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Darwin NT 0812

Professor Marcia Langton and Professor Tom Calma

Co-Chairs

Voice Co-design Advisory Group

Second Written Submission on the Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

Dear Co-Chairs,

1. I write this submission as a Torres Strait Islander residing on Larrakia land, Darwin. I make this submission from my life experience, as a stevedore and union delegate for 16 years, as an elected union official since 2010, and as an advocate for a substantive – and lasting – First Nations representative body (Voice).

THE VOICE MODEL MUST NOT BE VULNERABLE TO THE WHIMS OF PARLIAMENT

2. As a trade unionist, I understand the great value in self-determining collective structures of representation (Voice), and how they can politically further the interests of a group of people. In particular, structures that include local, regional, and national representation, with democratic processes to determine the rules, protocols, policies and priorities of the organisation, and mechanisms of accountability of representatives to the people they represent. My understanding goes beyond a workers Voice, I am aware that such organised structures furthers the interests of other interest groups: employers and industries through their chambers and associations for example.
3. I am a beneficiary of a Voice, as a worker and Australian citizen, and the capacity to organise that comes with it. I benefit directly by way of maritime workers having the power to gain better wages, safety standards and conditions of employment in our industry through our membership of the Maritime Union of Australia. I also benefit from a Voice as a worker in general, and as an Australian citizen, through unions coming together in the Australian Council of Trade Unions, as a Voice to advance workers rights in state and federal laws and policies. All workers, including workers who are not members of a union, benefit from National Employment Standards, Award conditions, safety regulations, workers compensation and superannuation guarantees that have been achieved and are defended through our unions. Most Australians would have a much lower quality of life without unions – without a Voice.
4. Point (2) above applies specifically to Aboriginal and Torres Strait Islander people as well. Firstly, through the solidarity from workers and their unions in many First Nations actions for

self-determination, land rights, protecting Country, treaties, equality and justice – such as the Pilbara Strike, the Gurindji Wave Hill Walk-off and the Noonkanbah Dispute. And secondly, through representative organisations established for or by First Nations people during colonisation and to date, such as the Australian Aboriginal Progressive Association (AAPA), Aboriginal Advancement League (AAL) and the Aboriginal and Torres Strait Islander Commission (ATSIC).

5. Unlike unions of workers that have a potential membership of over ninety percent of the population and the democratic power that comes with such numbers, and unlike employer associations that have significant resources to use for political influence, First Nations are merely 3% of the population without great amounts of pooled resources that we collectively control. The lands that we do control are still subject to the laws and policies of parliament.
6. The representative organisations established for or by First Nations people during colonisation and to date, including those mentioned in point (4), have all been silenced through pressure applied by authorities, or repeal by parliament. First Nations Voices that status the status quo are always destroyed. There has been no repercussion for the decision makers who silence First Nations Voices. The repercussion has only been felt by Indigenous people directly, and all of Australia through the shame of disgracefully disproportionate incarceration rates, differences in life expectancy, and the list goes on.
7. Some of the same organisations that have silenced First Nations Voices have tried to destroy the Voices of workers. In my time as a worker alone, I have witnessed multiple attempts, including the 1998 Patrick dispute, to destroy unions. Our numbers of members, community solidarity and access to finance has defended our Voice from such attacks. As mentioned in point (5), for First Nations Voices, defending against moves to silence us, have not the numbers of affected members, nor the broader community solidarity or finances, and therefore have been vulnerable.
8. A First Nations Voice that is vulnerable to being silenced by the federal parliament by repealing the enacting legislation, will be ineffective because of the risk of being silenced, and will almost certainly be destroyed by a hostile government.

Recommendation 1

The question of the constitutional form that the Voice will take is not separate to the question of the design of the model. Any Voice model without this constitutional underpinning is likely to fail. The First Nations Voice model must include that it should be constitutionally enshrined.

Recommendation 2

The Government must honour its election commitment to a referendum once the model for a Voice has been settled.

SEQUENCE OF REFORMS

9. A First Nations Voice should have the power, capacity and political will to challenge the decision makers in parliament, among other organisations that may decide to act to the detriment of Indigenous peoples.
10. A First Nations Voice, like all other human organisations, will have issues with governance and leadership from time to time. Issues that should be dealt with through the rules of the organisation, legislation, democratic accountability, and law enforcement.
11. There is great momentum in Australia to change the constitution to recognise and empower First Nations peoples – to return us to our rightful place as the custodians and as decision makers on Country.
12. If the First Nations Voice is merely legislated, it is likely there will not be a referendum to enshrine it. This is because as stated in point (9), the decision makers in parliament, having been challenged by the advocacy of the Voice, will not want to pass a Referendum Bill toward enshrinement – and further empowerment of – the very Voice that is challenging them. As in point (8), a merely legislated Voice – a Voice not constitutionally underpinned – will almost certainly be destroyed.
13. Also, a referendum held after legislation is enacted, and after the Voice has operated for a time, will likely have less chance of success because as in point (10), the Voice will have issues that may be amplified by those who oppose enshrinement of a First Nations Voice.
14. A referendum held after legislation is enacted will have lose the momentum referred to in point (11). Momentum that is vital to success. This is because some may feel that if the Voice already exists, why continue to pursue it. This momentum will also be affected by point (13) above.

Recommendation 3

Enabling legislation for the First Nations Voice must be passed after a referendum has been held in the next term of parliament.

MODEL DESIGN

15. I am concerned that the current 18 member National Voice is not representative enough of language groups or needs. I would prefer a model with broader representation.
16. This aspect of the model will be difficult to balance, and will likely need to evolve and be constantly improved. For this reason, flexibility of the Voice model is import, though any change must be led by the Voice itself.

17. Importantly, the Voice model must ensure accountability of leaders to the peoples that they represent. It must also be open to all Indigenous peoples in the region to nominate and potentially be elected to be a representative.

ALL RECOMMENDATIONS

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Recommendation 4

The Voice must be representative of the diverse populations and needs of Aboriginal and Torres Strait Islander people.

Recommendation 5

The membership model for the National Voice must ensure previously unheard Aboriginal and Torres Strait Islander people have the same chance of having their voices heard.

Regards,

Thomas Mayor