



NACCHO
National Aboriginal Community
Controlled Health Organisation

28 April 2021

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Dear Marcia and Tom

INITIAL RESPONSE TO THE INDIGENOUS VOICE CO-DESIGN PROCESS INTERIM REPORT 2020

Please find attached a submission on the Government's Indigenous Voice proposals.

I have approved this submission, and can I ask that any enquiries are directed to:

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Yours sincerely

Donnella Mills
Chair



NACCHO

National Aboriginal Community
Controlled Health Organisation
Aboriginal health in Aboriginal hands

www.naccho.org.au

INITIAL RESPONSE TO THE INDIGENOUS VOICE CO-DESIGN PROCESS INTERIM REPORT 2020

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Introduction

This submission is made by the National Aboriginal Community Community-Controlled Health Organisation (**NACCHO**) in response to the Indigenous Voice Co-design process Interim Report 2020 (**Report**) and the Commonwealth proposals for an Indigenous Voice which are intended to provide a way for Indigenous Australians to provide advice and input primarily to the Australian Government on matters that are important to improve their lives.

NACCHO requests that our submission is published as soon as it is received by NIAA on the website established for the consultations on the Commonwealth's Voice proposals: www.voice.niaa.gov.au. NACCHO will also be publishing the submission on its own website: <https://www.naccho.org.au>

NACCHO is the national leadership body for Aboriginal and Torres Strait Islander health in Australia. Our organisation provides advice and guidance to the Australian Government on policy and budget matters while advocating for community-developed health solutions that contribute to the quality of life and improved health outcomes for Aboriginal and Torres Strait Islander people.

We represent our members – 143 Aboriginal Community Controlled Health Organisations (**ACCHOs**) that operate in over 300 clinics across Australia, delivering holistic, comprehensive, and culturally competent primary healthcare services. These ACCHOs are initiated and operated by local Aboriginal and Torres Strait Islander communities. The sector is the largest employer of Aboriginal and Torres Strait Islander people across Australia, with well over half of its 6,000 staff being Aboriginal and Torres Strait Islander.

NACCHO is a living embodiment of the aspirations of Aboriginal communities and their struggle for self-determination. Our roots are deep, and our first members have been around since the very early 1970s. NACCHO itself was established in 1992, replacing its predecessor, the National Aboriginal and Islander Health Organisation (**NAIHO**) which operated from 1975. Our vision is for Aboriginal and Torres Strait Islander people to enjoy quality of life through whole-of-community self-determination and individual spiritual, cultural, physical, social, and emotional well-being.

NACCHO is also a founding member of the National Coalition of Aboriginal and Torres Strait Islander Community-Controlled Peak Organisations (**Coalition of Peaks**). The Coalition of Peaks is a representative body comprised of more than fifty Aboriginal and Torres Strait Islander peaks and organisations from across Australia that have come together as an act of self-determination to work together with Australian governments on Closing the Gap.

NACCHO's CEO, Pat Turner AM, is the Lead Convener of the Coalition of Peaks and NACCHO hosts a secretariat funded by the Australian Government that supports its governance and operations. With other members, such as the NSW Aboriginal Land Council, the National Aboriginal and Torres Strait Islander Legal Services, First Nations Media Australia, and First Peoples Disability Network, NACCHO has been instrumental in the negotiations and agreement from governments to the historic Partnership and National Agreements on

Closing the Gap (**the Agreements**). The Agreements commit all Australian governments to share decision making with Aboriginal and Torres Strait Islander representatives, chosen by our peoples, on matters relating to improvements in our life outcomes.

In reaching a position on the Commonwealth's proposals for an Indigenous Voice, it is very important to recognise that Aboriginal and Torres Strait Islander people already have a voice to the Federal Government, whether it is NACCHO or other national and state/territory community-controlled peak bodies including independent statutory bodies such as Land Councils in the Northern Territory that have existed for decades. That voice is based firmly on the principles of self-determination and community-control. Their leaders are Aboriginal or Torres Strait Islander persons who are either:

- members of Boards that are elected by community members or community-controlled member organisations of the peak body; or
- Chief Executive Officers or senior staff of the organisation who are appointed by and accountable to their elected Boards.

The evidence is that community-controlled organisations have allowed not just established leadership figures but also unheard of Aboriginal and Torres Strait Islander people to be elected leaders. Most national and state and territory leaders of Aboriginal and Torres Strait Islander people have 'grown-up' in the community-controlled sector.

