



# Commissioner for First Nations Voice to the South Australian Parliament

## Second Engagement Note

November 2022 to January 2023

# Acknowledgment of Country

We acknowledge and pay respect to South Australian First Nations people as the first peoples and sovereign nations of South Australia.

We recognise the cultural, spiritual, and heritage beliefs, languages and laws of First Nations peoples, that continue to be vitally important, as they always have been.

We acknowledge and recognise First Nations leaders, including younger people who will carry the voices of their communities into the future.

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## Use of Imagery

We sought permission from community leaders and participants for their photographs to be taken during engagement sessions.

Photographs have been used on social media as a way of communicating publicly throughout this engagement process and to create a platform for communities to connect.

Signage was placed at the entrance and check-in station of each session advising that photographs would be taken and that individuals could request that their photos not be taken and/or their images used. Participants were also asked prior to photographs being taken whether they agreed for this to occur.

First Nations people should be aware that this report contains images of people who were voluntarily and actively involved in our process and who may have passed away.

Care has been taken to be respectful of the wishes of participants and communities.



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## About the artwork

### Journey

This artwork represents all Aboriginal Communities coming together, standing strong and having a voice individually but are all together on the same journey of empowerment.

The waterholes represent the different communities who are joined together with journey lines that show individual journeys but also the greater connection through culture.

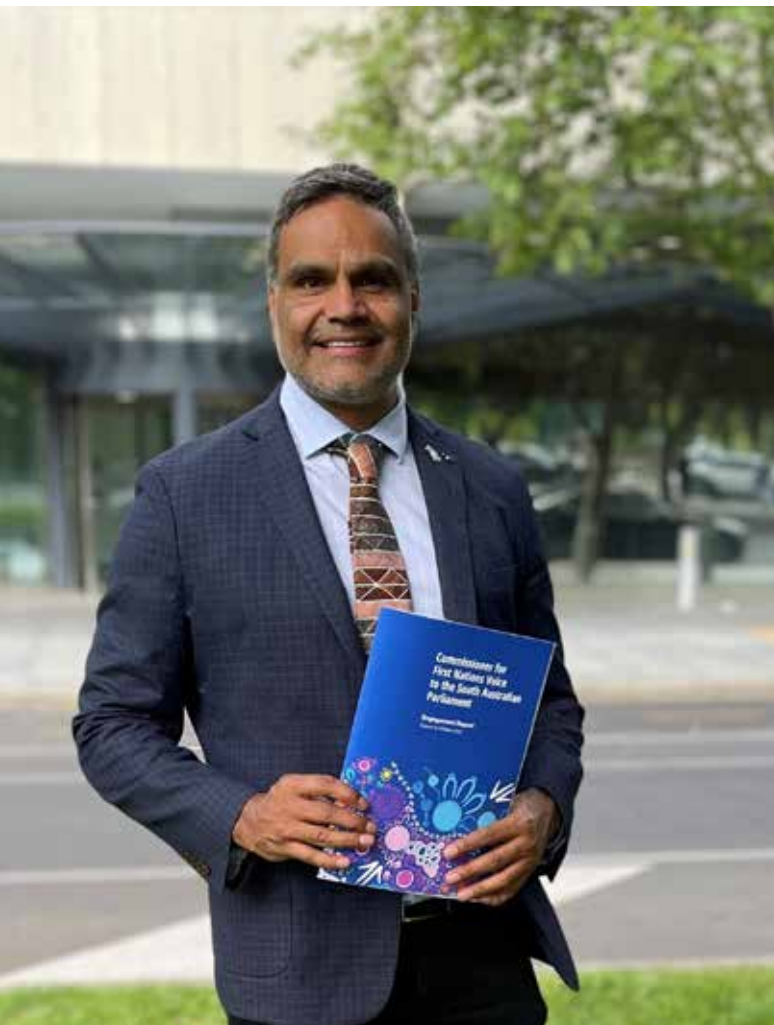
The kangaroo prints represent the Aboriginal communities as they are moving forward as one on their Journey.

The vibrant colours are used to show that the Aboriginal people and communities will be seen and heard to raise issues in a display of community-led solutions and ultimately their Journey to empowerment.



*Artwork by Gabriel Stengle  
(Kurna, Ngarrindjeri, Narungga)*





## Introduction

From August to October 2022, I undertook a state-wide engagement process with Aboriginal and Torres Strait Islander people in South Australia, to hear views on the underpinning principles for the First Nations Voice to the South Australian Parliament. Following this, I released my Engagement Report (November 2022), alongside the release of a proposed model for the First Nations Voice to Parliament and the draft legislation – the First Nations Voice Bill 2022 (the draft Bill).

The Attorney-General's Department developed the draft Bill and model based on findings from the first Engagement Report. The release of the draft Bill was accompanied by two boundary options for community feedback.

In November 2022, I commenced a second round of community engagement, to seek feedback on the proposed model for the First Nations Voice to Parliament. The below summarises the engagement approach and themes that emerged from the second stage of engagements.

I want to acknowledge the many First Nations community members who generously offered their time, advice, and guidance in an effort to ensure the First Nations Voice to Parliament is created with a firm platform. I also want to acknowledge those who have contributed feedback via written submissions.

*Dale Agius*

*Commissioner for First Nations Voice*



## Second engagement round process

The second phase of engagements was undertaken in two parts, from November 2022 until January 2023:

- ▶ Face to face engagement sessions for Aboriginal and Torres Strait Islander people in South Australia to share their views. Attendees were invited to complete an optional survey as an additional avenue to provide feedback. More than 200 people attended sessions, and 26 surveys were completed.
- ▶ Open community online engagement via YourSAy submissions page. Approximately 40 written submissions were received, with 11 from organisations and the remainder from individuals.

The draft Bill, fact sheets and the first Engagement Report were released on 9 November 2022 and promoted through email networks, social media, and mainstream media.

A series of guiding questions were provided to facilitate feedback on core components of the proposed model (these questions were also included in the optional survey for engagement session attendees mentioned above).

## Summary of feedback

The following is a summary of the key themes arising from this stage of engagement. These themes are drawn from in-person community engagement sessions — including written surveys completed by people who attended engagement sessions — and from submissions received through YourSAy.

The face-to-face and the written submissions have been summarised separately as there were several areas of feedback that were raised specifically and only in each of these engagement formats. Where overlapping issues were raised these have been cross referenced in each section.

*Yadu Health, Ceduna*



## Overarching feedback

Throughout the engagement phase I received consistent feedback of support for the findings of the first Engagement Report. Aboriginal and Torres Strait Islander people commented that they saw their views and voices reflected in the report, and it was seen as bringing people to, and keeping people at, the table.

People expressed that having a Voice to Parliament was long overdue and highlighted that the Uluru Statement from the Heart has been discussed for more than five years.

