

SUBMISSION TO PROPOSAL FOR VOICE TO GOVERNMENT

Thank you for the opportunity to make this submission. As one of the large number of non-Indigenous Australians who feel strongly that in this great country of Australia there should be no section of our community suffering disadvantage, I welcome any opportunity to relieve Indigenous disadvantage and any opportunity to find a way to overcome the sense of grievance and injustice felt by many Indigenous peoples so that a collaboration between the Indigenous peoples and the non-Indigenous can produce an harmonious country benefiting all.

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INTRODUCTION

This is written with the caveat that it is not a work of scholarship so although I have attempted to ensure factual correctness my resources are limited and I apologise for any unintentional errors. I am non-Indigenous and cannot claim legitimacy from ever having worked with Indigenous peoples. The most I can claim is to have lived next door for quite some part of my childhood to a wonderful aboriginal lady and her family in a small country town and to going to school with two aboriginal children in an even smaller country town. So, this is simply a submission from someone who cares. Someone who cares that Indigenous peoples have historically been dealt with unjustly and that grievances remain, that history does not go away and its consequences must be dealt with. I care when Lidia Thorpe states that, despite standing for and being elected as a Senator to the Parliament of Australia, she does not identify as being Australian. I care that we are evidently still missing something of importance to Indigenous people despite the attempts Australia as a country has made, most particularly in the last half century. I mention the following simply with the aim of trying to determine what is going wrong. I do not know the current figures for spend on the Indigenous peoples but in 2016 Warren Mundine stated that \$30 billion was spent each year on what was then 500,000 Indigenous people. Efforts have been made with regard to representative and governance structures, education health housing and social welfare initiatives, positive discrimination education and employment measures, land and sea rights to the extent that I understand 40% (and set to increase) of the Australian landmass including I understand 80% of the coastline of the Northern Territory is under Indigenous title, heritage rights (in fact Uluru the iconic symbol of Australia is Aboriginal controlled), cultural recognition, Indigenous Protected Areas providing employment enabling retention of connection with land, compensation and redress funds for perceived injustices including the around \$2bn Indigenous Land Fund for dispossession of native title, grants, recognition (flags, welcome to and acknowledgement of country, road signs indicating Indigenous lands, State constitutions, Federal legislation, unique status with regard to the right to live in Australia even if not a citizen as acknowledged recently in the High Court case of *Love v Commonwealth*), Indigenous history inclusion in the school curriculum, acknowledgement of historical wrongs and despite, significantly, recognition of the unique and continuing status of the Indigenous peoples in the Mabo decision nearly twenty years ago.

The Indigenous population of Australia have possibly the oldest surviving culture in the world. There is some evidence that they may have lived in Australia up to 60,000 years ago. They were the inhabitants of this country at the time of British settlement. There is no doubt that historically great injustices have been visited on the Indigenous population and the dispossession and dispersals, the brutal frontier violence, the attempts to assimilate, the stolen generation, stolen wages, unequal wage and welfare rights, unequal voting rights and many other instances of discrimination (some of which are tragically documented in recently released archives of Western Australia) carried out by people and institutions who, though they are long gone, are part of the memory of this country. There is no shortage of concern for these and no shortage of concern for the anger it is evident has been inherited by new generations of the Indigenous populations.

However much has been done to redress the injustices and there is no shortage of goodwill.

With the matters above in mind, it is of great concern to me that this initiative will be yet another instance of efforts being made to heal the grievance which in itself will not fulfil that purpose. There are many who would argue that as the Indigenous population of Australia is estimated to be around 2.8% and the Indigenous representation in Federal Parliament is 2.7%, that the Indigenous peoples are already properly represented in the Federal governing structure of Australia and that this is the proper forum to resolve issues as it is for the remainder of the Australian people. However it is certainly important that any group that is a minority of the population has a way to represent its views, and even more so for people who have been dispossessed in the manner of the Indigenous peoples. However, before we take this step of organizing yet another Indigenous representative body, I wonder, given the proliferation of Indigenous voices to government already in existence through numerous bodies, the best approach would be firstly to consider what is already in place and secondly to consider exactly how the Indigenous people wish to interact with/ be part of Australia, that is, in particular, what exactly in concrete practical terms is meant by self-determination. With regard to the latter, there are, the traditional protest call "always was, always will be Aboriginal land", and "It's our Country", and Indigenous only businesses, and Indigenous only political structures. Vanessa Kitchett of the Noongar people stated after the finalization of the \$1.3bn Noongar settlement which included 200,000 square kilometres of land South West of Perth, "we have to write our own story". Yet there are others who while wishing to retain their own Indigenous culture believe as stated by Jacinta Price "we want to be part of the fabric of this country like everyone else.

