

## **Submission in response to Indigenous Voice Co-Design Process *Interim Report to the Australian Government***

### **Initial comments**

Today I live and work on the land of the people of the Kulin Nation in Naarm/Melbourne. I grew up on the country of the Gadubanud people, of which the custodians today are the Gunditjmara people, though there are people in the area who trace their ancestry to the Gudabanud people. First Nations sovereignty to these lands and waters has not been ceded. It is remarkable to live on the lands of, and alongside the peoples of, the oldest living culture in the world.

I am a lawyer and believe this comes with a responsibility to learn about and convey to others the harmful impact of the colonial legal system on First Nations people in Australia, and to advocate and contribute to changes to the system that are called for by First Nations people.

While I commend the Australian Government for establishing the co-design process and call on it to fulfil its commitment to a referendum, I criticise it and all Australian governments from the time of invasion for implementing or failing to abolish racist laws and policies and for failing to listen to Aboriginal and Torres Strait Islander peoples. Two of the most egregious and high-profile examples of this today are the failure to implement every recommendation of the 1991 Royal Commission into Aboriginal Deaths in Custody and the continuing state removal of First Nations children from families.

Of course, these failures of governments are despite and alongside the powerful ongoing advocacy of generations of Aboriginal and Torres Strait Islander peoples that have resulted in positive change.

### **Response to the Interim Report**

My views are my own and I do not purport to speak for others. I make this submission in the expectation that Aboriginal and Torres Strait Islander people will lead the co-design process, be widely consulted and make decisions about the Voice in accordance with international human rights principles of free, prior and informed consent.

I acknowledge the First Nations people who disagree with and reject the proposals and ideas in my submission.

### ***Constitutional enshrinement of the Voice***

Amendment of the *Commonwealth of Australia Constitution Act* (**Constitution**) is excluded from the co-design terms of reference. However, the Interim Report relies on various reports and resources that call for Constitutional amendment to enshrine the Voice, including the Uluru Statement from the Heart. I ask the Government to listen to those calls. In particular, that without Constitutional enshrinement, the existence and role of a representative Indigenous Voice will remain at the whim of successive governments.

For reasons and legal positions in support of Constitutional enshrinement, I refer to the submissions in response to the Interim Report:

1. Public Lawyers, *The Imperative Of Constitutional Enshrinement*, 20 January 2021; and
2. Professor Geoffrey Lyndell, *The relationship between Parliament and the Voice and the importance of enshrinement*, 2 March 2021.

The above submissions also address many of the misunderstandings or inaccuracies about Constitutional enshrinement contained in other submissions in response to the Interim Report (for example, that of the Institute for Public Affairs).

***Other matters for further consultation***

I make the following observations in response to the Interim Report, and hope that stage two of the co-design process engages in further and more widespread consultation of First Nations people about these matters.

1. The National Voice should exclude ministerial appointees, to maintain actual and perceived independence from government.
2. The obligation to consult the National Voice should be widened so that it extends to what the Interim Report describes as *"proposed laws and policies of general application which particularly affect, or which have a disproportionate or substantial impact on Aboriginal and Torres Strait Islander peoples"*. If there is a mere expectation (not obligation) of consultation on matters of critical importance, this appears inconsistent with the aspirations in the Interim Report that all governments will need to come together and there will need to be transformative and systemic changes to government for the Voice to succeed.
3. Proposed character tests for membership to the Voice should ensure that people are not inappropriately excluded from membership. For example, First Nations people are overrepresented in the criminal legal system and a criminal record under that system should not necessarily exclude membership.
4. Will proposals for the Local and Regional Voice to share data between government and communities have sufficient protections of data sovereignty of First Nations people?
5. Will equal gender representation in membership to the Voice be inclusive of people who do not identify as male or female? (Noting the difference between gender representation in membership and the representative committees proposed to be established by the National Voice.)

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