Several of the submissions, as well as some attendees at sessions, raised concerns with the speed of the reform process. There were concerns the engagement approach has not allowed for deeper co-design or for Aboriginal and Torres Strait Islander people to fully inform the model, and there was insufficient time for some organisations and communities to provide a full response. Some advocated for the South Australian process to be delayed until the Federal referendum has been finalised and the Commonwealth Bill has been released.

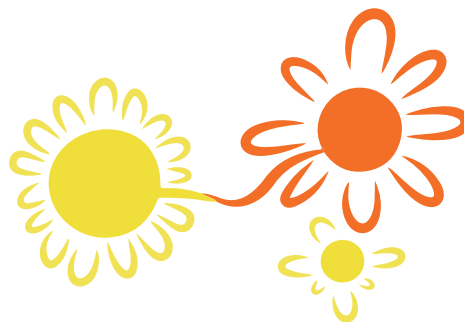
Some engagement session attendees requested a state-wide engagement process be undertaken to raise awareness in Aboriginal and Torres Strait Islander communities on the final model in the lead up to the first election. I support this approach and encourage the government to involve local community representatives in broader implementation, along with the Electoral Commission of South Australia.

## Face-to-face community engagement

Overwhelmingly, people who attended face-to-face sessions supported the proposed Voice to Parliament model. There was particular support for the provisions that enable the Voice to engage with Parliament, the Cabinet and public sector Chief Executives (including via engagement hearings). People continued to express the importance of allowing flexibility in the model, to incorporate cultural knowledge, practices, and frameworks of Nations within each region. This is in acknowledgement that these practices continue to have strong and ongoing significance to the ways Aboriginal and Torres Strait Islander people lead and self-determine the lives of their communities.

It was recommended at several sessions that the model should have the ability to evolve over time and be able to be formally reviewed to learn from the early experiences of this new body. People expressed the view that the State Voice should play a leading role in any future review process, in equal partnership with the Parliament and Government.

Key areas of feedback covered boundaries, election process (nominations and voting), the powers and functions of the Local and State First Nations Voices and on technical elements of the draft Bill.



# Boundaries

As outlined in the first Engagement Report, those attending stage one engagements preferred elections at the regional level to support local voices to be heard. This approach requires electoral boundaries to be established, with people elected to speak on behalf of those regions.

To enable this, two boundary options were released for public comment:

- ▶ **Option 1:** featured 6 regions and factored in existing state electoral, and Nation group boundaries. This method for establishing regions was expressed as a preference during the first round of engagement (Appendix A).
- ▶ **Option 2:** this approach proposed under the Aboriginal Representative Body model, which proposes the state have 5 regions, based on population spread and Nation group connections (Appendix B).

Ceduna



## Boundary preferences

Overall, feedback on the proposed boundaries was the predominant discussion point in engagement sessions.

Option 1 received the most support. Generally, this option was described as enabling more local representation and afforded the greatest number of representatives through more regions. Participants felt the boundaries supported existing connections between Nation groups.

There was some concern expressed that not all the boundaries supported existing cultural connections or Nation group alliances, and it was felt that some regions were too large which could impact on the ability for smaller communities to achieve representation compared to larger communities in the same region.

It was also discussed that some of these regions may be too diverse and that the interests of communities in some regions were too dissimilar to achieve the best level of regional representation. In most sessions it was also commented that one region mirrored a sole Native Title area, where other regions comprised of multiple Native Title areas. People commented that this does not align with a more inclusive, regional approach as reflected in the first Engagement Report.

Option 2 received some support, but it was not the majority view shared. Supporting views mostly commented that some regions more closely represented existing cultural connections and Nation group alliances.

People raised that in general this option would provide fewer representatives as compared with Option 1 and that some regions might be too vast which could limit the representation of smaller communities. People were less inclined to discuss modifications to this option, preferring to focus on adjusting some boundaries in Option 1.

## Boundary adjustments

The following are some suggested adjustments that community felt could enhance the boundaries in Option 1:

- ▶ Northern Flinders Ranges area be included in the Northern-most region to join with APY Lands, Coober Pedy, Oodnadatta, and surrounding communities.
- ▶ Far West Coast, Eyre Peninsula and Iron Triangle regions be readjusted into two (possibly three) regions, for example -
  - ▶ A single West Coast region incorporating communities west of Cowell to the West Australian border, including Maralinga Tjarutja and Oak Valley.
  - ▶ Communities east of Cowell, in particular Whyalla and Port Augusta be incorporated into the Yorke Peninsula, Spencer Gulf and Flinders Ranges region.
  - ▶ A new region be formed that encompasses communities in the Iron Triangle, incorporating communities east of Cowell (as mentioned above), in addition to communities currently in the larger Yorke Peninsula, Spencer Gulf and Flinders Ranges region.
- ▶ Determining whether Mount Barker is included in the Metropolitan Adelaide region or retained as per the current Option 1 (in consultation with community representatives).

With some adjustments to proposed boundary lines incorporating this feedback participants tended to express more confidence and stronger support with Option 1, particularly in regions associated with these adjustments.

*Coober Pedy*

## Wards / Zones

The option of subdividing regions into wards or zones was raised at several engagement sessions. Some people felt that these could bring about greater equity within regions to ensure that all communities within a region were able to have a voice to represent them. Discussion of wards tended to arise in regions that would comprise of larger geographic areas including smaller communities, who felt that they would be outvoted based on population share.

Other benefits to implementing wards include that it would support local communities to grow their leadership capacity, including supporting younger or emerging leaders to gain valuable experience.

Some viewed wards as a restriction on self-determination, voicing that this could undermine the ability of regions to select their best representatives by virtue of limiting the number of representatives from a particular ward. Some people expressed their preference to have more flexibility to decide who they wanted to represent them, which could be someone from outside of their designated ward or zone. Some indicated that a hybrid approach might work, where some regions, but not all, use wards.



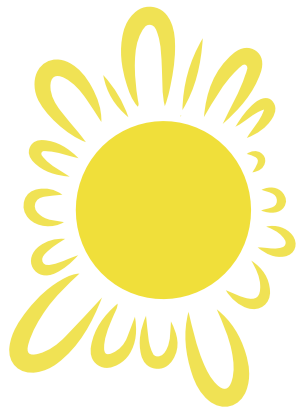
## Overall boundary preferences and next steps

Overall, Option 1 (with 6 regions) was the preferred model expressed in engagement sessions, as well as in written surveys (with 75% of survey respondents expressing support).

Whilst wards were discussed at many sessions, some boundary adjustments could address the concerns raised about representation for smaller communities.

Therefore, the suggested adjustments should be considered prior to settling on an approach to achieve broad community support.

At several sessions it was suggested that the boundary approach will benefit from further input and endorsement from Aboriginal and Torres Strait Islander people in South Australia. People felt this was an important part of the process of exercising self-determination over these affairs. The idea of convening a group of Aboriginal and Torres Strait Islander representatives to advise on this approach was seen by community members as a way of achieving this.