If, after consideration as stated above, we are to continue with a proposal for a Voice it should be made clear and accepted that this is the body intended to provide for self-determination for the Aboriginal and Torres Strait Island peoples. There is much talk of the fact that the purpose of this proposed Voice is to habituate the Australian people to an Indigenous self-determining body, with the purpose of continuing with further changes and having a Voice embodied in the Constitution. If this is the case, it is fair to the Indigenous peoples and to the non-Indigenous people to face this properly, to be transparent with the Australian people both Indigenous and non-Indigenous and to ask, firstly, whether there should be a separate democratic Voice for the Indigenous peoples, and if the answer to that is yes, whether that Voice should be enshrined in the Constitution in a manner suggested by Noel Pearson or in the manner suggested by others, or whether it should be a legislated body only. There is talk of the need for a treaty and a Makarrata or truth telling Commission (indeed some States of Australia are already proceeding separately along this path). I believe these matters need to be addressed "up front" when proposing a Voice to government, so that some resolution may be attained and there is not an ongoing piecemeal approach. In fact one could argue with regard to a treaty that the Federal and State governments already have a multitude

of treaties with the Indigenous peoples. The numerous agreements with the traditional owner groups under Native Title and with traditional owner groups and others under the various land legislations are in many ways a treaty concerning the land of that traditional owner group. We have a Closing the Gap agreement with the Peak Bodies. We have agreements with representative bodies, as just some examples the Victorian First Peoples Assembly, the Torres Strait Regional Authority, the ACT body the Aboriginal and Torres Strait Islander Elected Body (ATSIEB), the Land Councils including the important NSW Aboriginal Land Council and the important land councils of Northern Australia, we have agreements with Empowered Communities, the Yorta Yorta Nation, we have the Noongar settlement, and many others. We have the redress schemes and court decisions compensating Indigenous peoples for past injustices. We have positive discrimination schemes for employment and education. We have grants to support various Indigenous bodies. These could be all investigated and brought together in a cohesive whole as treaties dealing with various aspects of dispossession. In fact when these matters are all taken into account, much of the aspiration and spirit of the United Nations Declaration on the Rights of Indigenous Peoples have already been made a reality in our country. If it is thought to be helpful there could also be a Makarrata Commission. It has been reported that "truth telling" while approached with a spirit of goodwill after the release of Mandela did not really help in the South African situation in the long run. However if both Indigenous and non-Indigenous people are prepared to keep an open mind to each other I believe it may help.

May I finish this introduction with two quotes from Nyunggai Warren Mundine. The first was in January 2014

"However, for real reconciliation, it is not enough that the country says sorry, feels remorse, rejects racism and seeks to make amends. It would not even be enough to close the gap. For real reconciliation, Indigenous people also need to forgive. I'm not suggesting that Indigenous people should forgive wrongdoers as individuals. However, I do believe the time must come when Indigenous people forgive Australia as a nation. Indigenous people have every reason to be aggrieved and angry about the past. As a people, and as a nation, we must never forget it. These events cannot be undone. Indeed, the most heinous wrongdoings against Indigenous people were committed by people who are now dead. This is a permanent, irreversible part of our history. So Indigenous people now have two options: continue to feel anger at the nation for something the nation cannot change. Or leave these events in the past, draw a line in history and allow the nation to start with a clean slate. Continuing to feel anger can manifest itself in a number of ways - for example, always assuming the worst of Australian authorities; talking about atrocities of the past as a way of shaming or criticising the nation today; pouncing on a single word or turn of phrase and amplifying into something it is not; or equating patriotism with racism. Drawing a line in history means Indigenous people permitting themselves to love their country, express patriotism, take pride in Australia's successes and achievement, and feel part of Australia as a nation, in addition to their own Indigenous nations. We can have all the reconciliation action plans that we like, but there will be no reconciliation until Indigenous people are willing to accept the nation's apologies; until we as Aboriginal and Torres Strait Islander people acknowledge Australia's right to exist."

