Gemma: Australia goes to the polls on October 14 in a referendum on whether to enshrine an indigenous advisory body known as The Voice to Parliament into the country's constitution.

News clips

Gemma: In this episode, a political theorist from the Torres Strait Islands explains the background to The Voice and the arguments for and against it. Plus, we get a view from Canada on how the voice proposal compares with indigenous systems of representation elsewhere in the world.

I'm Gemma Ware and this is The Conversation Weekly, the world explained by experts.

Aboriginal and Torres Strait Islander listeners are advised that this episode of the podcast contains names of deceased people.

Carissa Lee, you're the First Nations and public policy editor at The Conversation in Australia based in Melbourne. Welcome to the podcast.

Carissa Lee: Thank you Gemma.

Gemma: Tell us what is the Voice to Parliament?

Carissa Lee: Yeah, the Voice to Parliament is an advisory body that has been proposed that would advise Parliament about issues that relate to Aboriginal and Torres Strait Islander people.

Gemma: What are people in Australia actually going to be voting for on the ballot?
**Carissa Lee:** We'll actually be voting on proposed alteration to the constitution. One of the chapters of the recognition of Aboriginal and Torres Strait Islander people, it's going to have wording attached that enshrines the Voice to Parliament. So it will ensure that it is permanent and cannot be removed by preceding governments.

**Gemma:** And for you, Carissa, what's it been like covering The Voice campaign for The Conversation?

**Carissa Lee:** Well, I'm a Noongar woman who was born on Wemba-Wemba country. So I'm a First Nations person. So it has been a bit of an emotionally tricky situation to be in. I've learned a lot about the constitution, whether I wanted to or not. I have learned a lot about, you know, how this stuff works in parliament and even just being across the arguments that are happening for and against the Voice, it has been causing a lot of division in First Nations communities because not all people are overly excited about it and actually think it's not that good an idea. My main concern has been how community are coping with this at the moment, regardless of what side they’re on.

**Gemma:** And Carissa, one of the people that you've been working with a lot to explain the Voice referendum and put the debates in some perspective is Sana Nakata, who you and I've been talking to for this episode. Before we hear from her, can you introduce Sana for us?

**Carissa Lee:** Yes, Sana is a principal research fellow at James Cook University in Queensland, even though she is also based in Melbourne. And she's originally from the Torres Strait Islands, a set of islands north of mainland Australia. She is my go-to for this and she is really amazing. And it's also important to acknowledge as well with First Nations people in Australia, we are Aboriginal and Torres Strait Islander people. So we're two different types of peoples. So I'm Aboriginal and Sana is Torres Strait Islander.

**Sana Nakata:** I'm a Kulkalgal woman from central Torres Straits. Kulkal is the place that we are from and gal means we are for that place. So I lived in the Torres Straits before I started school. And my life in the Torres Straits, my memories of that time were of being in between my own home and my grandma's home and all of my cousins being around. And on Friday afternoons when my mum would finish as a school teacher, she would pack up the boat. Dad would come home from work and we'd head out to Wongai Beach or Frenchman's Beach on a place now known as Prince of Wales Island. And my dad would fish all week for our food for the week and some extra that he could trade and barter with local airline workers for fresh fruit and vegetables. which in the 1980s were hard to access and very expensive and indeed food security in
remote communities across this continent is still a real issue. But it was a very
happy time and it was a time that anchored me to the Torres Straits and to my
family and to my culture and my language.

We moved to the mainland so that my father could pursue education, and that
wasn't available in the Torres Straits. So I grew up and attended school and
learned to read and write English at the same time, my father was learning to do
a lot of those things as a mature-aged university student. And over those years,
he would become the first islander to receive a PhD. It was also a time in my
childhood where there was a lot of momentum towards land rights, lots of land
rights litigation and failed land rights claims. And of course, famously the Mabo

Newsclip

**Gemma:** Torres Strait Islander man Eddie Mabo was part of a group who
pursued a long legal battle to secure recognition that his people, the Meriam
people, were owners of their land. The case was successful and it was the first
decision which recognized that Indigenous people have always been in Australia
and that British colonizers knew that when they arrived.

**Sana Nakata:** I was nine, ten years old when Mabo decision was handed down.
I didn't know too much about land rights or the High Court. What I felt as a
young person was the aftermath. I recall acutely the desecration of Mabo's
tombstone. He had sadly died by the time that the High Court decision was
delivered. And an enormous amount of racism and hostility emerging in our day
to day lives as the backlash to native title and land rights took hold. And that
really went on for years. And that was when I started to pay attention. But to be
honest, you know, I came to university and I got interested in politics. I studied
American politics. I did everything I could to avoid the study of my own
oppression and condition in this place we call Australia. But the fact of the
matter is that we are a small community. We are 60,000 Torres Strait Islanders
in this country. We are less than a million Aboriginal and Torres Strait Islander
people. And there is work that my family has been building towards for
generations. And that work is not finished.