## Election processes

### Voting and nomination criteria

The draft Bill outlines separate requirements for people to vote in Local First Nations Voice elections and for those who can nominate to be Local Voice candidates.

- ▶ **Voting:** voting for the Voice is tied to the local area a person resides in. Only Aboriginal and Torres Strait Islander people living within the regional boundary can vote in that local area.
- ▶ **Nominating:** Aboriginal and Torres Strait Islander people can nominate to be a Voice representative in a region based either on (a) the place of residence as reflected on the South Australian electoral roll, or (b) their connection to Country.

As with the first engagement round, there continued to be a strong response that people should be able to vote for the area they have cultural connections to, noting this would mean people could vote in multiple regions. This view was supported in one of the written submissions. Others argued that the voting and nominating criteria should be kept consistent with each other – so either restricting nominations only to people residing within the local area or expanding voting requirements to match the nomination process.

Once attendees were able to discuss the issues involved, most people expressed comfort with limiting voting by residency, in keeping with the intention of the Voice to be a mechanism to progress local social issues. Further discussion also tended to lead to most people feeling that a person should be restricted to nominating in only one region based on their circumstances.

## Residency

Linked to this, people raised that there needs to be consideration of a minimum requirement for residency within a local area before a person can vote in the Voice election process for that area.

Responses on the specific minimum time differed. Some advocated a significant connection to the area must be demonstrated – more than 2 years and up to 10 years. Others put forward that it should be a far shorter residency requirement, to enable more flexibility and to include more people residing in the region at the time of voting.

The majority of feedback found that a 12-month residency requirement could be a sufficient approach. However, this may be administratively more difficult. Adopting different criteria could have implications for the state electoral process, as eligibility to enrol and vote requires, amongst other things, that a person has lived at their address for at least one month. This would require further exploration to understand any implications to be reflective of cultural frameworks whilst being fair and representative.

## Defining and demonstrating Aboriginality

At engagement sessions, people raised that the definition of Aboriginality in the draft Bill departs from the existing tripartite definition of Aboriginality as recognised in the *Mabo v Queensland (No 2)* 1992:

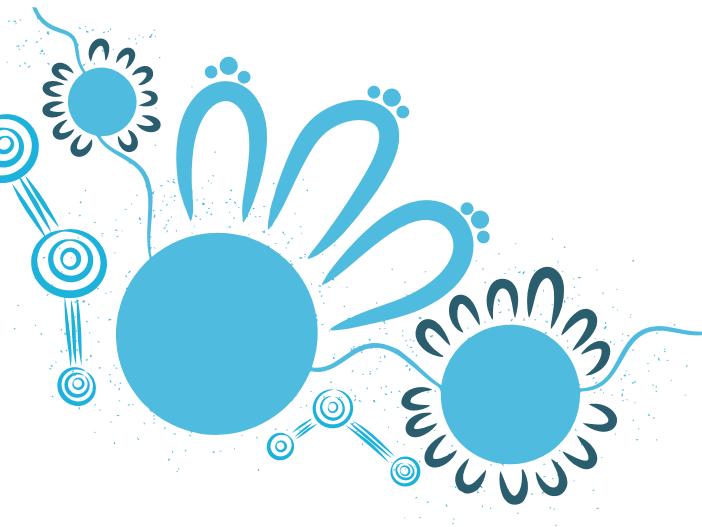
- ▶ self-identification as Aboriginal or Torres Strait Islander.
- ▶ the recognition of an individual's Aboriginality by that community.
- ▶ the person is biologically descended from the Indigenous people of Australia.

The definition in the draft Bill is limited to whether someone is of 'Aboriginal descent', being that they are 'biologically descended from the persons who inhabited Australia before European settlement'. Additionally, the definition does not mention Torres Strait Islander people. As such, it is recommended that the draft Bill uses the above definition, and explicitly includes Torres Strait Islander people.

Schedule 1 provides that the voting documentation forms a declaration of the person's eligibility to vote, which includes they meet the Aboriginality criteria. There are penalties factored into the model regarding false declaration, including up to four years imprisonment.

Under the current model, there is no requirement for voters to submit proof of Aboriginality documentation as part of their declaration. This is following from discussion in the first engagement round where concerns were expressed that more rigorous requirements could prevent some people from voting, including those who have been unable to access the required documentation.

As with the first engagement round, people highlighted the processes for individuals to demonstrate their Aboriginality need to have some rigour to ensure that there is no fraudulent voting activity, whilst ensuring inclusive approaches for those without access to documentation. Overall, session attendees seemed comfortable with the safeguards in the



declaration process and the penalties for any false declarations. A small amount of people expressed that the process might be overly burdensome and would prefer a simpler method.

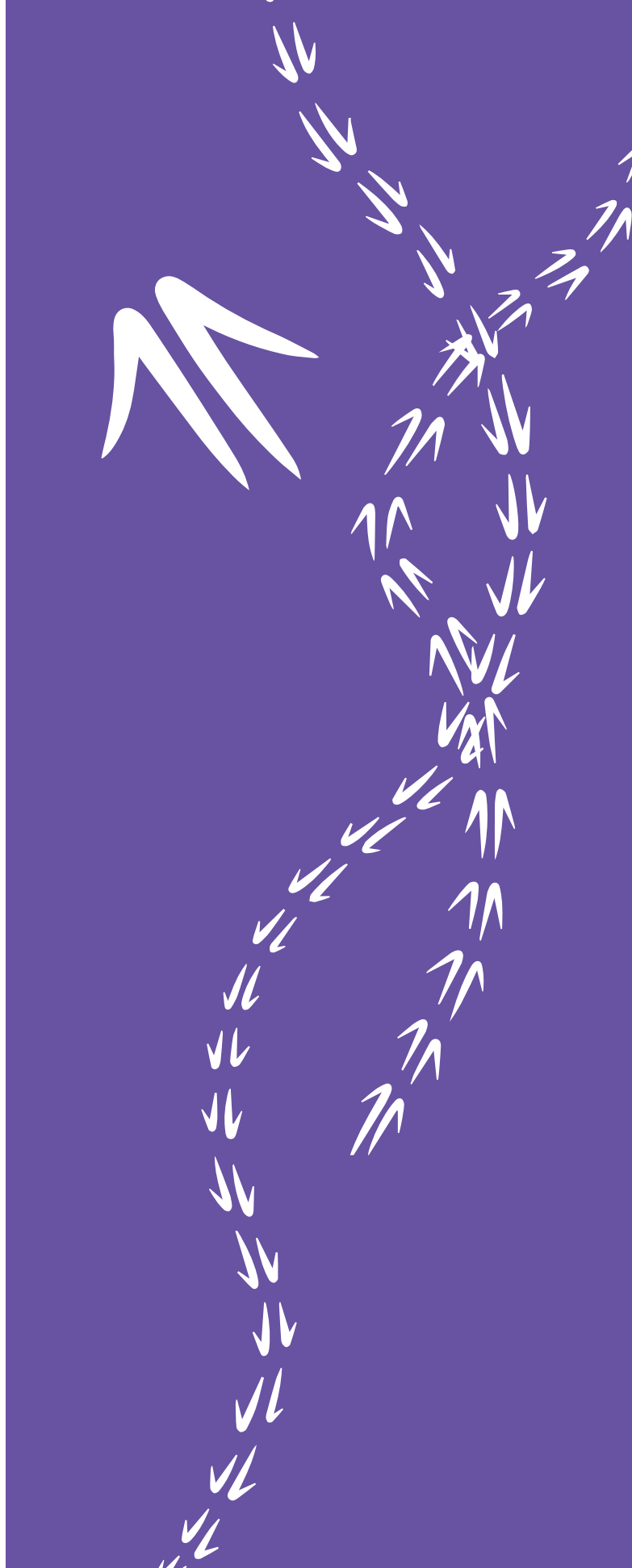
Some session attendees suggested a role or team should be created to scrutineer and consider any election disputes that might arise. One suggestion was for the establishment of a dedicated Aboriginal Commissioner or senior independent official whose role it could be to also assist in the verification and / or resolution of issues regarding residency or connection to Country, as well as supporting the growth and uptake of voter enrolment. These roles could be embedded in a government agency or in the South Australian Electoral Commission itself, with an appropriate degree of autonomy and impartiality. Similarly, one submission suggested the establishment of a standalone independent boundary commission which could help to provide a suitable level of rigour and oversight.

