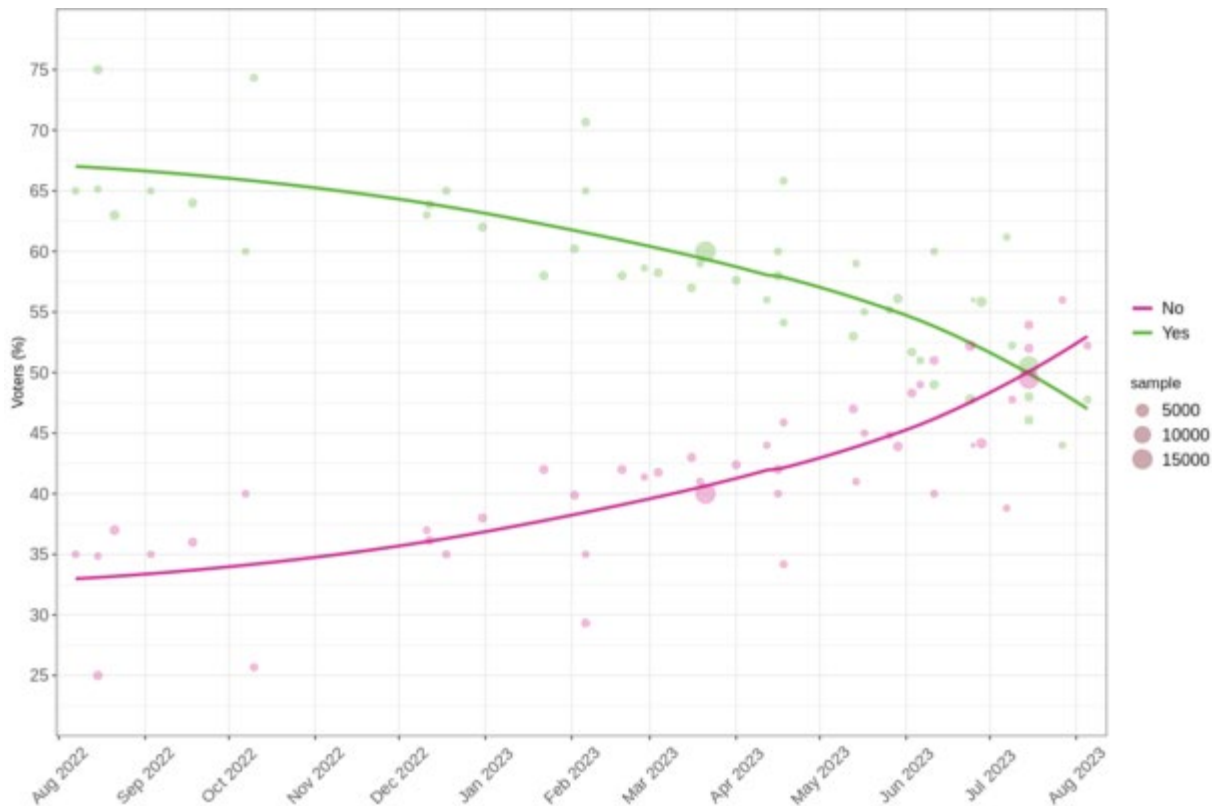




Treaties aren't scary, and a draft bill saying how the voice will work might be worth the risk

Dominic O'Sullivan | August 10, 2023



Last week was a bad one for the Yes campaign on the referendum to create an Indigenous Voice to Parliament. The government struggled to explain the relationship between the Voice and treaty. Its message on what the Voice is and what it will do isn't getting through, and [opinion polls](#) are showing a steady reversal of the once majority support for the Yes case.

The latest shows a [56-44](#) lead for the No side.

The No campaign's argument that the government's secret agenda is for the Voice to lead to a treaty, and that treaties are scary, is making the Yes side sound confused and indecisive. All this, supporting the argument that 'if you don't know, vote no'.

The No side is more or less divided into two camps. [First Nations' people](#) have enough say as it is or, on the other hand, the Voice won't change things enough to make a difference.

[Some people](#) on the No side argue that a treaty should come first.

By contrast, the Yes case is remarkably simple. [First Nations' people](#) should have a guaranteed and structured say in policies that affect them.

[But people](#) still want to know what this means in practice. And to stop the declining support, it may be time for the government to publish a draft of the Bill it plans to put to parliament, should the referendum pass.

Perhaps people also want to be sure that this isn't Prime Minister Albanese's Voice, or a Canberra Voice? [It's a First Nations' people's idea](#), and although taken 7 months ago, the [most recent poll](#) shows 80% Indigenous support.

A draft Bill is risky, but it might be the Yes case's best chance

A draft Bill is risky. While it gives people something definite to support, it also gives people something definite to oppose. It gives people who support the idea, in principle, the opportunity to conclude that it won't do enough to make a difference. Yet, the Yes campaign is rapidly losing ground. It needs focus, certainty, and clarity.