**Gemma:** Let's turn now to the Voice. What would actually happen if the
constitution is changed to introduce the Voice to Parliament?

**Sana Nakata:** If the Voice to Parliament referendum succeeds, the
Commonwealth Parliament will be empowered to establish a representative
body. The government has committed to the nine design principles that were
developed out of a co-design process. One of the most important elements of those design principles is that Aboriginal and Torres Strait Islander communities themselves will be in charge of determining the process by which their representatives are selected and who those representatives are.

Once established, the Voice will be able to advise parliament on matters affecting Aboriginal and Torres Strait Islander peoples. There is a word in the amendment, “may”, which was debated and deliberately included to enable the Voice to decide for itself what it can give advice on. The fact that they may provide advice also means that they can't be compelled to provide advice. So they can't necessarily be put upon by governments who might wish to overload them. It's up to the Voice as an institution to determine what those matters are.

**Gemma:** The Voice isn't the first time people in Australia have been asked to vote in a referendum on Indigenous rights. In a 1967 referendum, Australians voted to include Aboriginal and Torres Strait Islanders in the census for the first time. The referendum also gave the Australian Parliament the power to make laws about Aboriginal and Torres Strait Islander people. More than 60 years later, Australia's prime minister, Anthony Albanese, and his Labor Party decided it was time to try and change the constitution once again.

**Newsclip**

**Gemma:** What were the steps that led to this referendum, the Voice referendum?

**Sana Nakata:** A lot of things, but where we can build a more formal and immediate history to this specific process probably goes back to the 2010 expert working group on constitutional recognition. That provides a series of recommendations that constitutional recognition is desired and sought by Aboriginal and Torres Strait Islander peoples.

There was a significant event in 2014, under the prime ministership of Tony Abbott, when he consolidated all of Indigenous related programs and funding into a central government department. In the process of doing that, he slashed AUS$500m from budgets without consulting with or advising any of the affected communities. This was a bit of a turning point, in that Aboriginal and Torres Strait Islander people from across the country were outraged.

**Newsclip**
Sana Nakata: This led to, by 2015, the Kirribilli Statement, where notable Aboriginal and Torres Strait Islander people came together to demand that the Commonwealth and the government commit to a serious process of constitutional recognition and that such a process identify and look seriously at substantive reforms so that Aboriginal and Torres Strait Islander peoples, their communities and their interests would be better protected.

Gemma: Later in 2015, Malcolm Turnbull, Abbott's successor as prime minister, set up a referendum council.

Sana Nakata: That led to what we now call the Uluru Dialogues. So, 12 three-day conventions held across the continent that then culminated in a national constitutional convention at Uluru on May 27, 2017. And that delivered The Uluru Statement from the Heart.

Newsclip

Sana Nakata: Which is composed of a call for voice, treaty, and truth.

Carissa Lee: The order of voice, treaty, and truth is really crucial to understanding the debates about the referendum. Now can you tell us why the sequencing of those words matters?

Sana Nakata: The constitutional dialogues over three days discussed five proposed forms of constitutional recognition, and those were: symbolic recognition, we call them, and acknowledgement. Second, the amendment or the deleting of the race power in the Australian constitution. Third, the introduction of a non-discrimination clause in the constitution. Fourth, a Voice to Parliament or a representative institution in more general terms and fifth agreement-making or treaty.

The overwhelming consensus across the dialogues was in order of preference, a Voice to Parliament first. The second most highest level of support was for treaty and so voice and treaty were sequenced in part, as I understand it, in the Uluru Statement because it reflected the level of support. Truth was added because it emerged in the course of hosting the dialogues that truth-telling was fundamental to starting the conversation.

My view on the sequence goes to how we understand the impact of our voices on the Parliament. So, I believe that if you want our truth to make a difference to the condition of our lives on this continent, it's really important to have agreement making, right? Otherwise you just have trauma stories. You just have
performative storytelling and some people are moved and some people don't really care. And I'm not interested in that kind of truth telling. I'm interested in truth telling that shifts the paradigm of thought about what Indigenous affairs is and what Aboriginal and Torres Strait Islander people are working towards in the pursuit of our self determination and the building of our own futures.

To get that, I think you need agreements. I think you need negotiations. I think you need treaty, but I think that you need the Voice first because you need to create and build the conditions for political action, which is how you create the conditions for strongly negotiated treaties. And I think the existence of those agreements is what honors our truth, and turns our truth into action.

Carissa Lee: Some of the opposition to the referendum is based around the sequencing of voice, treaty and truth. What is the nuance of that argument?