The second was in January 2018.

"At last year's United Nations' Expert Mechanism on the Rights of Indigenous People, I met delegates from many countries with indigenous populations. Few come close to Australia's record in protections and respect for indigenous people and cultures. Some are as bad as Australia was in the past. To those who condemn Australia because of history or claim it's still a "racist nation", I say name me another country with Australia's diversity that's better, more harmonious, more respectful

of difference, more embracing of its Indigenous heritage than Australia. No nation is founded on purity. Even nations that are standard bearers of liberty and justice, models of progressiveness and enlightenment, have bloody and brutal histories. Human history is a record of humans: the brutality that humans are capable of and the incredible capacity of humans to advance, learn from wrongdoing, build better societies and improve the quality of all life. I don't judge a nation by the worst of its history but by how it overcomes that history and its vision for the future. Australia has achieved things no other nation has."

OVERVIEW OF THE PROPOSAL

1. Advisory only. The very first point that needs to be made is that the Proposal for a Voice has been promoted as designing an advisory only body. It has been stated that being an advisory body there is no way it can be regarded as a third chamber of Parliament. However although design of the National Voice is advisory only, it is proposed that the Local and Regional Voices not only advise but work with government to undertake strategic planning, agree how investment and service delivery will align, and co-design strategies, service delivery, monitoring and evaluation. This remit is clearly beyond an advisory model.
2. Nebulous nature of Local and Regional Voices. It is difficult to comment on all aspects of the structure of the National Voice without making some assumptions and decisions as to the structure and framework of the Local and Regional Voices. Indeed, although I understand and appreciate the democratic wish for each region to determine its own structure depending on its own cultural preferences, I believe that some criteria need to be detailed in order that these Local and Regional Voices are truly representative and their structure is not taken over and determined by "elites", a concern that has been repeatedly expressed by the "grass roots" Indigenous people themselves. I understand that the Report of the Social Justice Commissioner in 2005 looked at surveys that had been undertaken in the regional communities and outlined the difficulties in attempting to establish regional organizations after the dismantling of ATSIC and the lack of capacity at the regional level for Indigenous people to organize themselves into a regional structure. Much has happened in the intervening decade and a half but nonetheless it may very well be that an education/preparation agenda needs to be undertaken before meaningful representation can take place. As mentioned above I do not have the knowledge of the great variety of representative structures in use, but I note that out of all the attempts to create representative structures after the dissolution of ATSIC came the Murdi Paaki Regional Assembly in Northern NSW and Ngaanyatjarra Council and these may provide some guidance. Other bodies, for example, such as the First People's Assembly in Victoria, the Torres Strait Regional Authority, ATSIEB, the Deputy Ombudsman in NSW and its implementation of the Ochre Plan, the Aboriginal Councils in Queensland, the Empowered Communities in New South Wales, may be looked at for best practice determination of a set of criteria for true representation.
3. Timing, Process, and Consultation with existing bodies. As it is currently set out in the Proposal, the structure and establishment of Local and Regional Voices described would seem to involve many years of work and negotiation not only at "grass roots" level but also with the multitude of Indigenous bodies already operating, many very successfully delivering, contesting rights and providing and overseeing the delivery of services. Concurrently with the development of the National and Local and Regional Voices, there are

State-wide organisations already developed and being developed, there are sub-State and multi-State organisations already strongly operating delivering and contesting rights and providing or overseeing the delivery of services. It would seem essential to, as a very important first step, to correspond with these many Indigenous bodies to obtain their views on the structure of the Voices and their suggestions for linking into the National Voice and the Local and Regional Voices. Perhaps this has already been done but these ideas and approaches have not, to my knowledge been referred to in the accompanying documents. In fact, as mentioned above, it would seem that what is needed first is a detailed evaluation of the existing initiatives.