## Gender balance

The proposed Voice model embeds requirements for gender balance at both the local and state level. This reflected support expressed in the first engagement round as the best way to ensure men and women's issues could be raised and addressed.

To do this, the draft Bill provides each voter with two votes to nominate their preferred male and preferred female candidates.

During the second engagement round some people raised that the equal gender requirement represents a limit on the community's abilities to self-determine their leadership, by limiting who can be elected. On the whole, there continued to be strong support for gender equity expressed in this round, consistent with the last round's feedback, as each region allows for multiple representatives.



## Functions of the State First Nations Voice

The various functions of the State First Nations Voice were well received in most sessions, with people responding that the proposed legislation establishes many strengths that have not previously been afforded to Aboriginal and Torres Strait Islander people in South Australia.

People supported the ability for the State First Nations Voice to engage with the Cabinet and Chief Executives. Additionally, many attendees supported the inclusion of the annual engagement hearing, and specifically commented that the ability to engage with Chief Executives and Ministers from across portfolios in the one hearing is an important mechanism to bring about access and accountability.

An issue requiring consideration is the role of the Clerk, as outlined in Part 5 of the draft Bill. The draft Bill currently requires the Clerk of either house to notify the State First Nations Voice of legislation that *“in the opinion of the clerk, addresses matters of interest to the State First Nations Voice”*.

Playford, Adelaide



Concerns were raised during engagement sessions that this relies on the Clerk’s judgement on matters of interest to Aboriginal and Torres Strait Islander people. Options raised to improve this are:

- ▶ **State First Nations Voice being advised of all new bills being introduced into parliament.** This would transfer the requirement to interpret the Bill and its level of interest for the Voice onto the State First Nations Voice and was considered to be more aligned with the principle of self-determination. However, without being resourced to undertake this function it could inundate the State First Nations Voice and Secretariat with Bills, many of which might not progress (such as private member’s Bills).
- ▶ **Clerks to be resourced or trained to interpret this themselves.** This could be dealt with by the State First Nations Voice providing the Clerks with a statement of matters of interest and legislative issues they wish to engage on.

To support this, it was suggested that additional Aboriginal and Torres Strait Islander identified roles should be created, either as additional Clerk positions, or within the State Voice. At minimum, attendees raised the Clerk will need to receive strong cultural awareness training.

A further issue raised was that the State First Nations Voice does not have an entitlement to address the Legislative Council without the consent of the President of the Legislative Council (Part 5 of the draft Bill). Consent is not required for addressing the House of Assembly. The preference of these attendees was for an equal entitlement to address both the House of Assembly and the Legislative Council to ensure uniformity, and without the need for prior consent.



Leigh Creek

Tandanya, Adelaide

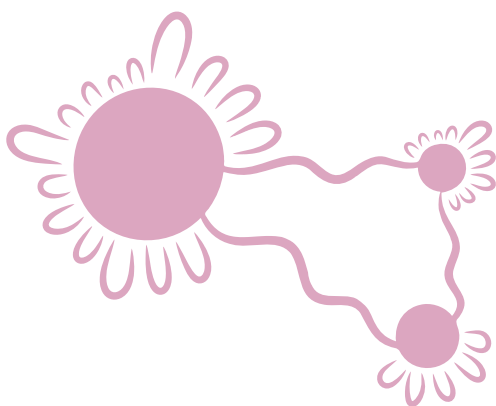


## Resourcing

There was resounding support for the requirement to adequately resource the Voice, at all levels, with operational funding, staffing, remuneration and secretariat support to ensure the Voice can undertake its work effectively. It was acknowledged that there should be reasonable adjustments made to ensure regional and remote areas receive the necessary support they require to enable nominees in these areas to engage in the election process and to enable elected members to represent their larger geographical areas. Community members suggested that the respective Voices should have the ability to coordinate their own resources and staffing arrangements independently, within agreed parameters.



Mount Barker



## Preamble, purpose, and functions

The draft Bill was released without a drafted preamble to allow for contributions from the second engagement process to inform its development. The preamble will establish the intention of the legislation and supports interpretation of it.

Feedback received outlined the preamble should include reference to First Nations peoples as the original custodians of the land, and reflect the history of the experience of colonisation, with the potential to reference or reflect the language in Section 2 of the *Constitution Act 1934 (SA)*.

Other feedback also suggested it include:

- ▶ Connection to Uluru Statement from the Heart: As the mechanism to establish the intention of the legislation, the preamble should include reference to the Uluru Statement from the Heart. It should outline the intentions underpinning the Voice to Parliament as a mechanism for Aboriginal and Torres Strait Islander people to speak to legislators on issues that impact them, and on their hopes and aspirations for themselves and their communities.
- ▶ Sovereignty: Some raised the legislation for the Voice should not create any legal impediments to any future treaty processes. Some raised that the preamble or legislation should reference the South Australian Letters Patent – which are also referenced in the South Australian Constitution.
- ▶ United Nations Declaration of the Rights of Indigenous Peoples (UN Declaration): At several sessions, people spoke of the significance of the principles of the UN Declaration and these principles should be referenced in the Preamble, recognising that the UN Declaration has not been ratified by the Commonwealth Government.

## Written submissions

Around 40 written submissions were received on the draft Bill. Of this, the most substantive input was from the 11 submissions from organisations. Most of the individual submissions either wrote in support of the Voice or in opposition to it, without much additional input on the elements of the model or legislation.