Sana Nakata: Yes, there have been really interesting arguments against the Voice across the political spectrum. So, on the left or the progressive end of the political spectrum, where we would normally expect to see a lot of support for a referendum on Indigenous rights in broad terms, we've seen some really specific arguments, particularly from senator Lidia Thorpe for treaty first rather than voice.

Newsclip

Sana Nakata: These are arguments that are grounded in long-established political movements and treaty is a word that means a lot to a lot of people and it reflects the work that generations of their communities have worked towards. When you ask people what are they fighting for, you will find people in communities who will say my family has been fighting for treaty since the 1920s. This is a longstanding claim, and so the claims for treaty first are understandable. They are, in my view, not well informed about the nature of political power and how treaties function in practice, particularly how difficult they are in terms of effectively implementing them.

On the other side of the political spectrum, we have arguments against voice really on the idea that they go too far, that a voice is too broad, it's too uncertain, it introduces threats to the Parliament's ability to do its job and pass laws for all Australians. As the campaign moves towards its final weeks, we have seen that end of the no argument simplify considerably in arguing that a voice is racially divisive, which of course we know it's not because the constitution already racially divides us.
Gemma: This referendum campaign has been characterized by a lot of misinformation, but particularly on social media. What kind of misinformation are you seeing, Sana, in your community being spread about the Voice?

Sana Nakata: Yeah look, I am seeing misinformation in this campaign that I've never seen before in any other election in my memory. We are seeing tactics to disseminate misinformation that are really similar to what we know have taken place in recent U.S. elections and that played a role in shaping the U.K. Brexit election. Misinformation abounds, so there is genuine misinformation around what the Constitution is, what the Parliament's powers are, how you can regulate government power. I think there's a lot of misinformation around that. The idea that a treaty could more effectively constrain or regulate government power than a voice is really grounded in misunderstandings of basic principles of law and politics. There is misinformation about where the proposal comes from, about who was involved. There are outright conspiracies about what this comes from. And then there is deliberate disinformation.

Carissa Lee: What do you think it would mean for Indigenous people in Australia if the referendum is passed and the constitution is changed?

Sana Nakata: I don't necessarily see the Voice as something that radically changes or alters the types of politics or projects that Aboriginal people and Torres Strait Islanders are already engaged in. What it will mean is that there are new forums and platforms through which communities can be heard.

I certainly hope that at its best in the way that I envisage the Voice having an impact is that we will start to hear from people on the national stage that we haven't heard from before. I think that we will see a greater diversity of our politics and our agendas and also our answers and solutions to the kinds of challenges that we do have in common across the continent.

I think for a lot of older Aboriginal and Torres Strait Islander peoples, and certainly a lot of older members of my community that I sit with and talk to, it will feel like a genuine and deep recognition that they haven't experienced in their lives.

Gemma: Sana, thank you very much for coming on to talk to us about this unique and important moment.

Sana Nakata: Thank you for having me.

Gemma:
After Carissa and I chatted with Sana, we decided to get an international perspective on the Voice from another part of the world, from Canada, which has had its own struggles over rights for Indigenous people. We wanted to find out how the Voice referendum compares to other battles for Indigenous rights around the world. And so I called up an expert in Indigenous and constitutional politics.

Kiera Ladner: I'm Kiera Ladner. I teach in political science at the University of Manitoba in Winnipeg, Canada. And I run a research center called Mamawipawin.

Gemma: I caught Kiera a few days before she flew to Australia to be there for the Voice referendum. On a previous trip in 2012, during the constitutional reform process, she told me she was really struck by what she heard from some First Nations people.

Kiera Ladner: I was in a community just outside of Darwin. Community consultation. Not a public forum. Where a number of people got up and spoke about both Canada and South Africa. And I was shocked at the level of knowledge by this elder. Absolutely dumbfounded because they knew more about Canada's constitution, how it had come to be, some of the issues with the recognition of aboriginal rights and treaty rights that happened in 1982. They knew more about that and the problems than my students do when writing a test after they've been in a four month class. And I found that fascinating, just that level of knowledge and that level of detail and how interested people were in trying to find a solution and drawing from all these international experiences that would actually work in Australia.

Gemma: How does what's being proposed for the Voice differ to the situation in Canada?

Kiera Ladner: Canada has a long history of treaty making. Treaties began long before Canada did. It goes back to some of the earliest treaties in the 1640s. Huge treaties between the Mi'kmaq 1725 that have been in court. But those treaties, much like New Zealand, sometimes, were just left by the side and not really picked up and not really honored.

Gemma: In the early 1980s, Canada began a process to reform its constitution under Pierre Trudeau, the father of the current Canadian prime minister, Justin Trudeau.
Kiera Ladner: Indigenous leadership got involved and they welcomed themselves to constitutional discussions that were between 11 white men in suits. They insisted that they be there. There were great demonstrations across the country to protest the exclusion of Indigenous people from constitutional debates. And they really forced a discussion.