4. Legitimacy. A difficulty for any new Voice, National or Local and Regional, with the plethora of existing Indigenous organisations, will be legitimacy. It has been stated that the Voice will not take over the responsibilities of any existing organization or act as a “go-between” or gatekeeper. How will the Voice carve out a responsibility for itself so that it is regarded as the “Peak Body” representing Indigenous advice and not just another Indigenous representative body, both from the point of view of the Indigenous people and also the governmental and non-government organisations working with them. Acceptance within the Indigenous community itself is a primary concern. I have read that many people did not participate in the vote for the National Congress as they argued that the views put forward were not those of the remote communities. There have been views expressed in the media that in the opinion of many of the “grass roots” Indigenous persons the concern should be rather on matters specifically affecting the community, for example crime including domestic violence, housing, employment rather than being concerned with the Voice. The most well known current proponent of the primacy of local issues is Jacinta Price. Additionally a number of influential Indigenous persons have vocally expressed their opposition to the Voice Proposal, notably Noel Pearson and Lidia Thorpe each for their own reasons. Also, “What do I care about a Voice”. (website Creative Spirits) “It’s a waste of time for people to be even talking about it.” Gary Foley quoted in “It’s Our Country” at p 147. Michael Mansell suggests a more radical proposal of a completely new Indigenous state. How are all of these conflicting ideas to be reconciled to give legitimacy to the proposed Voice? Without some means of establishing this legitimacy I believe this initiative is doomed to fail.
5. Clear and unambiguous advice. Need clear direction to government on its delivery of services. We are in the unenviable position where organisations are “worried” to intervene in child protection issues for fear of being accused of another “stolen generation”. They are cautious about their intervention in criminal matters whether that be domestic violence, pedophilia or rape issues because of the charge of being racist. They are unsure how much they should intervene, even at the request of other Indigenous persons, into corruption and other misuse of money in Indigenous bodies because of the possibility of being called racist or interfering in the legitimate business of Indigenous people (note the recent case of the alleged corruption concerning half a billion dollars set to flow into aboriginal corporations in the Kakadu region and the request for government assistance). Anecdotally, non-Indigenous persons are even frequently generally concerned about expressing an opinion on how to best overcome Indigenous disadvantage which does not accord with the view of the Indigenous “elite” for fear of being declared racist and even possibly losing their job.

6. Independence. Funding will be from the Commonwealth or State governments. Will this not impact on the independence of the Voice and should there be some consideration of some type of seed funding and then after a period of time self-funding, through perhaps subscriptions, or generated through Indigenous activities. (Note that the NSW Aboriginal Land Council was given seed funding of 7.5% of non-residential land tax in NSW for a period of 15 years and the National Congress was also given seed funding.) I realise that the funding issue is to be dealt with later but I believe that it is relevant to the independence of the structure being proposed and also relevant to the chance of the Voice succeeding.
7. Engagement as respected contributors to the Australian nation. I believe that this is extremely important for the legitimacy of the body within the Indigenous and non-Indigenous population. Nowhere does the Proposal make reference to the fact that the Indigenous population should consider the issues facing the Australian nation as a whole in developing its advice concerning Indigenous issues. It is self evident that it is in the interests of both the Indigenous peoples and the non-Indigenous people that Australia be a prosperous and stable country. It is important for the status and self-respect of the Indigenous peoples that this Proposal does not become simply an argument for welfare by whatever means it is delivered. I have read that Noel Pearson referred to the idea of the National Congress as a “blackfella’s wailing wall” and claimed it would be a forum for victimhood. The structure must foster the qualities of responsibility and self-reliance that would make a contribution to the Indigenous people and to the life of the nation as a whole rather than be born in negativity. If I may steal from someone without attribution as I cannot remember who said it –“ Rage cements identity but it is not always the bedfellow of reason or of the correct path to a better outcome.”
8. Who can vote in a representative structure. In any representative structure that is proposed how is it to be determined who are peoples of the Nation or Clan in that particular region who have the right to a say for that area. I have noted that many Indigenous persons refer to a number of ancestries or Nations/Clans, for example Nyunggai Warren Mundine was born into or descended from Bundjalung through his father and Gumbaynggir and Yium through his mother. It would be iniquitous, if not to say confusing if one person had one or two or three votes depending on his or her ancestry. There needs to be a procedure to determine claims to membership of a traditional group or a local/regional grouping and a procedure to stop duplication.
9. Tension between rural and remote traditional people and urban. The majority of the Indigenous population are not the traditional Indigenous people still linked closely to their traditional land living in desperate circumstances due to the lack of economic opportunities and loss of Indigenous culture. Most, 82% according to census predictions, live in on or near the large cities and towns or regions where for the majority their lives are no different from the rest of Australians. I am happy to be corrected but it appears that it is the former group who are most in need of help and representation. The design of the Voice should ensure that these most disadvantaged have their own say and are not simply effectively controlled by what have been called the “elites”. In 2012 it was reported “Most (85 per cent) Aborigines and Torres Strait Islanders live in major cities and regional towns, side-by-side with other Australians. Most—more than 60 per cent (330,000)—work in a range of occupations from low skills through trades to professions and management. About 68 per

