



Australian  
Human Rights  
Commission

# Submission to the Indigenous Voice Proposals outlined in the Indigenous Voice Interim Report

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION  
TO THE INDIGENOUS VOICE CO-DESIGN PROCESS**

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## 1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to provide this submission to the Indigenous Voice Co-design Groups on the proposals outlined in the Indigenous Voice Interim Report of October 2020 (the Interim Report).
2. The Commission acknowledges the significant work undertaken by the Indigenous Voice Co-design groups, led by co-chairs Professor Marcia Langton AM and Professor Tom Calma AO and commends the development of the Interim Report which is informative, considered and transparent, and provides some clear pathways forward.
3. The role of Aboriginal and Torres Strait Islander Social Justice Commissioner was created by the federal Parliament in 1993 to provide ongoing scrutiny and guidance about the human rights issues faced by Aboriginal and Torres Strait Islander peoples.
4. Each Aboriginal and Torres Strait Islander Social Justice Commissioner, over the past 28 years, has identified the need for an Indigenous representative body as an integral component of the reforms necessary across our parliamentary and government systems to address the ongoing human rights concerns faced by Aboriginal and Torres Strait Islander peoples.
5. As noted in the Interim Report, the Commission has previously published comprehensive research on models for national representative voices, resulting in the establishment of the National Congress of Australia's First Peoples:
  - Building a Sustainable National Representative Body Report (2008)
  - Our Future in Our Hands Report (2009)
6. In 2018, the Commission produced a submission to the Joint Select Committee on constitutional recognition relating to Aboriginal and Torres Strait Islander peoples. The submission was developed and signed by all current and former Aboriginal and Torres Strait Islander Social Justice Commissioners. The submission identified the ongoing importance of achieving constitutional reform to remove the capacity to racially discriminate against Aboriginal and Torres Strait Islander peoples. The Commission does not focus on that issue in this submission but notes that there remains an ongoing need for constitutional reform through federal laws.
7. In December 2020, the Commission released the *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report 2020*—a whole-of-life report which highlights the importance of Aboriginal and Torres Strait Islander women and girls' participation and representation in decision-making; what women and girls need in order to participate more fully; and how women and girls want to be represented at all levels.
8. The Commission notes the call in the Uluru Statement for a national representative voice to be enshrined in the Constitution. We note that this

consultation process has not been empowered to consider this issue. We encourage the Government to listen to the voices of Aboriginal and Torres Strait Islander peoples about the desirability of a constitutional versus legislative basis for the Voice. Our comments in this submission go to the characteristics that any model should include however it is established.

9. The Commission does not intend to traverse all of the issues raised in the Interim Report in this submission. Rather, attention will be given to the following five areas:
- Ensuring the independence and sustainability of the Indigenous Voice
  - Accountability mechanisms
  - Ensuring integrity—composition and role of the proposed ethics council
  - Aboriginal and Torres Strait Islander women and girls' representation, participation and decision-making
  - Aboriginal and Torres Strait Islander children's representation, participation and decision-making

## **2 Ensuring the independence and sustainability of the Indigenous Voice**

10. Self-determination is an outcome as much as it is a process of negotiation. It is about determining, through legitimate dialogues with the nation state, how Aboriginal and Torres Strait Islander peoples are able to pursue their own political, cultural, social and economic interests, while retaining the right to participate fully in Australian life.
11. We know that enhancing control is strongly connected to positive wellbeing outcomes and can have significant implications for addressing existing challenges within communities. A self-determining approach is therefore critical for promoting strong and safe communities, where Aboriginal and Torres Strait Islander peoples are better able to transcend challenges and cycles of powerlessness.
12. It is therefore critical not only to the credibility and legitimacy of the National Voice but also to its efficacy that it be free—and be seen to be free—of influence, interference or coercion by governments and/or other parties.
13. As detailed in the Interim Report, this can be addressed through:
- careful consideration around how members are selected
  - ensuring the independence of the operations and decision-making processes of the representative body, free from government control or approval processes

- ensuring that the Voice has a broad mandate, and is able to consider a full range of issues of its own choosing
- prioritising the National Voice’s links with its own constituency through engagement with local and regional Voice structures, state structures and sectoral Indigenous peak organisations
- access to adequate and sustainable funding.