The issues outlined below primarily address those raised in the organisation's submissions, however, do also reflect sentiment from broader submissions. Submissions were received from the following organisations:

- ▶ South Australian Aboriginal Community Controlled Organisations Network (SAACCON)
- ▶ Antakirinja Matu-Yankunytjatjara Aboriginal Corporation (AMYAC)
- ▶ The Law Society of South Australia
- ▶ Yerkala Mirning Elders Council
- ▶ SA Native Title Services (SANTS), including an open letter from Chairpersons and South Australian Native Title groups and First Nations
- ▶ Jumbunna Indigenous House of Learning, University of Technology Sydney
- ▶ Public Law and Policy Research Unit, Adelaide University
- ▶ Nukunu Wampa Thura Aboriginal Corporation
- ▶ South Australian Stolen Generations Aboriginal Corporation
- ▶ Joint submission from Ngaanyatjarra Pitjantjatjara Empowered Communities, Far West Coast Empowered Community Partnerships and Ngarrindjeri Ruwe Empowered Communities
- ▶ Aboriginal Legal Rights Movement (ALRM)

Yalata

## Support for the South Australian Voice to Parliament

The majority of submissions were supportive of the principles underpinning the Voice to the South Australian Parliament, of seeking to progress self-determination and the ability to engage with decision-makers at the highest levels.

One submission expressed that the Voice *“offers a wonderful opportunity for First Nations to be engaged with Government at the highest level”* and another highlights it establishes a way that *“Aboriginal peoples can exercise self-determination and shared decision-making.”*



## Feedback on the design and engagement approach

Some submissions, whilst supportive of the principles of the Voice, raised some concerns with the design process and engagement approach.

Some submissions provided feedback that described the proposed model as being a top-down approach. They considered the design could therefore not achieve self-determination for First Nations peoples. Others cautioned against over-prescribing functions in the draft Bill, as it would represent a limit on self-determination.

These submissions advocated for a more extensive process, like the federal process. This would be done to *“facilitate a framework or proposed model for recognising and establishing Aboriginal governing bodies as political collectives, capable of effective political expression and action, rather than imposing an individualistic model for representation of Indigenous Voices.”*

Some submissions advocated that the State Voice wait until the Federal referendum is finalised or considered that Treaty should be progressed first.

Submissions raised concerns with the speed of the engagement approach, arguing that it did not allow enough time to obtain free, full, and informed consent from Aboriginal and Torres Strait Islander communities.



## Local and State Voice structure

Most supported the two-tiered structure of the Voice as a way of enabling grassroots representation.

Some advocated, however, that there are some groups of Aboriginal and Torres Strait Islander people who should be specifically provided for in the model in some capacity. Submissions offered different approaches, depending on the group:

- ▶ **Native Title:** Submissions raised concerns that the Voice could impact on Native Title remit and authority. To address this, a proposal was put forward for a three-tiered approach, with a third layer under the regional Voice comprising of Native Title Prescribed Body Corporates.
- ▶ **Stolen Generations survivors:** Submissions advocated that due to the significant number of survivors and descendants in South Australia, and the unique issues that survivors face, that survivors should be represented on the Voice. Options put forward include that survivors should have dedicated seats on the Local or State Voice bodies, or that they have their own separate ‘virtual region’ or committee in the model.
- ▶ **Non-binary or gender-diverse identifying people:** Some raised the draft Bill is not clear on how non-binary people would be a member of the Voice, as candidates are required to nominate as either male or female. The submission was supportive of seeking gender balance in the Voice, but recommended ways to ensure non-binary people can best participate in the Voice be further explored in consultation with Aboriginal and Torres Strait Islander peoples and with the State Voice, once formed. This sentiment was also put forward in some face-to-face engagements.

Murray Bridge

- ▶ **Elders and young people:** One submission noted the absence of any reference or provisions in the draft Bill to ensure representation of Elders and young people. Submissions noted this was despite the feedback in the engagement report of the culturally significant place Elders and young people have in Aboriginal and Torres Strait Islander communities.

## Local and State Voice intersections with existing bodies and authorities

Several submissions raised concerns about how the Voice would interact with existing bodies or authorities.

Some submissions raised concerns that the Voice could cause overlap in responsibilities and functions with these existing bodies, like regional partnerships and peak bodies. One submission raises that where there are perceived overlap in areas of responsibility that it is not clear how the government will decide which perspective to prioritise. This in turn could create a wedge and ultimately challenge legitimacy; and create a risk that competition will occur between Aboriginal and Torres Strait Islander representative bodies, peaks and organisations vying for funding and access to government.

Some submissions also raised that existing structures should be utilised and bolstered alongside the Voice process, arguing that these bodies already have some investment and authority within their regions. They called for flexibility for local regions to decide how to best form their Voice bodies, so they can self-determine how to incorporate the existing regional governance arrangements.

The draft Bill itself does not specify who has the authority to speak on Native Title, and submissions raised the need to have a clear scope of authority and clarity about the nature of the issues and decisions the Voice will concern itself with. Additionally, some suggested the

draft Bill should specifically reference the other components of the Uluru Statement for the Heart in the Voice functions, particularly Treaty-making.

Several submissions also advocated that the draft Bill should include provisions to enable the Voice to interact with other State and Federal Bodies, and create the ability for interaction with a potential Federal Voice or equivalent.

## Voter eligibility and election processes

Submissions provided specific suggestions for the clauses related to voting and election processes. Most were supportive of elections, although as highlighted above, some raised concerns that a voting approach was not the best method, given the existing regional structures and authorities.

Some submissions queried the use of ‘first past the post’ over preferential voting systems. The ‘first past the post’ model was viewed as inconsistent with widely used election models and it was recommended this approach should be revisited.

Several submissions raised the draft Bill requires Aboriginal and Torres Strait Islander voters to be registered on the state electoral roll, which could be a deterrent to people voting for the Voice who do not want to vote at State Government elections on grounds of conscience.

Additionally, one submission recommended that State and Federal provisions for itinerant voters should be added to the draft Bill, including an option to use an address of a local homeless service or Aboriginal Community Controlled Organisation they are connected with.

## Criminal offence provisions

The draft Bill establishes that people who are imprisoned or have been convicted of a serious offence in the preceding 10 years are ineligible to nominate as a Voice candidate. Similarly, those with a restriction on travel due to a bail, parole or other agreement are also disqualified from nominating.

Several submissions raised significant concerns about this provision, raising the adverse impact this would have given the higher incarceration and conviction rates that Aboriginal and Torres Strait Islander people experience compared to the general population. It was considered this would reduce the pool of potential candidates and remove the ability of some people convicted of offences to provide their valuable insights into structural issues with the criminal justice system as a Voice representative.

The provisions also exclude people who have been convicted of a ‘serious offence’ but not sentenced to any term of imprisonment, with one submission raising that no (or a short) period of imprisonment may ‘reflect a relatively low level of moral culpability’.