cent own or are buying their homes. Their children attend mainstream private and public schools where they perform like other students with more than 90 per cent passing national minimum literacy and numeracy standards. More than 70,000 Aboriginal and Torres Strait Islander students are enrolled in vocational courses and more than 11,000 in universities, including a substantial graduate enrolment. More than 25,000 have graduated in law, medicine and other professions. There is no “gap” between these Aborigines and Torres Strait Islanders and other Australians. They vote like other Australians and otherwise participate in civil society without losing “a sense of difference and pride in their Indigenous background: Their ancestors will forever be Indigenous and their ancestral places will always be Indigenous.” (Quadrant) It also should be recognized that according to one report around 80% of aboriginal people in the cities are married to non-aboriginal people. This results in an inevitable blurring of the distinctions between Indigenous peoples and non-Indigenous and so leads to confusion on what issues are of primary importance. However it has also been stated many times that many Aboriginal people wish to live on their traditional lands. The problems in many of the remote communities are well documented from unemployment to crime/violence in its many forms. Despite this we are told that these communities wish to remain intact and it will be remembered that in 2015 hundreds of thousands of Australian people walked in support of this stated aim of the Aboriginal people. How to reconcile this wish to live remotely with the delivery of services to “Close the Gap” must be high on any agenda.

Who will the proposed Voice represent and how will it reconcile differences.

10. Transparency and accountability. This goes to, but is separate from, legitimacy. For the best performance of its operations in support of the Indigenous peoples an obligation and process need to be set out in the structure to ensure both transparency and accountability.
11. Formal recognition of the Australian government. The principles set out in the United Nations Declaration on the Rights of Indigenous Peoples 2007 provides for the right of Indigenous peoples to autonomy and self-determination but it also provides that nothing within the declaration should be “construed as authorizing or encouraging any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States”. It has been reported that many Indigenous peoples do not regard themselves as being Australian. I would submit that the United Nations Declaration on the Rights of Indigenous Peoples would ask of Indigenous peoples who participate in the prosperity of the country in which they live to regard themselves as Australian citizens.
12. Separateness. The proposal for a Voice to government carries an immense responsibility to ensure that it is a positive force. It would be foolish not to fully recognize in all of its consequences that by creating this structure, we are cementing in the perception, and the resultant reality, that Indigenous people are different from the remainder of other Australian peoples who are of a multitude of diverse heritages (not simply white and of British heritage). Differences are already being created with the development of Indigenous only businesses, Indigenous only rights in relation to land, positive discrimination in relation to employment and education opportunities being created, heritage rights, separate flags, acknowledgement and welcome to country, but a separate Voice structure makes it abundantly clear that we are not one but two. I make no comment as to whether this is a