## **2.1 Independence**

### *(a) The United Nations Declaration on the Right of Indigenous Peoples*

14. The Australian Government endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2009. Its provisions identify a range of matters that are relevant to establishing a national Voice, most particularly the right to independent political institutions.
15. The UNDRIP emphasises the importance of ‘participation of indigenous peoples in matters that would affect their rights, through representatives freely chosen by themselves’:
  - Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
  - Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
  - Article 3: Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
  - Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.<sup>1</sup>
16. It also sets out the right of Indigenous peoples to freely determine their own processes and structures for identifying membership of Indigenous groups.
  - Article 33: Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live. Indigenous peoples

have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

(b) *The Paris Principles*

17. The Principles relating to the Status of National Institutions (The Paris Principles) which were adopted by General Assembly resolution 48/134 on 20 December 1993.<sup>2</sup> They are the international minimum standards for effective, credible National Human Rights Institutions (NHRIs) such as the Australian Human Rights Commission.
18. While these principles were not developed with Indigenous representative bodies in mind, they set out a useful list of requirements to ensure that an organisation is robust and able to operate with an appropriate level of independence.
19. The principles set out minimum requirements which national human rights institutions must meet if they are to be recognised as ‘A status’ institutions. Such status ensures that the institution has full participation rights in UN human rights processes and is seen as a credible, authentic human rights institution.
20. The Commission considers that the matters articulated in the Paris Principles provide useful guidance for the types of requirements that would ensure the integrity of a National Voice and that it has the key elements to ensure genuine independence from government.

**Recommendation 1: The Commission recommends that guidance be drawn from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Paris Principles to set out a series of principles setting out minimum standards to underpin the independence of the Voice.**

(c) *Principles to guide the operation of a National Indigenous Voice*

21. The Commission has prepared the following list drawn from both UNDRIP and the Paris Principles as an example. It is illustrative, not comprehensive.
22. This list of principles could be reflected in legislation. If the Voice is to be constitutionally enshrined, such principles could also be referenced in the Constitution with the principles set out in supporting legislation.

***Principles to guide the operation of a National Indigenous Voice, to ensure its independence, credibility and effectiveness:***

1. The National Voice should have a broad mandate, which shall be clearly set forth in a constitutional or legislative text.
2. This mandate shall extend to commenting on policy issues relating to Aboriginal and Torres Strait Islander peoples, without limitation, educational and promotional activities, as well as engaging in legal processes.
3. The Voice should have the mandate to submit to the Government, Parliament and any other competent body, opinions, recommendations, proposals and reports on any matters concerning Aboriginal and Torres Strait Islander peoples.
4. The Voice should have the capacity to independently publicise their views and reports.
5. The Voice should have the mandate to participate in UN and international fora, if the Voice so chooses.
6. The membership of the Voice should reflect the diversity of Aboriginal and Torres Strait Islander peoples and enable the participation of all Aboriginal and Torres Strait Islander peoples in its proceedings.
7. Processes for selecting representatives of the organisation should reflect the diversity of Aboriginal and Torres Strait Islander peoples—including gender equality.
8. The processes for determining representatives and membership should be clearly set out, including by specifying length of terms for selected representatives to ensure stability of the organisation.
9. Consistent with the UNDRIP, processes for membership and for selecting representatives should be undertaken through processes established by Aboriginal and Torres Strait Islander peoples themselves.
10. Processes for determining who is Aboriginal and Torres Strait Islander should also be articulated through processes established by Aboriginal and Torres Strait Islander peoples themselves.
11. The Voice shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding over a longer time period. The purpose of this funding should be to enable it to have its own staff and premises, to be independent of the Government and not be subject to financial control.
12. Government should establish clear processes for engaging with the Voice, to ensure that they consult and cooperate in good faith with the Aboriginal and Torres Strait Islander peoples concerned, through their own representative institutions, to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

