations peoples, and overtly racist views multiplied during the campaign period. Hence a process designed to address racial bigotry and promote reconciliation actually unleashed racism and appeared to have set back reconciliation.

What can be done?

We held a panel discussion in Canberra a few days before the referendum. Our last question to a Wiradjuri emerging leader was about what would happen if the referendum did not succeed. She answered, 'Then Wiradjuri nation building goes on, as it has for thousands of years.' So how might the spirit of the 40 per cent nationwide 'Yes' vote be used positively to support the needs and future aspirations of First Nations communities?

First, as Stan Grant Jnr put it with his final words on ABC's Q+A program early on in 2023, we need a commitment to *Yindyamarra Winhanganha*:

This phrase, which is sacred to the Wiradjuri people, means 'the wisdom of respectfully knowing how to live well in a world worth living in'. People of goodwill on both sides of the vote will want to recognise that all Australians became responsible for closing the gap opened up in the campaign through strengths-based interventions.

Second, at a high politics level, the Voice would have been of symbolic significance as an act of restorative justice. But, in more practical ways, its failure mattered most at the local scale in affecting (or not) the lives of First Nations peoples. International evidence suggests that the best way of achieving improvements for disadvantaged minorities has been through community

development councils (CDCs). These are designed to reduce poverty by empowering communities through improved governance and social, human and economic capital. They develop their own community plans, prioritise initiatives through whole-of-community direct decision-making, make bids for development funding and manage and deliver their own development projects. The establishment of directly elected CDCs lies at the heart of this strategy – putting communities in charge of their own development process and providing them with technical support and resources to deliver co-designed projects that matter to them.

Third, co-design by default, supporting the expectations of First Nations communities, inevitably requires both a better understanding of their service needs and aspirations and a service culture that attempts to ‘see’ like First Nations peoples. This is why co-design has moved to centre stage in public sector production around the world, for both online and offline citizen interactions. It places the selected members of society, in this case the First Nations community or citizen, at the centre of a planned process of collaborative learning. The process of learning focuses on the achievement of very specific outcomes, such as a fit-for-purpose nation-building plan. It draws on ways of working that are commonplace in product design and formulates interventions through understanding the lives of others and walking in their shoes. Co-design has been widely used in the development of interventions to combat various forms of marginalisation and carry out new governance practices or service innovation. In sum, design thinking has become a fundamental tool of public policy design and analysis, and it should be mandatory for all services, programs or projects aimed at supporting First Nations peoples.

Of course, there is also a chance that the next generation of Australian voters will take the initiative and right historic wrongs. According to a suggestive survey of next-generation students visiting the Museum of Australia Democracy ([Evans, Stoker and Halupka, 2019](#)), young Australians want to see a more participatory and representative democracy with the capacity to address long-term policy problems and bring in a fairer, tolerant and egalitarian democracy. ‘Indigenous constitutional recognition’ was their third priority issue, above gender equality and climate change. Given that young Australians are now among our most active and engaged citizens, the promise of change remains ([Guardian, 2023c](#)).

Conclusion

The Voice referendum produced a clear verdict in an appropriate and legitimate way that has been widely accepted as clearly expressing the views of Australians. Key lessons will no doubt be learnt for any future referendum (for example, on Australia’s links with the UK monarchy), especially regarding the need for the precise implications of a ‘Yes’ vote to be fully specified.

Note

- 1 We acknowledge the traditional owners of the lands on which we developed this article – the Wiradjuri, Ngunnawal and Ngambri people. The yarns, led by Stan Grant Jnr and observed by Professor Evans, were held on three occasions: at the Warangesda Festival in Darlington Point (Canberra), Bathurst and Wagga Wagga. The interpretation of the data from the yarns rests with us.

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