“good or a bad” thing, there are arguments for both sides but I believe it has to be fully accepted by both Indigenous and non-Indigenous people that this is what is happening. The structure being proposed is clearly not designed simply to relieve disadvantage, to “Close the Gap”, or to settle historical grievances concerning land, heritage, “stolen generations”, stolen wages, or other acts of dispossession, there are other established groups both Indigenous and non-Indigenous addressing these issues. The Voice will continue as a body of self-determination forever emphasizing the separateness of Indigenous peoples. Whether it is called discrimination because of race or some other less inflammatory terminology avoiding the race word, the reality remains the same. It is important to recognize that this would not be simply a matter of cultural differences, many other sections of our communities have cultural differences which do not require a structure of this nature, it goes further. It is a body that is set up as a separate polity representative of the Indigenous peoples only. This must be fully accepted by all those who go along this path. It is very important also to recognize that many Indigenous people are as integrated into the Australian community as other cultural groups, so if this Voice is to proceed, a roadmap for the ongoing future purpose of this body should be developed.

13. Is this the best way forward. I realise that this is not within the scope of this proposal. In the introduction to the proposal for the Voice it was stated that the matter has been dealt with otherwise and it is no longer up for discussion. In essence however I believe the parameters of the current proposal are too narrow to provide a successful outcome. I realise that critiques are more pervasive than solutions, nonetheless I ask to be able to make the following points on representation:

-Much has been made of the fact that other countries, New Zealand and Canada for example have made a treaty with its Indigenous peoples, and much has been made of the representative nature of the Sami Parliaments of Norway Sweden and Finland, the Indian nations in the United States of America, particularly the Navajo Nation, the Assembly of First Nations in Canada, and of the reserved Maori seats in the New Zealand Parliament. But it is clear from reading about the continuing struggles of these peoples that these things have not benefited their Indigenous populations to the extent of their aspirations.

- It is very clear from numerous commentators that the Indigenous peoples of Australia do not wish to “assimilate”. This is completely understandable if the interpretation of “assimilate” is to lose one’s own culture and become what is traditionally referred to as a WASP. They have this in common with many other sections of the multicultural Australian community who do not wish to give up their heritage or culture when they become Australian. Australia is a place of many cultures and is all the richer for it. It does not need assimilation in this sense. It is better without it.

-The Indigenous peoples have a special place in the history of this country for reasons that are evident, but despite this they are a minority of the population. It is clear that whenever there is a minority group which has special interests different to others of the population that the establishment of lobbying groups can be very important to secure proper representation.

-What is needed is a structure which settles all of the claims and grievances of our Indigenous peoples so that in these challenging times the great talents of our Indigenous population could contribute towards making both Indigenous and non-Indigenous people more prosperous and harmonious. Paul Keating after Mabo in his now famous Redfern speech nearly twenty years ago said Mabo is an historic decision -and we can make it an

historic turning point, the basis of a new relationship between indigenous and non-Aboriginal Australians. Twenty years on this still has not happened. Many other occasions have been filled with hope of a new relationship between Indigenous and non-Indigenous people, the creation of ATSIC, the institution of the Social Justice Commissioner, the Sorry Statements, the land rights legislations, the recognition in legislation and State Parliaments, acknowledgement and welcome to country, amongst others, but none of these have forged a new relationship . The reason for this needs to be addressed before we move forward.

ABORIGINAL AND TORRES STRAIT ISLANDERS NATIONAL VOICE

Role

1. Noted that the Voice will not replace existing bodies or structures. This goes to both legitimacy and efficiency. There needs to be a review of existing bodies and a plan for how the interrelationship is to work. Without this there will be a confusing duplication on behalf of the Indigenous bodies and also the Federal and state governmental structures supporting them. If the Voice is to be truly the representative body of the Indigenous peoples, there needs to be some rationalisation of the multitude of organisations which currently are interacting with government at all levels. The Voice needs to be a “Peak Body”. I recognize that this is a difficult issue to approach given the many vested interests, and many of whom are doing an excellent job for their Indigenous members, but in order that the Voice does not simply become yet one more organisation among many, some rationalisation coherency and authority needs to be established.
2. Re two full time co-chairs and part time general members – how often will these meet, how will the priorities be determined? Processes need to be put into place, for example, how will they agree on the advice or on the chosen priority to be put forward to government, who will prepare and deliver the advice, will the interaction with the government be ongoing or on a timetabled basis (except of course for emergencies), who will determine on what issues the government must consult, may consult and are these to be immutable (on this latter point I note that some suggestions are put forward in the full scope document).
3. Noted that the obligation is to be non-justiciable. I realise that this is a source of concern but it may be that it is simply being realistic and negotiations entered into in good faith without continual threat of legal proceedings are generally the most productive. This advice model seems to be working well for other Indigenous organisations and indeed other organisations that advise the government in general. Further, the mere fact there is an obligation to consult, and the fact this consultation is proposed to be made publicly transparent has proven to be a watchdog on government actions in other situations.
4. It should be noted and accepted that the Australian government and the Parliament are expected to make decisions for the benefit of the nation as a whole and this may not always be the best possible outcome for some sections of the community, Indigenous or non-Indigenous. This is necessary for a balance of equity. Though of course it is not unreasonable to expect that all sections of the community which would be impacted by a decision should be considered.