## **2.2 Sustainability**

23. The Voice will require sufficient and sustainable resourcing to operate effectively. A National Voice—even one that was constitutionally enshrined—would not be immune from funding cuts and the undermining effect this might have on the independence of the Voice through reducing its capacity to carry out core functions and/or creating an environment where co-option is more likely to occur.
24. A number of potential mechanisms for financial sustainability and examples of their application are discussed in both the Building a Sustainable National Representative Body Report (2008) and Our Future in Our Hands Report (2009).
25. Initially, the Government should provide block-funding for 5 to 10 years while the Voice is in its establishment phase.
26. If the body is established under legislation, as a statutory body, consideration should be given to it being a corporate entity under the Performance Governance and Public Accountability Act. This would enable it to have the capacity to enter into corporate partnerships, fund-raising and fee for service arrangements. The ability to supplement funding from non-government sources could significantly aid the long-term sustainability of the Voice, and its independence from Government.
27. Other funding options discussed in Our Future in Our Hands, for ensuring the sustainability of the Voice include the following:
  - a one-off lump sum payment (\$100–200m) as a Capital Fund to create an interest-accruing source of funds that could be drawn down at levels that would meet the needs of the organisation without eating into the real value of the capital in the fund.<sup>3</sup>
  - Ongoing payments to a Futures Fund generated by taking a percentage of a tax or levy.<sup>4</sup>
  - Being granted Deductible Gift Receipt (DGR)/charity status and the ability to receive donations.<sup>5</sup>
28. The rationale for the first two measures could be justified as a measure of restitution and compensation for the loss of lands and other injustices, which has not been otherwise forthcoming.
29. Indigenous peoples' right to restitution is backed up by UNDRIP (Article 11 and Article 28):
  - Article 11: States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.



- Article 28: Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, of a just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.<sup>6</sup>

**Recommendation 2: The Commission recommends that consideration be given to funding mechanisms that will ensure the viability and sustainability of the Voice—including by providing initial funding for a 5–10-year period; enabling the body to source non-government funding in addition to core funding from government; provide the Voice with DGR tax deductibility status; and consider long term funding mechanisms such as a capital fund or levy.**

### **3 Accountability mechanisms**

30. Notwithstanding the partnership agreement on Closing the Gap signed by the National Cabinet and the Coalition of (Indigenous) Peaks, there is a general lack of accountability within government for outcomes to Aboriginal and Torres Strait Islander peoples. This lack of accountability is integrally connected to the lack of engagement with Aboriginal and Torres Strait Islander peoples.
31. One mechanism that could improve accountability is ensuring Aboriginal and Torres Strait Islander participation in Senate Estimates processes. The cross-portfolio Indigenous Affairs day at Senate Estimates could be enhanced by inviting non-parliamentary representatives of Aboriginal and Torres Strait Islander communities to sit with the parliamentary committee for questioning of agencies. Ideally, the National Voice would provide these representatives.
32. While it is not usual for non-parliamentarians to participate in Estimates processes in this way, it is not without precedent. There is no requirement of Parliamentary Committees that their members be exclusively drawn from parliamentarians.
33. The ACT Parliament has enacted provisions that give the ACT Indigenous elected representative body functions to participate in Estimates proceedings in this manner. Commonwealth legislation could authorise the appointment of non-parliamentary representatives from the National Voice as members of the committee.
34. Another key measure would be to introduce legislation to amend section 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) to include the United Nations Declaration on the Rights of Indigenous Peoples. The Attorney-General should similarly exercise the power under s 47 of the *Australian Human Rights Commission Act 1986* (Cth) to include the UN

Declaration within the human rights functions of the Australian Human Rights Commission.

35. In both instances, this would improve accountability through parliamentary scrutiny processes and the work of the Australian Human Rights Commission of how policies and programs respect the rights of indigenous peoples.
36. These mechanisms could be further enhanced by measures to ensure that the views of the Voice are required to be heard in parliamentary debates on bills that significantly affect Indigenous peoples. At present, Explanatory Memorandums include a statement of compatibility with human rights. One approach would be to enact legislation so that—for relevant Bills—statements of compatibility with human rights also be required to include a statement by the National Voice expressing its views about whether the bill is consistent with the rights of indigenous peoples and whether the Voice was consulted in its development. An alternative approach would be to empower the Minister for Indigenous Affairs to make a declaration in similar terms about the consultations undertaken and the view expressed by the Voice.
37. These proposals would elevate the significance of the views of the Voice in the development phase of relevant laws. While the Voice could participate in parliamentary committee inquiries by making submissions, the Commission sees this as a less desirable option as: a) there are not inquiries into all bills; b) this engagement occurs once a bill has been drafted whereas the objective is to ensure full and proper indigenous engagement **prior** to this stage; and c) there are potentially resourcing issues associated with this engagement, especially if bills are referred for review within extremely short time frames and/or there are multiple bills requiring attention simultaneously.