Some organisations advocated that there should be no disqualification for imprisonment or criminal history, as the decision on whether the person should be able to be a Voice representative should be made by Aboriginal and Torres Strait Islander voters. Another recommended that unless the provision represents a standard clause applied in mainstream policy and legislation related to holding a public office or being an elected official, that it should be removed for similar reasons.

One submission suggested that if the exclusion is to remain, the definition of ‘serious offence’ should be refined to be only offences carrying a maximum penalty of a specified number of years of imprisonment (eg., 5 years or more) and the post-conviction exclusion be reduced from 10 years to 2 years or less.

## Ability of the Voice to engage with Parliament

Most submissions were supportive of mechanisms in the draft Bill enabling the State Voice to engage with Parliament, Cabinet and Government officials. Submissions also suggested further ways to strengthen these provisions.

The draft Bill establishes that the Voice will have an entitlement to address the House of Assembly but must request to address the Legislative Council. Submissions advocated that the Voice should have equal entitlement to address both Houses.

As at the face-to-face engagements, submissions also recommended amending the role of the Clerk in advising the state Voice on Bills of interest. For example, the draft Bill could specify that the Clerk is required to act in accordance with the expressed wishes of the State Voice as to the matters they deem of interest.

Several submissions highlighted that the draft Bill needs to include provisions to oblige Government to do more than just hear the views of the Voice. As one submission stated, “*Whilst we understand that with a Voice to Parliament there will be no veto power assigned, there is an expectation from community that upon hearing their Voice, that government will attempt to make active efforts to address their concerns*”. The submissions suggested tightening the clauses allowing legislation to proceed before the Voice has provided their views.

Further suggestions to strengthen the Voice’s engagement with Parliament include:

- ▶ Requiring Aboriginal Impact Statements to be included in all legislation impacting on Aboriginal peoples, to support the State Voice to understand how the Legislation would affect Aboriginal and Torres Strait Islander people.
- ▶ Including an entitlement to provide views on regulations, where these regulations impact on local and State First Nations Voices.

## Boundaries

### Tristate region

Under the draft Bill only South Australian residents on the electoral roll can vote and nominate in the Voice elections. Some submissions suggested this should be expanded to include Aboriginal and Torres Strait Islander communities where cultural affiliations cross state borders. This was particularly raised regarding the Anangu Pitjantjatjara Yankunytjatjara (APY) region, where Anangu affiliations extend across the Western Australia and Northern Territory borders.

### Boundary amendment

Only one submission provided specific feedback on the two boundary options. This submission raised concerns that of the two boundary options presented, option 1 seems to be prioritised and emphasised, including in the way the Option 1 map is visually displayed.

The submission advocated that if Option 1 is preferred, the northern boundary of the region spanning the Far West Coast be adapted so the border sits at the Trans-Australian Railway line. This matches the boundary for that region in Option 2.

*Oodnadatta*



## Other issues and clauses

In addition to the issues above, submissions raised suggestions to specific clauses or components of the draft Bill. These include issues that were also canvassed in the face-to-face engagement process. Issues include:

- ▶ **Preamble:** Similar input on the preamble was provided as outlined above in the face-to-face engagements, including alignments with the *Constitution Act 1934 (SA)* and the Uluru Statement for the Heart.
- ▶ **Definition of 'Aboriginal Person':** Similar to the feedback at face-to-face engagements, several submissions suggested that the government should consider the use of the tripartite definition of 'Aboriginal person'. One submission raised that reference to biology alone is "*dangerously reminiscent of the era where blood quantum and a caste system was used to define and control Aboriginal people*". Submissions also raised inconsistency in the wording used to define Aboriginality in the draft Bill, which in the first parts uses 'Aboriginal person' but shifts to 'is Aboriginal' in Schedule 1. It was recommended either consistent wording should be used or both terms should be defined in the draft Bill.
- ▶ **Definition of 'Country':** Several submissions highlighted that the draft Bill creates a new definition of 'Country' and is not consistent with similar definitions in the *Aboriginal Heritage Act 1988 (SA)*. Some submissions acknowledged that it may be appropriate that the definition in the draft Bill is a broader definition. They put forward, however that if it is not intended by Government to create a new definition then aligning the two definitions should be considered.

- ▶ **Protection of culturally sensitive information:** Some submissions raised that the draft Bill does not adequately protect against disclosure of sensitive cultural information. One submission raised that the protections of personal information (Section 51) should make clear it also includes cultural practices, including group practices and beliefs. Similarly, another submission raised that the right to withhold information that should not be disclosed under Aboriginal or Torres Strait Islander traditions (Section 8) is too vague and open to interpretation. This submission recommended a definition of cultural confidences be developed, based on common law.
- ▶ **Conflicts of interest:** Submissions considered the conflict of interest provisions could be too rigid in operation, given the extended family and kinship networks many Aboriginal and Torres Strait Islander people have. Options to resolve this were via a statutory code of conduct or drawing on provisions in the Australian Capital Territory's *Aboriginal and Torres Strait Islander Elected Body Act (2008)*.
- ▶ **Nomination period:** The draft Bill does not expressly indicate when nominations must be lodged prior to an election. One submission recommended this should align with the approach used for House of Assembly elections.
- ▶ **Deadlock provision:** Provisions to resolve deadlocks within the Voice currently allows the two joint presiding members to have the casting vote. Submissions raised that this could result in a continuation of the deadlock and recommended this be resolved in the Bill.
- ▶ **Resourcing:** One submission put forward that the draft Bill should make clear the legal obligations of public service staff employed by the Voice, including whether they can be directed by Government to follow Government objectives, overriding Voice

objectives. Additionally, specific resourcing requirements should be listed in the draft Bill, to ensure they are provided for.

- ▶ **Committee provisions:** Some submissions raised the importance of clarity in the draft Bill regarding the scope and roles of any committees established by the Voice. Submissions put forward that it must be clear that the Voice bodies have the power to wind up a Committee, that Committees have no independent decision-making or other authority, and should be required to prepare minutes.
- ▶ **Use of audio-visual and audio communications for meetings:** Two organisations submitted that the procedures for the Local First Nations Voices should provide for meeting by video conferencing, as well as some specific mechanisms to enable this, to ensure those unable to be physically present have the same rights and opportunities to engage as those attending in person.
- ▶ **Voting age:** One submission advocated to lower the voting age to 16.

Koonibba



# Summary and recommendations

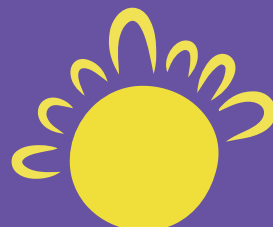
Overall, people expressed support for the model outlined in the First Nations Voice Bill 2022 in this second engagement phase.

This note aims to highlight elements of the model the community identified will empower the First Nations Voice (Local Voices and State Voice) to represent the interests and aspirations of Aboriginal and Torres Strait Islander people independently from the grassroots level up in its dealings with the South Australian Parliament and the executive branch of government.

