

Submission in Response to the Indigenous Voice Co-design Process Interim Report to the Australian Government

Acknowledgement must be made for the comprehensive work presented in the interim report on the Indigenous Voice co-design process by the advisory groups. I write as a migrant to Australia and have had the opportunity to live and work in many parts of Australia, located on many different lands of the First Nations of this continent. I have prepared a submission from a wish to see the design process succeed and for that process to meet the aspirations of the Uluru Statement of the Heart. My submission is divided into two sections: the first part is to highlight the importance of the First Nations Voice for all Australians, which I understand has been done by others. In the latter part of the submission, I would like to provide feedback on some of proposals set out by the co-design interim report.

In regards to terminology, I understand the interim report has used the term Indigenous Voice. This submission uses the term First Nations Voice, as originally presented in the Uluru Statement from the Heart. There are more important aspects to the co-design process than the naming of the entity being formed, but it would be remiss not to highlight that the final report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples does refer throughout that report to either a “Voice” or a “First Nations Voice”.

I understand the term ‘First Nations’ may be challenging to some Australians on their ideas and notion of nationhood and history. I also understand from some of the public consultations regarding the co-design process that some Aboriginal people have disagreed with the term “Indigenous Voice” and stated other preferences. Nomenclature should not be the “thing” that distracts the good work of the co-design process, but a First Nations Voice speaks truthfully to the longer history of Australia before British settlement.

The co-design process has been invaluable in clarifying the proposed structure and function for the First Nations Voice, and allowed for a period of re-educating the broader public around the unfounded concerns that were proposed by a number of politicians and commentators in the period soon after the Uluru Statement from the Heart was presented to the Australian public.

The co-design advisory groups will be aware that there will always be disagreement from parts of Australian society on the premise of a First Nations Voice. I have had challenging conversations with friends and acquaintances when discussing the need and function of a First Nations Voice. For some who hold these views, a common argument made to support a negative opinion of a First Nations Voice, was that the British settlement (we are still working on getting familiar with the use of the term ‘invasion’) of Australia was more peaceful and less aggressive than other European empires. It is not in the remit of the co-advisory group to present a truthful history of the first 130 years of British colonisation of the continent to the general populace, but much of these false hoods can be counteracted by a more informed understanding of Australian history. In fact, many voices from the time in Britain and the Australian colonies highlighted the damage and destruction of the British

colonisation process. One example is the British Parliamentary Select Committee on Aboriginal Tribes of the British Settlements (here Aboriginal refers to all Indigenous people of the globe), which presented a 140 page report in 1837 to “consider what measures ought to be adopted with regard to the Native Inhabitants of Countries where British Settlements are made”. The preface from the report highlights the similar negative impact that the United Kingdom (or England, in paragraph below) had on Indigenous peoples when compared to other European nations.

“While however the motives which have influenced the different nations of Europe in their treatment of the Aborigines may have varied with the changing circumstances of the times, the effect of that treatment upon the Aborigines themselves, those especially of the Western hemisphere, has in all cases been the same. To them the brutal tyranny of Holland, the ferocious bigotry of Spain, and the insatiable cupidity of England, have proved alike degrading and destructive. Destitute, afflicted, tormented, death has been their only refuge from suffering so intense” (Preface of Report of the Select Committee on Aboriginal Tribes of the British Settlements, 1837)

This report from 1837 highlights cases of conflict between European settlers and Aboriginal and Torres Strait Islander people, neglect by the Australian colonial authorities in bringing a settlement between the factions, or at times contributing to the frontier wars, and is part of a body of evidence demonstrating that the process of colonisation of the Australia continent was not peaceful, and was aggressive. In this submission, the report of the Select Committee on Aboriginal Tribes is used to highlight that the British colonial process in Australia was just as damaging as other European nations. One could also propose that the recommendations from the report implemented in Australia, which included the measures of colonial appointed Protectors for Aboriginal people, was also damaging to Indigenous peoples, culture and society. There has been awareness of these issues for a very long time. Listening to the voices of Aboriginal and Torres Strait Islander people is a modest request, considering the period of the shared history of Australia, which was violent and destructive.