**Recommendation 3: The Commission recommends the co-design and adoption through legislation of a package of accountability mechanisms that will enhance the ability of the Voice to input into and scrutinise the design and implementation of Australian Government policies and legislation impacting First Nations peoples.**

#### **4 Ensuring integrity—the composition and role of the proposed ethics council**

38. The Commission notes that the consultation document proposes an Ethics Council as part of any representative structure. The Commission set out detailed arguments in favour of such an approach in the *Our Future in Our Hands Report* and notes the genesis of this approach in the British Parliament's Nolan Principles.
39. As noted above, the UN Declaration on the Rights of Indigenous Peoples sets out the right of Indigenous peoples to set in place the rules governing their own institutions, as well as membership of such institutions and processes to determine who is Indigenous.

40. The Commission considers that an Ethics Council or like governance process is a way to implement these rights. Determinations of this nature should not be matters for government, and not be dealt with as political issues.
41. An Ethics Council will also provide a rules-based approach for addressing challenging issues, with the Council having the role of setting criteria for a range of issues including who is a fit and proper person for being a chosen representative, indigeneity etc. The Commission notes that the test for a fit and proper person should take into account the over-representation of indigenous peoples in criminal justice processes and should ensure that people are not disqualified for minor offending.
42. The Commission encourages any Ethics Council to have gender equity built into its structure.

**Recommendation 4: The Commission recommends that an Ethics Council be established within the Voice to establish and adjudicate on matters of governance and ethics. This might include matters such as who is a fit and proper person to be a representative; disputes about indigeneity; and the resolution of other disputes. Such a body should have gender equity among its membership.**

## **5 Aboriginal and Torres Strait Islander women and girls' representation, participation and decision-making**

(a) *Better women and girls' representation is key to addressing policy failure*

43. Parliament and government have consistently struggled to engage meaningfully with Aboriginal and Torres Strait Islander people, especially women, in policy development and service delivery. This has fundamentally undermined government's capacity to respond effectively to their needs.
44. That there is a pressing need for Aboriginal and Torres Strait Islander women and girls' voices to be heard about matters that affect their lives is evident in the facts below, which evidence ongoing policy failure.
  - Three out of five Aboriginal and Torres Strait Islander women have experienced physical or sexual violence and are 3.1 times more likely to experience violence than non-Indigenous women.<sup>7</sup>
  - Aboriginal and Torres Strait Islander women are the fastest growing prison population and are 21.2 times more likely to be incarcerated than non-Indigenous women.<sup>8</sup>
  - Aboriginal and Torres Strait Islander women in prison are often victims of violence or abuse, have a disability or be homeless.<sup>9</sup>
  - Aboriginal and Torres Strait Islander people are 10 times more likely to be homeless and 19% of Aboriginal and Torres Strait Islander clients of homelessness services report family violence as the reason for accessing the service.<sup>10</sup>

- Aboriginal and Torres Strait Islander women experience anxiety and depression at higher rates than Aboriginal and Torres Strait Islander men,<sup>11</sup> and are more likely to be caring for children and family with 30% of Aboriginal and Torres Strait Islander women caring for someone in need either with disability, a chronic health condition or old age.<sup>12</sup>

(b) *Wiyi Yani U Thangani (Women's Voices) Project*

45. In June 2017, the Indigenous Affairs Group of the Commonwealth Department of Prime Minister and Cabinet, now the National Indigenous Australians Agency (NIAA) and the Australian Human Rights Commission partnered on a multi-year initiative named *Wiyi Yani U Thangani* meaning Women's Voices in Bunuba language. Led by the Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO, the *Wiyi Yani U Thangani (Women's Voices) Project* set out to capture what Aboriginal and Torres Strait Islander women and girls consider to be their strengths, challenges and aspirations.
46. Throughout 2018, the Commissioner and her team travelled to 50 locations in urban, regional and remote areas across Australia. They conducted 106 engagements and met with 2,294 women of all ages, including senior elders, girls from 12 to 17 years of age, women in prison and Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex, Asexual, Sistergirl and Brotherboy (LGBTQIA+SB). Informed by these engagements, the *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report 2020* was tabled on 9 December 2020.
47. This report—which sets out a comprehensive plan for a structural change—should be used as a guide to re-setting the relationship between Aboriginal and Torres Strait Islander women and girls and Australian governments and to ensuring the full participation of Aboriginal and Torres Strait Islander women and girls in the decisions that affect their lives.

