

Allens

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia

T +61 2 9230 4000
F +61 2 9230 5333
www.allens.com.au

GPO Box 50
Sydney NSW 2001 Australia

ABN 47 702 595 758

Allens > < Linklaters

Voice Secretariat
Reply Paid 83380
CANBERRA ACT 2601

Dear Secretariat

Allens submission on Interim Report to the Australian Government: Indigenous Voice Co-Design Process

We are pleased to provide the following brief submission on the Interim Co-Design Report.

We recognise the deeply important work conducted by the co-design committees, led by co-chairs Professor Marcia Langton AM and Professor Tom Calma AO, and we understand the importance of the co-design process being led, driven and informed by the voices and experiences of Aboriginal and Torres Strait Islander peoples. We intend for our submission to honour the *Uluru Statement from the Heart's* (the **Uluru Statement**) invitation to “walk with us in a movement of the Australian people for a better future”.

By way of background, Allens is an international law firm with offices throughout Australia and Asia. Allens has had a long engagement with the issue of constitutional recognition of Aboriginal and Torres Strait Islander peoples. We provided submissions to the Expert Panel in 2011 and to the Joint Select Committee on Constitutional Recognition in 2015 and 2018, and we have been proud to provide pro bono legal support to Uphold & Recognise in respect of their advocacy for constitutional recognition since 2012. Through the firm's Reconciliation Plan, we are committed to continued support for constitutional recognition of Aboriginal and Torres Strait Islander peoples.

We have also proudly endorsed the Uluru Statement and, in particular, the constitutional enshrinement of a Voice to Parliament.

Our submission may be summarised by the following two key points.

- 1 The Voice, as called for in the Uluru Statement, should be constitutionally enshrined.
- 2 While a referendum and constitutional recognition are in our view critical elements of the Voice, we consider that the detail to support the operation of the Voice will need to be recognised by way of supporting legislation. Such legislation should be introduced promptly following the constitutional change.

Constitutional enshrinement

We do not support a legislative solution to the Voice. Rather, in our view, the Voice should be constitutionally enshrined.

Our Ref 120037712:120037712
KZYS 514260443v4 120037712 30.4.2021

The Uluru Statement represents a substantial consensus of Aboriginal and Torres Strait Islander peoples. It is the culmination of an unprecedented consultation process with First Peoples and it calls for constitutional recognition of the Voice:

...With substantive constitutional change and structural reform, we believe this ancient sovereignty can shine through as a fuller expression of Australia's nationhood....

We seek constitutional reforms to empower our people and take a rightful place in our own country.

When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country...

We call for the establishment of a First Nations Voice enshrined in the Constitution...

We support the enshrining of the Voice in the Australian Constitution for two key reasons.

1 **Constitutional reform will provide the Voice with security and stability**

In our view, it is an essential design feature of the Voice that Parliament must consider any advice tabled by the Voice. A constitutional mandate would protect the Voice from being easily abolished and would ensure that the Voice is both sustainable and durable. A constitutional mandate means that:

- (a) the Voice will have legitimacy and authority, being supported via a commitment from the Australian people (by way of a referendum); and
- (b) Indigenous empowerment and active participation in the democratic life of the State will be supported by a long-term, stable mechanism.

2 **Constitutional reform represents structural change**

The Uluru Statement expresses the felt structural powerlessness of First Nations peoples. Implementing the Voice through the significant structural reform of constitutional change may go some way towards recognising and reversing those feelings and experiences.

We do not consider a constitutionally enshrined Voice to be incompatible with Parliamentary sovereignty. The intention of the Voice is not to exercise a veto or limit the legislative power of the Parliament. Rather it is to provide input where such power is exercised in relation to First Nations peoples. It is about consultation and, through consultation, improved and informed decision-making by Parliament.

Enabling legislation

We submit that the process for a referendum in favour of enshrining the Voice in the Constitution should proceed without delay, with supporting legislation to be introduced promptly following that referendum.

A constitutional amendment would provide the basis for guaranteeing First Nations peoples a voice in matters affecting them, but, in our view, the details for operation of the Voice would need to be included in supporting legislation enacted by Parliament. This enabling legislation could address all of the complex, institutional detail that is necessary to give effect to the Voice, and would specify how the body is to be given an appropriately representative character and how it can properly and most usefully discharge its advisory functions.

Introducing supporting legislation as a second step has the advantage of ensuring that Parliament is given prime responsibility for deciding the shape of the body. This approach balances the need for stability and security through constitutional enshrinement with the potential need for flexibility through ordinary legislative definition and modification.

Additional considerations

Subject to the co-design process output, and consistent with the design principles identified by the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander peoples, in

our view, the design of the local voices should reflect the varying practices of different Aboriginal and Torres Strait Islander communities.

Bearing in mind the importance of respecting that the design of the Voice must be led by First Nations peoples, in our view the mechanism for hearing voices should be constructed from the bottom up – the building blocks should start at the local level.

Yours sincerely

Kylie Brown
Partner
Allens