5. Noted that the Voice will not be responsible for service delivery. This is reasonable when it is considered that the Indigenous peoples are part of the Australian nation. It also makes sense on several levels. Firstly there would undoubtedly be duplication of effort in delivering services to Indigenous and non-Indigenous persons. Secondly, it would require a substantial structure and budget to take on this role. However, as a primary source of concern is that non-Indigenous organisations fail to understand Indigenous needs, the Voice should in its advice give comprehensive recommendations on service delivery. It is not unreasonable to expect that it should take some account, formally, of the cost implications of its advice, without having the obligation to prepare a full budget.
6. Noted that the Voice will not be a clearing house for research and will not undertake program evaluations. I am assuming that this means that it will not conduct detailed evaluations of government proposals. However if the Voice declines to provide advice on any particular government proposal on which its advice has been sought that matter should be tabled in Parliament.
7. To what extent will the National Voice determine its own agenda? The Voice has been promoted on the grounds that the community at “grass roots” level are not being heard, so what obligation will be put on the National Voice to deliver the priorities as are notified to it rather than those generated by itself.
8. Related to point 7, some broad indication should also be given as to what is the agenda of the Voice. As well as “Closing the Gap” issues and issues relating to land and heritage rights, it also needs to be considered and openly discussed what rights should the Indigenous peoples have that other Australians do not have. As instances, various legislation gives Indigenous peoples traditional rights to hunting and fishing that are not allowed to other Australians, the Qld government has recently upheld adoption practices traditionally used by Torres Strait Islanders that are different from adoption laws applying to other Australians, Northern Territory laws do not apply on Aboriginal land in some circumstances, there is talk of traditional laws applying in relation to criminal matters. How far is it proposed the wish for “increased agency in our own lives” extend.

Selection of Members:

It actually is difficult to make a definitive comment on the proper model without first determining how the Local and Regional Voices are to be created. The direct election model, provided one could encourage sufficient engagement, does provide a better representation model in that the Voice would be less a voice of the “elite” which can give ‘too much talk from those not suffering’.

However assuming the model for the Local and Regional Voices does in fact provide a proper “grass roots” representation I offer the following comments:

1. I would suggest that the preferable method is the Structural Membership Link – Model 1 - for the following reasons,
 - Risk of poor turnout for elections based on historical data
 - Difficulty of determining indigeneity and so qualification to vote at the local electoral level