(c) *What women and girls told us*

48. A clear and common message from Aboriginal and Torres Strait Islander women and girls across Australia was that women, girls and their communities are excluded from meaningful participation in the decisions that affect their lives. As such, Aboriginal and Torres Strait Islander women and girls today remain one of the most marginalised and politically disenfranchised groups in Australia, and consequently experience high levels of disadvantage and vulnerability.
49. Throughout the *Wiyi Yani U Thangani* engagements, women were clear: effective Aboriginal and Torres Strait Islander representation and self-determination is critical to addressing this disadvantage and it must be a first-tier priority. When measures are designed to enhance the enjoyment of human rights by Aboriginal and Torres Strait Islander women and girls, entire communities benefit.

50. The key to designing such measures is the knowledge, skills and lived experience of Aboriginal and Torres Strait Islander women and girls. When Aboriginal and Torres Strait Islander women are represented, empowered to participate in decision-making and their leadership is embraced, we see more effective, productive and fair laws, policies and programs.
51. Throughout *Wiyi Yani U Thangani* engagements, Aboriginal and Torres Strait Islander women and girls were clear that they want to see representation proportional to their population within both mainstream and Indigenous structures at all levels and want representative bodies at all levels to carry the distinct voice of Aboriginal and Torres Strait Islander women and girls.
52. Many Aboriginal and Torres Strait Islander women also expressed frustration that, in the moments where Aboriginal and Torres Strait Islander people have had the opportunity to participate in decisions, women's distinct voices have often been conflated with the needs and aspirations of Aboriginal and Torres Strait Islander men.
53. An example of this from the *Wiyi Yani U Thangani* report can be read below:

*The board is made up of men. Women put their hands up to go on boards but men only vote for men. That is the biggest thing that is missing on the Tiwi Islands is gender equity. The women are scared cause there are too many men. The men try to dominate the meetings. They need to be told; this is an equal world now. **Tiwi Islands Melville women**<sup>13</sup>*

(d) *National-level representation, participation and decision-making mechanisms recommended by Wiyi Yani U Thangani*

54. Following calls from Aboriginal and Torres Strait Islander women and girls, the *Wi Yani U Thangani* report recommended:
- the development of a National Action Plan for advancing the wellbeing of Aboriginal and Torres Strait Islander Women and Girls (*Wiyi Yani U Thangani*, Recommendations 1).<sup>14</sup>
  - a National Summit be held as a key step in the process of co-designing this plan and that a National Aboriginal and Torres Strait Islander Women and Girls Advisory Body be established to lead the development of the summit and the formulation, implementation and monitoring of the plan (*Wiyi Yani U Thangani*, Recommendation 2).<sup>15</sup>

55. These recommendations were designed to ensure Aboriginal and Torres Strait Islander women and girls are at the decision-making table and it is intended that they be advanced in conjunction with the Indigenous Voice process.

(e) *Women's representation in the National Voice*

56. The Commission welcomes the proposal in the Interim Report that there be structurally guaranteed gender balance for the National Voice. This is critical to progressing the representation and self-determination of Aboriginal and Torres Strait Islander women.

57. The Commission is of the view that measures should be put in place to ensure gender equality within the proposed permanent standing committees for youth and persons with disability. As is detailed in the *Wiyi Yani U Thangani* Report, the lived experience of Aboriginal and Torres Strait Islander girls requires particular attention as does the lived experience of Aboriginal and Torres Strait Islander women and girls with disability who face the intersection of race, gender and disability, making them one of the most disadvantaged groups in Australia.

**Recommendation 5: The Commission recommends that measures be put in place to ensure gender equality within the proposed permanent standing committees for youth and persons with disability.**

58. Alongside the permanent standing committees for Youth and persons with disability, the Commission recommends the establishment of a permanent standing committee for women. The National Voice should be able to draw on the expertise, knowledge and lived experiences of a range of Aboriginal and Torres Strait Islander women within this Committee, in addition to the female representatives of the National Voice.