For our generation and in this present time, other misunderstandings and falsehoods need to be confronted. Many of the unsubstantiated concerns of the First Nations Voice being a third chamber of parliament or a perception of unequal citizenship in Australia, have been explained and answered by lawyers, past chief justices and politicians. Perhaps more importantly, everyday Australians, on gaining the opportunity to understand the Uluru Statement from the Heart, can see the decent requests of the statement and are willing to walk with Aboriginal and Torres Strait Islander people “in a movement of the Australian people for a better future”.

Graciously, non-Indigenous Australians have been provided the opportunity to provide feedback and input on how they see themselves interacting with the Voice and to ensure they understand the proposal. There is a growing awareness amongst the general populace that the First Nations Voice would also be of importance and benefit to non-Indigenous Australians. The broader society of Australia is itself undergoing a journey as it gains more knowledge of

Indigenous Australia, the different challenges that Indigenous communities face, and the different view points held by Indigenous Australians that differ from mainstream Australian society, but at times on an individual level, sometimes feel so familiar. For an example of a unique Indigenous view, a First Nations Voice will also provide a voice for the country, or in more modern terms, the environment. Thomas Mayor summed up the sentiment most poetically when presenting at the Eric Johnston Lecture (held at Northern Territory Library, Darwin on Tuesday 11 November 2020):

“When Indigenous people will have a voice in the centre of decision making, so do the seas and rivers, the grasslands and forests, deserts, hills and mountains. Because we, the First Nations people are the Dreaming, and when we are empowered in the Constitution, the Dreaming becomes us.”

If decisions made by governments could consider the environment as well as the spiritual connection of country held by Aboriginal and Torres Strait Islander peoples, all Australians will benefit.

A First Nations Voice that is institutionally robust and independent will also benefit the governments, parliaments and government agencies, at local, state and federal levels. An independent First Nations Voice that could provide advice to governments and parliamentarians with valuable input to help ensure that policies and laws concerning Aboriginal and Torres Strait Islander Australians yield better outcomes, and in turn benefit the governments of the day. The First Nations Voice will not diminish the authority of Parliament but will enhance its effectiveness.

In the latter part I will provide feedback on the co-design process interim report.

Numbers and Diversity of Members for National Voice

The Interim Report provides two options for numbers of the National Voice. The inclusion of equal male and female representation (and proposed in both options) is important for the work of the First Nations Voice, as representatives will need a good understanding and broad experience of cultural and societal issues that affect both women and men. I would like to highlight that the total number of representatives from each option for the National Voice would seem to be low for a national organisation that could deal with multiple issues concurrently. In the example of an environmental issue, which could intersect with cultural issues and land rights, the National Voice may be providing advice for the federal government, simultaneously interacting with the state and territory governments, as well as being guided by the local and regional Voices. I understand that representatives from the National Voice would have personnel to support the work and be able to call on expertise from government institutes. However well-meaning and experienced the support provided, it will still be the representatives of the National Voice who “would have the authority and responsibility to represent Aboriginal and Torres Strait Islander peoples” and provide advice to the government or Parliament on these issues. Could the co-design advisory group consider a process of simulating potential scenarios that could arise for the National Voice, based on recent examples, but also on potential cases with no precedent (such as providing advice to

the government on the establishment of a Makaratta Commission, to instigate the process of agreement making between governments and First Nations). This modelling may provide further insight in proposing an adequate number of representatives for the National Voice.