There were ideas in the [Prime Minister's speech to the Garma Festival](#), over the weekend which could be put into a draft Bill. He said very simply that a Voice will be chosen by Indigenous Australians to provide advice to parliament and government.

A committee of Indigenous Australians, chosen by Indigenous Australians, to work for Indigenous Australians in every part of our nation: the regions and remote communities, big cities and the Torres Strait Islands.

Giving Parliament and Government the advice to drive better results in health, education, employment and housing.

That's what the Voice is about: advice.

Advice that will ensure Government benefits from the perspective and experience of the people on the ground.

So we listen to communities, make better decisions and achieve better results.

A draft Bill could be short, simple, and direct.

Treaties are a distraction, but they're not scary

The idea for the Voice comes from the Uluru Statement from the Heart, drafted by First Nations' people after extensive dialogue. The Statement connects a Voice with a treaty (or perhaps treaties) and the government has said it's committed to the Statement 'in full'.

However, it's important to understand that we can have one without the other. Voting Yes doesn't mean there has to be a treaty, and voting No doesn't mean there can't be one.

Connecting the two does seem to be confusing the arguments for and against the Voice. It might have been better to say that the treaty debate is for another time. But having made the

commitment the government needs to show that treaties aren't scary. Like the Voice they can make democracy work better.

International experiences, from Canada and New Zealand, and the treaty preparations that are well advanced in Victoria support the argument that treaties aren't scary. So far, the arguments against treaties, haven't had the sophistication or nuance required to properly test the idea.

We should also keep in mind that the makarrata process that the Uluru Statement from the Heart recommends, to oversee treaty making means 'coming together'. Treaties would presumably have to support this ambition.

Makarrata is an important counterpoint to the No side's argument that the Voice is 'divisive', as if we should all think the same.

If people want to argue that a process intended to bring people together actually 'divides' them, they should be able to answer the question divided from what? Divided, perhaps, from a society that doesn't want First Nations' participation in public life – unity by exclusion?

Treaties Aren't Unusual

New Zealand's treaty – [Te Tiriti o Waitangi](#) – was signed in 1840. It is less than 500 words. Its overall purpose was to provide for good government. It allowed British authorities to govern the settler population, Maori to retain authority over themselves and environment, and promised Maori people the rights and privileges of British subjects. In 2023, these are the rights and capacities of citizenship.

Although [some people](#) say that the treaty is not honoured in ways that are fair and reasonable, liberal democracies are designed to manage different viewpoints. They are also designed to distribute power and authority fairly among citizens. To ensure that power doesn't belong only to *some* and not *all* people.

The treaty helps to answer one of the basic political questions that all societies have to think about – who has responsibility for doing what, how and why?

In Canada, 70 treaties were negotiated between 1701 and 1923. These treaties dealt with things like land, hunting and fishing rights, education and annuities. There was often much about them that was grossly unfair to First Nations' people, but the benefits are supposed to be protected under the [Canadian Constitution](#) as a matter of what the [Supreme Court](#) called 'the honor of the Crown'.

Since 1975, 26 modern treaties have been concluded. More than 70 are under negotiation. Modern treaties deal with things like land ownership and management, harvesting rights, financial settlements, and consultation and participation with governments.

Again, people disagree over how fair and reasonable these treaties are, but disagreement is a democratic right, not a democratic problem.

The substance of Commonwealth treaties will be influenced by what state and territory treaties contain and what they don't contain. The different powers and responsibilities of each tier of government are determining factors.

While [Victoria](#), [Queensland](#), the [Northern Territory](#) and [New South Wales](#) are at different stages in their treaty preparations, international experience suggests that treaties could deal with principles like self-determination, which Australia has already accepted as a universal right belonging to Indigenous peoples as much as to everybody else, and things like land rights which are specific to individual communities.

There are strong liberal democratic arguments to support these aspirations, just as there are strong liberal democratic arguments for a Voice. Though the argument that a Voice could make democracy work better does need sharper and specific focus.

A draft Bill could help.

The graph represents an aggregate of publicly available opinion polling on the 2023 Australian Indigenous Voice referendum – Teratix – CC BY-SA 4.0.

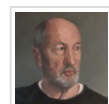
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ONE COMMENT



Max Thomas

August 11, 2023 at 2:24 pm

Professor O'Sullivan suggests a short, simple and direct draft bill for enabling legislation to provide for the selection of a committee of Indigenous Australians, chosen by Indigenous Australians, to work for Indigenous Australians in every part of our nation.

Instead of risking the national odium and disgrace that will ensue if the referendum fails, why not simply proceed with the enabling legislation?

Enshrining the concept of "The Voice" in the constitution would not guarantee that a future government could not amend or even repeal the enabling legislation.

The Constitution sets out, in detail, methods for electing our political representatives. Instead of conflating the "The Voice" question with formal recognition, a separate referendum question could ask for approval of an amendment to specifically include arrangements for the election of additional National Indigenous Senators in proportion to the Indigenous population of the nation as a whole, not by state or territory.

Prior to elections, Indigenous people could choose to enrol on either the Indigenous or the general electoral roll, as Māori people do in New Zealand.

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