**Recommendation 6: The Commission recommends the establishment of a permanent standing committee for First Nations women.**

59. The Commission considers that there is scope for the Woman and Girls Advisory Body recommended in the *Wiyi Yani U Thangani* Report to be engaged as the First Nation's women's permanent standing committee to support the National Voice and recommends that consideration be given to this as an option.

**Recommendation 7: The Commission recommends the implementation the recommendations of the *Wiyi Yani U Thangani (Women's Voices) Report* in full, including its recommendation to conduct a National Summit and establish an Aboriginal and Torres Strait Islander Women and Girls Advisory Body and that consideration be given to this Body taking on the role of the First Nation's women's permanent standing committee to support the National Voice.**

(f) *Women's representation in local and regional structures*

60. Alongside the above measures targeted at the national level, the *Wiyi Yani U Thangani* Report recommends Australian governments focus their engagement with Aboriginal and Torres Strait Islander women and girls at the local and regional levels (*Wiyi Yani U Thangani* Recommendation 7)<sup>1</sup>.
61. The Interim Report proposes that Local and Regional Voices be established under the 'principles-based framework', which includes principles such as empowerment, inclusive participation, cultural leadership and community-led

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<sup>1</sup> *Wiyi Yani U Thangani (Women's Voice): Securing our Rights, Securing our Future* (2020), p 100.

design. Crucially however, these principles make no reference to gender equality in participation, representation and decision-making.

The Commission suggests including gender equality in the ‘principles-based framework’. Not only will this ensure that gender balance in the National Voice is structurally guaranteed, it will also ensure Aboriginal and Torres Strait Islander women have the opportunity to be heard equally and be supported to participate equally in decision-making at the regional and national levels. This will require adequate resourcing of regional and local bodies to ensure that representation at the state and national levels is feasible.

**Recommendation: 8: The Commission recommends embedding gender equality in the ‘principles-based framework’ at the local and regional levels.**

(g) *Women’s groups*

62. The Interim Report notes that governments will need to enable capability building and provide support and resourcing at the local and regional levels. This echoes the recommendation in the *Wiyi Yani U Thangani* Report to invest in empowering women’s leadership on the ground (*Wiyi Yani U Thangani*, Recommendation 3).
63. Throughout *Wiyi Yani U Thangani* engagements, women noted the positive impact of women’s groups in their communities, many of which no longer exist, and called for adequate government funding to support the establishment of new ones at the local and regional level.
64. Stage Two of the *Wiyi ani U Thangani* Project is underway and as part of this work the Aboriginal and Torres Strait Islander Social Justice Commissioner and her team are focused on the implementation of the report’s recommendations and will be working with local and regional women’s groups—both established and in the process of being established—to amplify and ensure Aboriginal and Torres Strait Islander women’s leadership on the ground.
65. The Commissioner will be exploring mechanisms to improve engagement between women’s representative groups at the local and regional level with policymakers, researchers and governments to ensure the effective participation of women in policy formation and implementation.
66. This could include giving Local and Regional Voices the power to establish local and regional Aboriginal and Torres Strait Islander women’s groups to support and provide expert advice.

**Recommendation: 9: The Commission recommends that Local and Regional Voices be given the power to establish local and regional Aboriginal and Torres Strait Islander women’s groups to support and provide expert advice**

(h) *The need for supports*

67. Women called for supports such as carer respite and affordable and accessible childcare in order for them to organise and be heard with many women reporting their level of responsibilities in looking after their families and communities prevent them from coming together and participating in decision-making.
68. Women and girls also identified the need for capacity-building to encourage broad-based leadership, succession-planning and the skills required to represent at the interface with government and other external parties. An example of a strengths-based, community-controlled leadership program that could be scaled-up with very positive effects is the Women's Martu Leadership Program run by Kanyirninpa Jukurrpa in the East Pilbara.