The community-controlled voice is unique in Australia and continues to be effective in advising and providing input to all Australian Governments, even if it is often severely under-resourced. The Commonwealth more than any other Australian Government recognised the importance of the community-controlled sector when it led the development and negotiation of the Partnership and National Agreements on Closing the Gap with peak bodies. Importantly, the community-controlled peaks organisations came together at their own initiative to form their own Coalition of Peaks without any government involvement.

This voice is directly impacted upon by the Commonwealth's Voice proposals which seek to establish a new voice to Government that it is developing instead of Aboriginal and Torres Strait Islander communities. The Commonwealth will decide on its own proposals rather than representatives of Aboriginal and Torres Strait Islander peoples, particularly their own community-controlled organisations.

Meantime, NACCHO and other community-controlled organisations across the country face the risk that their voice will be muted because of the substantial funding and privileged access that will be given to the Government's voice. NACCHO does not want this to happen and proposes that more than anything else, Aboriginal and Torres Strait Islander communities and their organisations should be able to fully consider, negotiate and reach agreement with the Commonwealth with respect to its proposals.

NACCHO considers there is significant confusion about what is being proposed by the Government amongst our communities and organisations and in the public. Accordingly, our

response and recommendations are only initial at this stage and go to threshold issues that we think must be addressed before the Government's proposals are advanced any further.

In putting together this submission and its recommendations, NACCHO has spoken to other lead community-controlled peaks organisations.

NACCHO's Initial Response to the Government's proposals for an Indigenous Voice

- 1. Aboriginal and Torres Strait Islander peoples are being asked to respond to a set of proposals that are very different from what was envisaged in the Uluru Statement from the Heart.*

The government's Voice proposals are very different from a Constitutionally enshrined First Nations Voice to the Commonwealth Parliament. The Uluru Statement from the Heart sought full recognition of Aboriginal and Torres Strait Islander peoples as First Peoples through a Constitutionally enshrined national Voice to the Commonwealth Parliament to advise on laws that have a significant impact on Aboriginal and Torres Strait Islander people.

Despite the rejection of all elements of the Uluru Statement from the Heart by the Coalition Government, NACCHO continues to support it and notes that it has been overwhelming supported by many Aboriginal and Torres Strait Islander organisations and peoples and that this support continues to grow.

NACCHO supports a Voice to the Commonwealth Parliament as there is currently no formal way for Aboriginal and Torres Strait Islander peoples to speak to the Parliament about laws that will have a significant impact on our peoples. That said, any Voice to the Parliament must include obligations and responsibilities on the Parliament to respond and before any relevant legislation is passed. These obligations need to be detailed in any final draft of a proposed model.

Instead of taking forward a Constitutionally enshrined national Voice to the Commonwealth Parliament, the proposals from the Commonwealth comprise a range of Voice options at the national and regional levels that are primarily about advising the Government, rather than the Parliament. That advice will potentially be on all matters involving policy and programs impacting on Aboriginal and Torres Strait Islander peoples including those currently advised upon by the Aboriginal and Torres Strait Islander community-controlled sector.

The government's voice proposal will have no Constitutional protection and may or may not be underpinned by Commonwealth legislation. The Commonwealth has also put forward Voice options that may have an advisory role to state and territory governments on matters relating to policies and programs within their jurisdictions that impact on Aboriginal and Torres Strait Islander peoples, but we have not heard that this proposition is supported by State and Territory governments.

The Commonwealth has also left open as to whether its national voice will have a role in advising the Commonwealth Parliament, but this is not definite. What is clear is that the role of the Government's Voice will be to advise it in the first instance and there is little information about the circumstances in which it would also advise Parliament and how Parliament would be accountable.

The rationale for the changes from the model of the Voice envisaged in the Uluru Statement from the Heart and the case of the new proposals, particularly to be an advisory body to Government rather than the Parliament, have not been made clear by the government. The government has also not articulated a rationale for its changed approach, what the problem is it is trying to address and how the Voice models respond to the identified problem.

The Report, and during the consultations, the government, its officials, and representatives refer to the many discussions on Constitutional recognition as providing the basis and rationale for its proposals. However, this is misleading as the government is not talking about Constitutional recognition of Aboriginal and Torres Strait Islander people.

NACCHO is concerned that without Constitutional enshrinement and the changed role of the Voice(s), the proposals from the government are not likely to advance the empowerment, recognition, and self-determination of Aboriginal and Torres Strait Islander peoples across the country.