This note also outlines important points of community feedback and technical advice consistently raised in both face-to-face engagements and provided in written submissions, and expands on several of these points in detail to help guide the model's final development.

I specifically make the following recommendations:

1. Convene a committee of South Australian Aboriginal and Torres Strait Islander representatives to advise on the finalisation of the boundaries for the Local First Nations Voice regions based on Option 1.
2. Amend the definition of 'Aboriginal persons' in section 4 of the draft Bill to align with the existing tripartite definition and to specifically reference Torres Strait Islander peoples.
3. Consider the inclusion of a 'minimum time of residency' requirement for an individual to nominate and / or vote in the Local First Nations Voice election process.
4. Review the proposed ten-year disqualification period for 'serious offences' with respect to 'nominations for office of member of Local First Nations Voice' and consider reducing the length of the disqualification period in line with community feedback.
5. Consider including a specific mechanism in the draft Bill to provide for the representation of the diversity of community interests in the State First Nations Voice, that is inclusive of Native Title, Stolen Generation survivors, Elders, young people, and LGBTQIA+ people.
6. Consider amending the draft Bill to make clear the Voice is not intended to impede on rights and responsibilities under Native Title legislation.
7. Consider amendments that allow the Local and State First Nations Voice to connect and interact with existing organisations, peak groups and land holding bodies.
8. Examine the equal entitlement of the State First Nations Voice to address both the House of Assembly and the Legislative Council with respect to Part 5 of the draft Bill.
9. Consider suggested options to amend section 37 of the draft Bill to alter the role of the Clerks of the House of Assembly and the Legislative Council with respect to notifying the State First Nations Voice of the introductions of Bills in respective houses.
10. Include a clause to enable a review of the legislation within the first 3-5 years of operation, and at regular intervals thereafter. Any review and amendments of this legislation should involve the State Voice.