**Recommendation 10: The Commission recommends the co-design of measures to empower women's leadership and participation at local and regional levels which will provide the foundations for ground-up to capability-building and representation for the National Voice.**

## **6 Aboriginal and Torres Strait Islander children's representation, participation and decision-making**

69. The Commission notes the proposed measures to include young people between 18 and 25 years of age in the National Voice and to establish a permanent standing committee for Aboriginal and Torres Strait Islander youth.
70. The Commission notes that Article 12 of the Convention on the Rights of the Child is considered one of its the foundational / core principles that applies to the implementation of all other rights. It states:
- States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
71. Accordingly, the Commission considers that the proposed youth standing committee should also include children.
72. Best practice would suggest that there also be mechanisms for engaging with children of different age groups, including younger children. This is of particular importance in relation to issues where Indigenous children experience differential outcomes to other children, either through over-representation or lower outcomes. For example, Aboriginal and Torres Strait Islander children with lived experience in the care and protection and juvenile justice systems have important insights that could better inform program and policy design.
73. The Commission encourages the development of mechanisms to ensure such participation, and also to build the capacity of Indigenous young people and youth.



**Recommendation 11: The Commission recommends that the proposed Youth Advisory committee also include children. This should be supplemented by practices of engaging with children, especially those in vulnerable situations such as care and protection and juvenile justice; and youth leadership / mentoring initiatives.**

## **7 Recommendations**

The Commission recommends that:

- 1. Guidance be drawn from the UN Declaration on the Rights of Indigenous Peoples and the Paris Principles to set out a series of principles setting out minimum standards to underpin the independence of the Voice.**
- 2. Consideration be given to funding mechanisms that will ensure the viability and sustainability of the Voice—including by providing initial funding for a 5–10-year period; enabling the body to source non-government funding in addition to core funding from government; provide the Voice with DGR tax deductibility status; and consider long term funding mechanisms such as a capital fund or levy.**
- 3. The co-design and adoption through legislation of a package of accountability mechanisms that will enhance the ability of the Voice to input into and scrutinise the design and implementation of Australian Government policies and legislation impacting First Nations peoples.**
- 4. An Ethics Council be established within the Voice to establish and adjudicate on matters of governance and ethics. This might include matters such as who is a fit and proper person to be a representative; disputes about indigeneity; and the resolution of other disputes. Such a body should have gender equity among its membership.**
- 5. Measures be put in place to ensure gender equality within the proposed permanent standing committees for youth and persons with disability.**
- 6. The establishment of a permanent standing committee for First Nations women.**
- 7. The implementation the recommendations of the Wiyi Yani U Thangani (Women's Voices) report in full, including its recommendation to conduct a National Summit and establish an Aboriginal and Torres Strait Islander Women and Girls Advisory Body and that consideration be given to this Body taking on the role of the First Nation's women's permanent standing committee to support the National Voice.**
- 8. Embedding gender equality in the 'principles-based framework' at the local and regional levels.**
- 9. Local and Regional Voices be given the power to establish local and regional Aboriginal and Torres Strait Islander women's groups to support and provide expert advice.**

**10. The co-design of measures to empower women’s leadership and participation at local and regional levels which will provide the foundations for ground-up to capability-building and representation for the National Voice.**

**11. The proposed Youth Advisory committee also include children. This should be supplemented by practices of engaging with children, especially those in vulnerable situations such as care and protection and juvenile justice; and youth leadership / mentoring initiatives.**

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<sup>1</sup> *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, UN Doc A/RES/61/295.*

<sup>2</sup> *Principles relating to the Status of National Institutions (The Paris Principles): resolution / adopted by General Assembly, 20 December 1993, UN Doc A/RES/48/134.*

<sup>3</sup> Australian Human Rights Commission, *Our Future in Our Hands* (Report, 2009) 31.

<sup>4</sup> Australian Human Rights Commission, *Our Future in Our Hands* (Report, 2009) 18.

<sup>5</sup> Australian Human Rights Commission, *Our Future in Our Hands* (Report, 2009) 31.

<sup>6</sup> *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, UN Doc A/RES/61/295.*

<sup>7</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future* (2020), p 129.

<sup>8</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future* (2020), p 43.

<sup>9</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future*, Community Guide (2020), p 12.

<sup>10</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future*, Community Guide (2020), p 15.

<sup>11</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future*, Community Guide (2020), p 20.

<sup>12</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future*, Community Guide (2020), p 24.

<sup>13</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future* (2020), p 82.

<sup>14</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future* (2020), p 98.

<sup>15</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voice): Securing our Rights, Securing our Future* (2020), p 98.