2. *There is a significant risk that the government's proposals could undermine self-determination and result in conflict and a weakening of the community-controlled Aboriginal and Torres Strait Islander representative structures and shared decision arrangements making with governments across the country.*

The proposals do not take sufficient account of the many Aboriginal and Torres Strait Islander community-controlled representative and self-determined arrangements across the country. These have represented the needs of our peoples in service delivery and advocacy and policy advice to governments for decades and are based on the process of community-control; that is, a process which allows the local Aboriginal or Torres Strait Islander community to be involved in its affairs in accordance with whatever protocols or procedures are determined by the community.

The government has not made the case for how the voice of these precious arrangements is to be protected which have led to a world class Aboriginal health sector, to representatives of our peoples being able to negotiate the original Native Title Act of 1993 and for Aboriginal radio stations to be heard across the country. This serious issue is hardly addressed at all in the Government's proposals and to the extent it is, reference has been made to our representative and self-determined bodies being able to continue alongside its new voice.

NACCHO is concerned, however, that the advice and input of the Government's voice will be privileged over that of the voice controlled by Aboriginal and Torres Strait Islander peoples. If there were differences in the policy advice or input being provided by our organisations

and the Government's voice, it is likely that the Government will take the advice of its own voice. Its voice will also have the benefit of significant new funding provided by the Commonwealth that it will wish to control. It is difficult to see how this cannot be the outcome given the experience of previous Government initiated advisory structures, all of which have been established by governments and subsequently abolished or defunded.

The proposals from the government also lack clarity about the responsibilities and accountabilities of the government to any voice structures. There must be clear accountabilities on government to engage with and respond to any voice structures put in place.

Further, there needs to be clear accountabilities on the national Voice to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, organisations, and peoples in any position it takes and in its advice to government.

Any regional or local Voice structures must be established in a transparent manner and have a clear mandate from the relevant community. Regional structures must be led by Aboriginal and Torres Strait Islander peoples and not driven, created, or established by government(s). Importantly, any new regional and local structures need to take account of and be agreed with relevant community-controlled organisations operating within the same area so not to diminish or undermine their roles and representative responsibilities.

NACCHO is also concerned that the consultation process being led by the government and the way the proposals are being developed and decided is not consistent with the commitments from all governments in the Partnership and National Agreements on Closing the Gap. These Agreements commit governments to shared decision making with Aboriginal and Torres Strait Islander representatives that have a significant impact on our peoples.

Of equal concern is that the Government's proposal for an 'advisory' Voice falls below the commitments in the National Agreement on Closing the Gap to share decision making between governments and Aboriginal and Torres Strait Islander representatives.

- 3. Aboriginal and Torres Strait Islander communities need more information about what is intended by the proposed arrangements and more time to consider whether we should engage in and support the Voice(s) being proposed by the government.*

The face-to-face consultations have not been sufficiently advertised and with enough notice and NACCHO has received feedback that our members are not being properly supported to participate.

There is a lack of transparency in how the consultations are being recorded and managed. Some consultation session reports have been published but they have been prepared by public servants. NACCHO understands that the consultation session reports are not checked back with and agreed by participants making it difficult to be certain if the issues raised are being reflected accurately to government.

Whilst some written submissions are being made public and are available on the NIAA website, the records of meetings and summaries of their outcomes from the face-to-face engagements are not always being made public and in a timely way.

NACCHO is alert to confusion about the role and influence of the NIAA officials and the members of the Indigenous Voice Advisory Group members in the consultations. NACCHO has been told that Government officials attending the consultations do not always identify themselves and their role in the consultations.

The consultations are also being led by Aboriginal and Torres Strait Islander people appointed by and accountable to the Commonwealth Government through terms of reference and contractual arrangements, rather than Aboriginal and Torres Strait Islander representatives agreed by our peoples for this purpose.

Further, there is significant confusion about the Commonwealth proposals, what precisely is on the table, and how it relates to the Uluru Statement from the Heart.

We note too that written submissions close before consultations are due to finish.

The engagement process led by the Coalition of Peaks in advance of the negotiations to settle the National Agreement on Closing the Gap is a much better model. It was designed to respond to feedback from many Aboriginal and Torres Strait people about being consulted on policies or programs in the past, but not knowing if they had been heard.

Starting in September 2019, the Coalition of Peaks led engagements with Aboriginal and Torres Strait Islander people, communities and organisations in every state and territory to talk about what is needed to improve their lives and to provide input to the new National Agreement on Closing the Gap.