Port Augusta



Umoona Arts



Mount Gambier



Whyalla



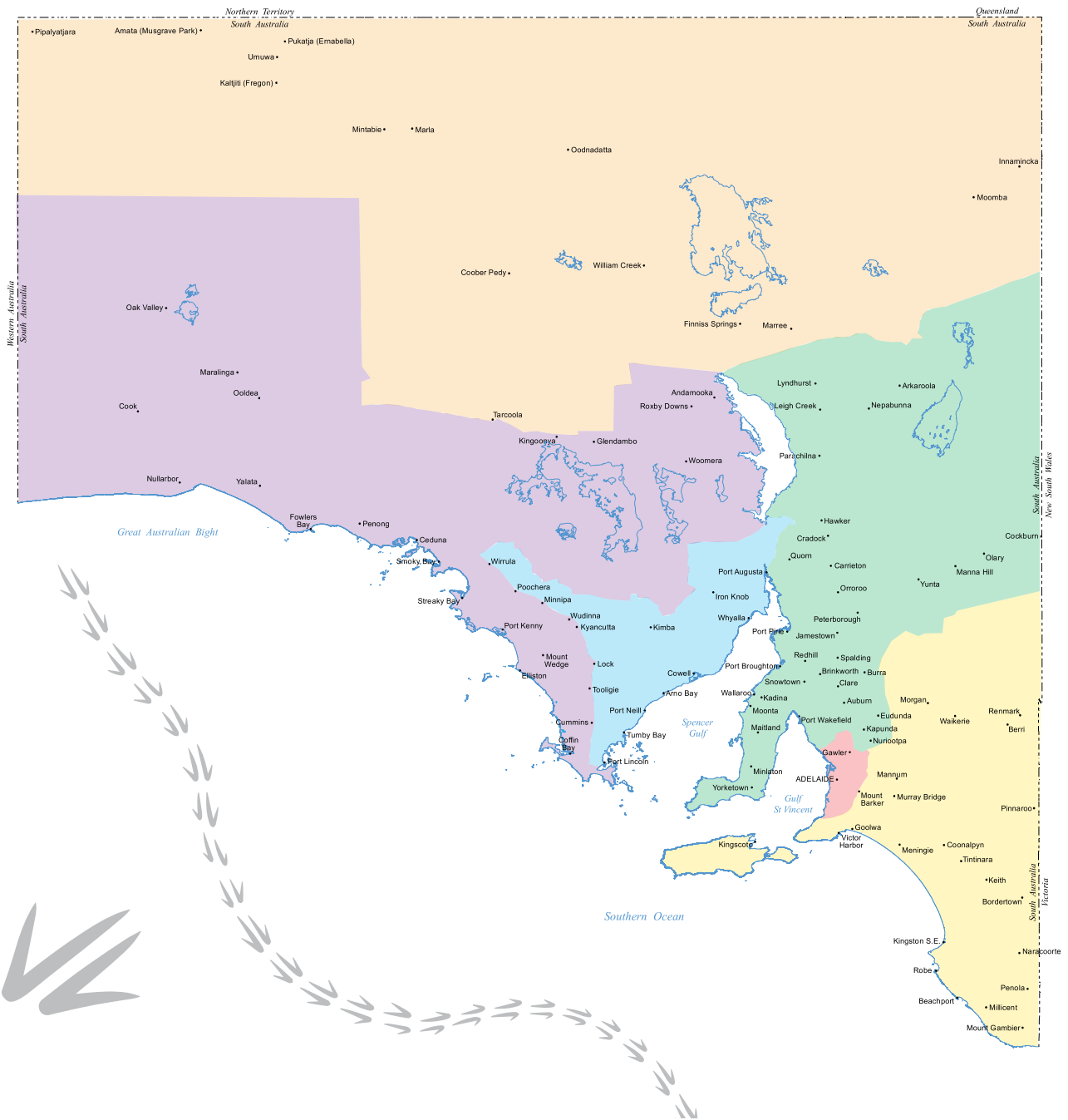
Point Pearce



Port Lincoln

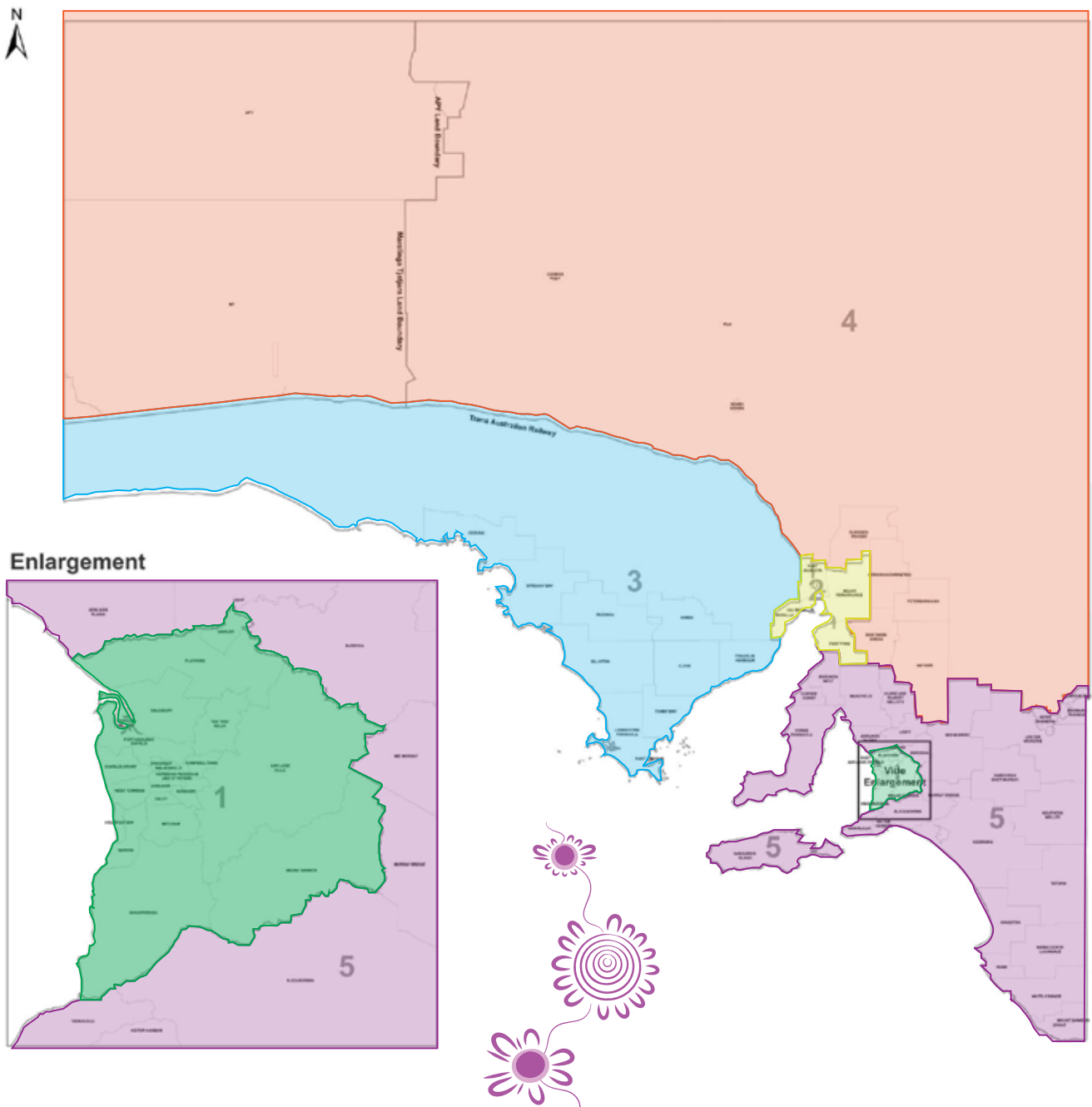
# Appendix A

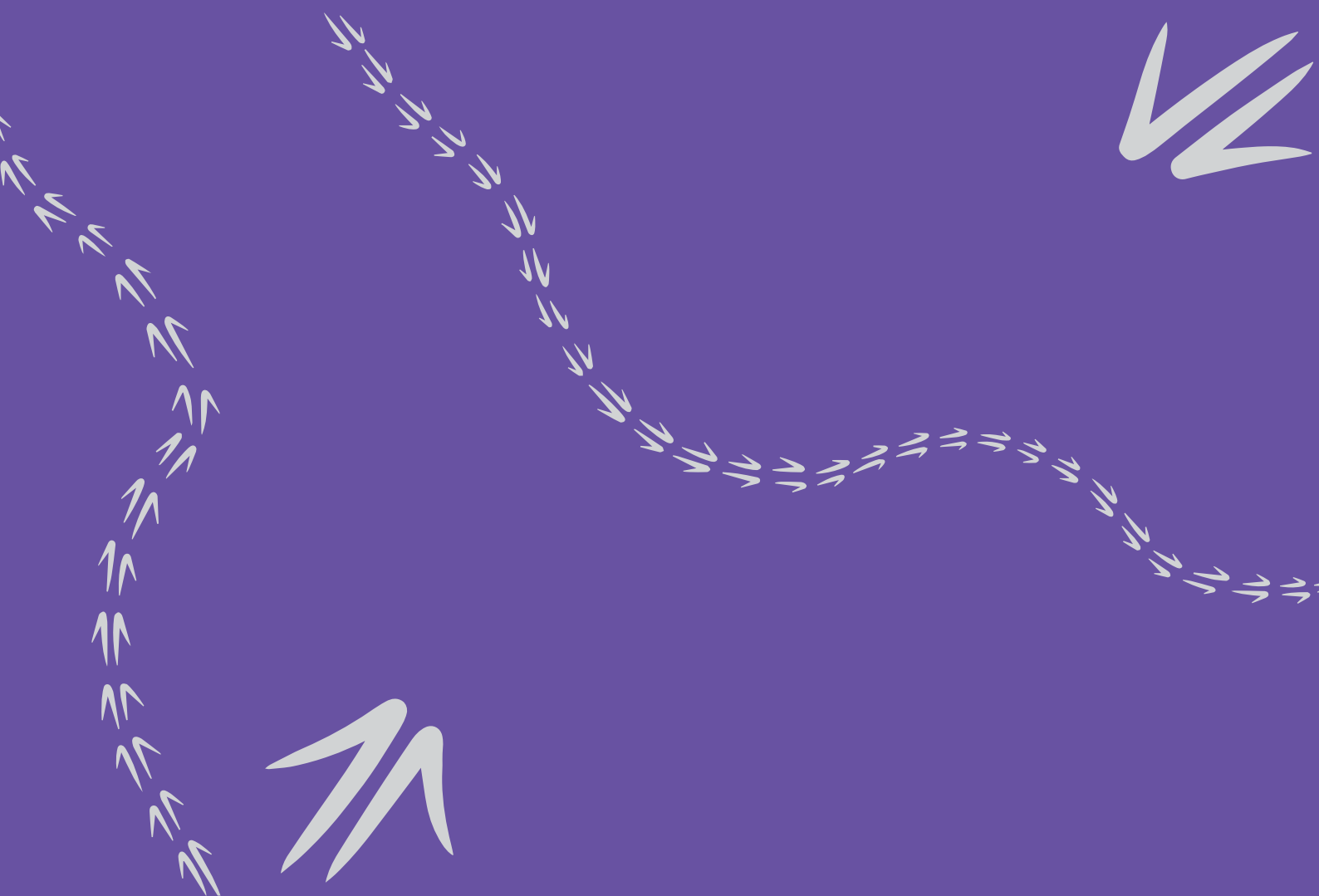
## Potential model for Local First Nations Voice regions (Option 1)



# Appendix B

## Potential model for Local First Nations Voice regions (Option 2)





**FIRST  
NATIONS  
VOICE**  
TO SOUTH  
AUSTRALIA'S  
PARLIAMENT