Ministerial Appointees

The Interim Report includes an option for two members to be appointed to the National Voice membership by the Minister. The inclusion of government-appointed members could devalue the credibility, weaken the self-governance and the legitimacy of the National Voice. I understand that the mission of the First Nations Voice is to provide Indigenous Australians a pathway for their concerns to be considered when laws and policies are made, and advice provided to the government/parliament to develop fair laws and policies. Including a government appointee to the National Voice does “blur the lines” between the Australian government or Parliament and the National Voice being able to give robust and frank advice. Whichever model of member selection the co-design process ultimately recommends, it should be the aspiration to ensure that members of the National Voice are chosen by either representative assemblies, local and regional voices, or direct election.

Term lengths of National Voice members

Two options for term lengths, 4 years and 3 years, are discussed in the report. In support of Option 1 (Four years) the advisory group could also consider the benefit of a longer term length than the length of Parliament. A 4-year term length would improve institutional memory and allow a process of education for the incoming government ministers and agencies (who presently have a 3 year term). If there is change of government after an election, there can be changes in policies and processes. Many of the issues facing Indigenous policy, especially those issues impacting remote communities, are often magnified by changes in ministerial appointments and policy.

Model for the selection of Members to the National Voice

The report proposes two models for selecting members to the National Voice: Structural Membership Model Link and Direct Election Model. The report indicates that the Structural Membership model was the Advisory Group’s preferred option, and does also highlight some of the challenges around a Direct Election model, specifically around the need to confirm Indigeneity of voters as part of an election process, the impact of low voter turnout on perceived authority of the National Voice, and the election process potentially not reflecting the cultural knowledge and leadership networks of Aboriginal and Torres Strait Islander communities, especially in remote regions.

The need to confirm Indigeneity of voters as part of an election process would seem to be the most significant challenge, as the advisory groups would understand that for a number of historical and current reasons, such as the frontier wars, the Stolen Generations, as well as the negative perceptions of Indigenous ancestry (historical and still current, unfortunately), that the records to demonstrate Indigenous identity is fractured or missing, and the process difficult and emotional.

The other concerns (potential low voter turnout, capturing the diversity of leadership and cultural knowledge) can be addressed over time, and may not always be a challenge into the future. When Indigenous Australians see the work of the First Nations Voice, they could be encouraged to engage in future elections.

Considering that the available models of the National Voice (but also local and regional Voices) may need to change over time to respond to the needs of Aboriginal and Torres Strait Islanders or changes in political systems, could the co-design advisory group consider mechanisms and processes to allow for internal changes to the Voice. The processes available for any internal change to the Voice could be conservative in breadth and scope but will be important for the entity in the long term.

Consideration of the enshrinement of First Nations Voice in the Constitution

I understand the terms of reference for the co-design process of the Voice excluded any recommendations on constitutional recognition for Indigenous Australians, or how the First Nations Voice would be protected or written into the Constitution. It is understandable that the government is tasking the co-design advisory groups to focus on how the Voice will work, rather than the way the Voice will relate to the Constitution. However, the First Nations Voice, as proposed in the Uluru Statement from the Heart, is a proposal for meaningful and substantive recognition for Indigenous peoples in the Constitution. Aboriginal and Torres Strait Islander people have rejected the option of symbolic recognition in the Constitution, as did most Australians in the 1999 referendum. The process of constitutional recognition and the First Nations Voice must be recoupled.

The co-design interim report highlights in Chapter 4 (Overview of Previous Key National Arrangements) the history of previous bodies and advisory groups that have provided a voice for Aboriginal and Torres Strait Islander peoples in the past. Previous bodies were eventually disbanded, and while it is important to learn from the limitations and weaknesses of these bodies, one consideration is that all of the bodies were not given a chance to adapt and change to a shift in politics, governments or when mistakes by the individual members of the bodies were made.

The Uluru Statement from the Heart did call for the Voice to be enshrined in the Constitution. To enshrine the Voice in the Constitution provides the independence from governments that a First Nations Voice will need to pursue its work. Many expert commentators have put forward different proposals on how the First Nations Voice may be incorporated into the Constitution. The co-design process should be given the chance to contribute to that discussion.

Thank you for providing the opportunity to make a submission in response to the Indigenous Voice Discussion Paper.