Over 2300 people attended nearly 70 face-to-face meetings in capital cities, regional towns, and remote communities from September to December 2019, with an online survey at the same time getting nearly 1700 responses. While governments supported the engagements, they were led by senior representatives of members of the Coalition of Peaks.

A snapshot report of what was heard during the engagements was published as soon as the engagements were concluded and sent to every registered participant in the engagements. The Coalition of Peaks also released an independent review of the engagements at the same time as the snapshot. The reviewer, a 100% Indigenous-owned, Supply Nation registered, consultancy, concludes that the engagements were open, fair, and transparent.

Subsequently, a comprehensive report on the engagements was put together by the Coalition of Peaks in partnership with government officials from the Commonwealth and states and territories and published. Most importantly, the Coalition of Peaks worked with governments to negotiate how the outcomes of the engagements were reflected in the National Agreement on Closing the Gap.

This model produced an agreed outcome that was hailed by the leadership of the Coalition of Peaks and First Ministers of all Australian Governments. Regrettably, it is not being followed in developing a new Indigenous voice.

4. *NACCHO has significant concerns that the final Voice model will be decided by government alone. The Voice proposals should not be agreed by government alone and instead should be negotiated and agreed between the government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.*

NACCHO believes that further engagement and negotiation between Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, and the Commonwealth Government on a possible model is needed before a decision on this matter can be made.

By the government putting forward its own and very different proposals to the Uluru Statement, relying on Aboriginal and Torres Strait Islander advisers it has appointed, NACCHO is concerned that there is no genuine community mandate for the proposals as they have not been developed through a process of self-determination. Should the government proceed with its proposals there is a significant chance that they will not be enduring or achieve meaningful change as they are being government driven rather than arising from a self-determined process.

NACCHO's Initial Recommendations

In response to the Report and with these matters in mind, NACCHO provides its initial response and the following recommendations against three broad categories.

1. *Recommendations to strengthen the current consultations process*
 - a) A complete list of upcoming face to face consultations should be published on the NIAA website and where NIAA is working with local Aboriginal and Torres Strait Islander community-controlled organisations to put together the face-to-face consultations in a way that encourage greater participation.
 - b) Aboriginal and Torres Strait Islander facilitators who represent the relevant communities should be engaged for the face-to-face consultations rather than allowing them to be led by Indigenous Voice Advisory Group members who are accountable to NIAA and the Minister.
 - c) Records and outcomes from the consultations are agreed with participating people and organisations and made public immediately following each consultation so that other participants and organisations can understand the issues being raised and how they might like to respond.
 - d) Government officials attending the engagements to clearly identify themselves and their role in supporting the consultations and measures taken to ensure they are not able to influence or bias the consultation process.

- e) The date for written submissions be extended until the end of May 2021 to align with the conclusion of the face-to-face engagements.
- f) An independent organisation with relevant expertise and experience be engaged in a transparent manner by NIAA to observe the remaining consultations and provide an assessment on whether the face to face consultations were open, transparent and informed and enabled Aboriginal and Torres Strait Islander peoples to be heard on the issues; if the outcomes of the face to face and written consultations reflect the issues that were raised; and to make recommendations for future engagements on the issue.

2. *Recommendations on the design of the Voice proposals*

NACCHO is very concerned that it is being asked to respond to a range of proposals that are not clearly defined and where the intent of the Commonwealth has not been fully disclosed. It makes the following recommendations noting this:

- a) Consistent with the Uluru Statement from the Heart:
 - The national Voice's central function should be on providing advice to the Commonwealth Parliament on laws that have a significant impact on Aboriginal and Torres Strait Islander peoples.
 - The Voice to Parliament should be enshrined in the Constitution before it is implemented and supporting legislation is enacted.
- b) For a national Voice to the Commonwealth Parliament:
 - The obligations on the Parliament to respond to the national Voice and its advice should be clearly articulated and included in underpinning legislation, ensuring the views of Aboriginal and Torres Strait Islander peoples are taken account of before legislation is passed and how and why the Parliament has responded in a particular way is made public.
 - The roles and functions of regional / local Voices should be clearly linked to the roles and functions of the national Voice to the Commonwealth Parliament so as not to confuse, undermine or weaken the roles and functions of community-controlled organisations across the country.
 - Support for the operation of the Voice structures should be independent of government and funding for its functions, including its own secretariat and policy support, is protected in Commonwealth legislation.
- c) Should the government proceed with the establishment of a Voice to government, instead of, or as well as, a Voice to the Commonwealth Parliament:
 - Instead of an advisory Voice, the relationship between the Voice structures and government should be based on formal shared decision-making arrangement and agreement, consistent with the Partnership and National Agreements on Closing the Gap.