Gemma: The result was Section 35 of the 1982 Constitution Act, which recognized Aboriginal treaty rights in Canada's constitution.

Kiera Ladner: So, we've spent since 1982 onwards litigating the meaning of Section 35 Aboriginal treaty rights.

Gemma: And you mentioned there that there have been treaties before Canada even existed. Actually, in Australia, a big part of the debate around the Voice is about the sequencing of what happens and whether or not treaties should come before voice. What's your perspective on that and what lessons are there there for that debate in Australia?

Kiera Ladner: I'm not sure if they're doing it the right way. They're doing it the right way because they're doing it the way in which community decided and instructed and dreamed and got behind through the Uluru process. But for this, I often look to South Africa. They had their truth process, their truth and reconciliation process and their constitution-making process, absolutely together. And their constitution is very much like a treaty.

And I think that that's really fascinating to look at. Because if you read their constitution, it is really a document of reconciliation. And the result is traditional leaders house is there to represent those tribal leaderships, those, those nations that were part of that South Africa colonization process.

It's there to provide a voice to traditional groups. It's there to provide a voice to rural and it's there to provide a voice to so many other peoples that had no voice within apartheid and within South Africa's colonial processes. And that doesn't mean that South Africa has really achieved what it set up to do. But the platform that it laid out allowed it to at least put down on paper a vision of an enlightened modern democracy.

Gemma: Are there any other countries around the world that you point to as a good example of the inclusion of Indigenous peoples in decision making and governance?
**Kiera Ladner:** I think New Zealand, Aotearoa. A phenomenal case of treaty, of representation within the national government but now also representation guaranteed in local governments. In South America, we saw a pink wave go through a number of years ago with people like Evo Morales. And I think that the constitutions that were being talked about and brought about then in places like Guatemala, Ecuador.

Chile tried to put up a new constitution that was a phenomenal constitution of indigenous inclusion, with movements towards a process of inclusion both within the house, as well as the third chamber. We see Colombia. We see Fiji. We see a number of countries around the world that are really restructuring these colonial processes that were left at the time of writing their initial constitutions. And rewriting their constitutions to embrace where they are.

And I think that we also need to think about places like Ecuador and New Zealand, which have not only brought in customary law, but are also bringing in the land and understanding that, that land has a personhood, a legal personhood. And therefore, cannot be violated in the same way that it has in the past, or should not be violated. And when we think about constitutional renewal, we should think about the land that we're sitting on. We're not sitting in the UK. We do not have to be modeled after the UK.

**Gemma:** Well, thank you so much for your insights and your global understanding of where we are with this.

**Kiera Ladner:** You’re welcome.

**Gemma:** Carissa, just to end here, referendums, nd I say this as someone sitting in the UK and has lived through the Brexit referendum, they are a divisive event for any place to go through. What's your hope for how this is going to pass in Australia?

**Carissa Lee:** I really hope that First Nations people are OK at the end of this, regardless of what the outcome is. I think no matter what happens, people are going to come out the other side of this pretty torn up because the misinformation and the racism that has been coming out of discussions and debates around the referendum, has been quite damaging, and to the point where the government has had to implement budgets for mental health services for First Nations people. So I really hope that they come out of this OK.

And I really hope that we can find a way to ensure that respectful dialogues can be had during this time because we're seeing, and I do completely blame what
happened over in the States with Trump and, you know, the misinformation that was surrounding covid and all that kind of panic that goes around, misinformation and people inciting fear in one another. I really hope we can find a way forward without trying to weaponize fear, to the point where it's harming marginalized communities. I just hope everyone's OK. That's really all I hope.

**Gemma:** And we hope so too. And we hope you're OK, Carissa. Thank you for coming on to help give some perspective on this big moment for Australia for our listeners. Thank you.

**Carissa Lee:** Thank you.

**Gemma:** That's it for this week. You could follow more of The Conversation's coverage of the Voice referendum and the result on our website, and we'll put some links in our show notes to that.

This episode of The Conversation Weekly was written and produced by me, Gemma Ware, with assistance from Mend Mariwany and Katie Flood. I'm also the show's executive producer. Sound Design was by Eloise Stevens, and our theme music is by Neeta Sarl. Stephen Khan is our global executive editor. Alice Mason runs our social media, and Soraya Nandy does our transcripts.

You can connect with us on Instagram @theconversationdotcom, on X, formerly known as Twitter, @tc_audio, or email us directly at podcast@theconversation.com. If you like what we do, please support our podcast and The Conversation more broadly by going to donate.theconversation.com. That's donate.theconversation.com and please do also give us a review or rating wherever you listen to your podcast. It really does help. Thanks very much for listening.