- The Voice structures are determined by representatives of Aboriginal and Torres Strait Islander people, are independent of government and long-term funding is provided for the Voice structures for their roles and functions, including for their own independent secretariat and policy support accountable to the Voice structures, not to government, consistent with the Partnership and National Agreements on Closing the Gap.
- The roles, responsibilities and accountabilities of government are clearly articulated, and dispute resolution mechanisms are agreed between the Voice structures and government, consistent with the Partnership and National Agreements on Closing the Gap.
- Clear obligations on the national Voice must be in place to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, organisations, and peoples in any position it takes and in its advice to government.
- The mandate of the Voice(s) fills an identified and agreed need and the interface between the government and the Voice is clearly articulated and defined including whether and how the Voice engages with various portfolios, departments, and Ministers.
- The roles and functions of NACCHO and other national and state/territory community-controlled peak bodies are not displaced or undermined by a new national and regional/ local Voice structure.
- The roles and functions of Aboriginal and Torres Strait Islander community-controlled organisations and representative arrangements across the country are not displaced or undermined by a national and regional / local Voice structures to the Commonwealth government and how the various structures co-exist and the empowerment, recognition, self-determination of the community-controlled organisations and representative arrangements and the responsibilities and obligations of the governments is clearly articulated and agreed between all parties.
- The roles and functions of the Coalition of Peaks on Closing the Gap, and the Partnership and National Agreements on Closing the Gap between the Coalition of Peaks and Australian governments are not displaced or undermined by a national Voice to the Commonwealth government and how the structures co-exist are clearly defined and agreed with the Coalition of Peaks including NACCHO.
- Any regional or local Voice structures must be established in a transparent manner and have a clear mandate from the relevant community – regional structures must be led by Aboriginal and Torres Strait Islander peoples and not driven, created, or established by government – and take account of and be agreed with relevant community-controlled organisations operating within the same area so not to diminish or undermine their roles and representative responsibilities.

3. *Recommendations on next steps*

From experience, and whether a Voice model is enshrined in the Constitution or not, much of its strength, longevity, and capacity to further the empowerment, recognition and self-determination of our peoples relies on its legitimacy and support from Aboriginal and Torres Strait Islander peoples.

The Commonwealth's existing consultation process, led by its own advisers and public servants, will not achieve this and furthermore, the steps and timeframes following the conclusion of the consultations are not clear. It is difficult to see how NACCHO, its members and other community-controlled organisations will be able to understand the issues that have been raised through the consultation process to inform how they might be responded to and how they can engage in the next steps.

A negotiated agreement on the final model of the Voice and the steps to achieve it between the Commonwealth Government and our representatives will provide the best foundation for an enduring and successful model that is owned by and advances the interests of Aboriginal and Torres Strait Islander peoples whilst fostering responsibility and accountability of the Commonwealth government to the voice.

At a minimum and as a first step, NACCHO would be very concerned if the Commonwealth Government were to decide on the final model of the Voice structures without a further engagement process. Noting it is not clear whether the proposed Voice structures will have a relationship to the Commonwealth Parliament and government or government alone, whether a Voice to government will be underpinned by legislation, and what the relationship will be with state and territory governments, a complete draft Voice structure should be developed and made public.

In addition to taking immediate steps to improve the transparency and legitimacy of the current consultation process, it is recommended that:

- a) A complete independent report be produced on the outcomes of the whole consultation process, identifying the issues that were raised so that Aboriginal and Torres Strait Islander organisations and communities can understand the full range of matters across Australia and consider the best way to respond.
- b) A complete draft proposed model for the national and regional / local Voice structures is put together and is tested through a further round of genuine engagements with Aboriginal and Torres Strait Islander people, organisations, and communities, led by Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.
- c) Should the Commonwealth proceed with its Voice proposals, the final design of the national and regional / local Voice structures should be determined through a negotiated and shared decision-making process between the Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.

- d) The Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, should negotiate and agree the process steps for implementing the agreed Voice model(s), including its legislative basis and whether it should be protected through Constitutional enshrinement before it is implemented, and legislation enacted.