- Cost of running national elections on top of local and regional elections for the Local and Regional Voices.
 - If membership of the National Voice is determined by voting, there could be lack of coordination and/or agreement between those determined to be regional representatives vs national representatives.
 - Given the fact that the regions at National level are to be based on State or Territory areas and are to produce only a suggested 16-18 representatives, it may be difficult to claim that these representatives properly are representative of views at the “grass roots” level in the elected model, particularly given the number of disparate nations and clans involved.
2. Within the alternatives for Model 1 I would suggest the better model is that the Regional Voices should determine collectively the national representatives for that State, Territory and Torres Strait Islands for the reason following. The regional governance structure proposed is for Regional Voices. The Regional Voice is best representative of the Indigenous population at the “grass roots” level. I believe it introduces an unwanted complication to introduce other bodies, State/Territory/TSI assemblies into the National governance structure. This complication could create confusion and uncertainty as to policies that are being promoted, both from the Indigenous perspective and from the government perspective. I believe it provides a more coherent structure if these bodies feed into either the National Voice or the Regional Voices.
 3. Equal numbers of each gender. This runs into the difficulty of positive discrimination and the difficulty of disenfranchising to some extent persons who do not fit into the bisexual categorisation. I make no comment as to how this is to be equitably dealt with. However, the role of Indigenous women has been frequently noted to be of great importance generally and it is evident that many of the matters important for the well-being of the Indigenous community in general impact disproportionately on Indigenous women, namely substance abuse, homelessness, family violence and abuse of children. For these reasons alone it is important to have equal representation of women. It also should be recognised that the United Nations Declaration on the Rights of Indigenous Peoples draws attention to the needs and right of Indigenous women and calls for action to protect them from violence.
 4. Re Eligibility, it would seem sensible in the current environment to have ethical eligibility requirements set by the Ethics Council. These however should be no more restrictive or lax than those required for MPs and Senators of the Federal and State governments, unless there are clear cultural reasons for this.

Membership numbers/Appointment of members

1. The difficulty in determining numbers is in finding a balance between sufficient representation and unwieldy numbers which would make decision making difficult. Cost is also a factor. The sometimes conflicting parameters are population, geography, Nation/Clan boundaries, and State/Territory boundaries. Using population as a measure accords with the system currently in use which determines the number of MPs in the Federal House of Representatives. The number of Maori seats in the New Zealand Parliament is dependent on registered Maori population. If a comparison is made with the Australian Federal system, using population comparisons, and using Australia Bureau of Statistics projections, Indigenous peoples are currently approximately 2.8% of the Australian population (according to projected census figures) so the number of representatives should be approximately 3% of the number of members of the Federal Parliament. This would indicate that the number of members should be seven (using the number of 3% and rounding up).

Historically however this is a low number for such a representative organization, particularly one which represents such a disparity, around 250 Nations with up to 7 clans within each of those Nations. (I have found it difficult to determine the precise number of Nations and clans but this figure was suggested by one commentator, though others suggest around 300 Nations or clans.) Canada's Assembly of First Nations represents 634 First Nation communities which include greater than 900,000 people (a greater number than Australia which has been estimated, I believe, to be between 713,000 and 721,000). It is led by a national chief who is elected for a three year term assisted by an executive committee of 10 regionally elected region chiefs. The similarities between Australia and Canada could indicate that this is the appropriate number. However, in contrast, the Sami Parliaments of Sweden Finland and Norway have each between 21 and 39 representatives for a total population estimated to be around 80,000. The National Congress of Australia's First Peoples had 120 representatives (but still found that some Indigenous persons did not agree with the Uluru Statement from the Heart). My understanding is that the last national body which had regional democratically determined representation was ATSIC. ATSIC had 35 elected Regional Councils which formed into 16 zones and each of these zones nominated one Commissioner to the Commission. The map created by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) which attempts to represent the language social and nation groups of Aboriginal Australia (using published resources from the 18th century to 1994) divided this large number of groupings into 18 regions (I do not know on what basis but can only suggest that it may be geographic). With the limited information I have the decision as to number of members is essentially arbitrary to some extent but it would seem that all of the factors mentioned above need to be considered. It may be that this was what was done in the structure of ATSIC. So, if the ATSIC numbers of 16 zones were accepted for the period of time of its operation then perhaps this is a good start.

2. Appointment of members. It is clear that the current view from the Indigenous population is that there is a great wish to be independent of government. The National Indigenous Council which replaced ATSIC and which included appointed Indigenous experts to advise the government was, from reports, not well received as it, as reported, was regarded not to have legitimacy despite the fact that the appointees were all talented Indigenous people. The conclusion has to be that it would be best not to have governmental appointments.

Member Terms

1. It makes sense to have four year staggered terms with half the membership changed every two years to allow some continuity of expertise gained and mentoring of new members. This does raise the question of how often the Co -chairs should be elected. Presumably half of the rotated members would be women and half would be men.

Independent policy body

1. As the National Voice is set up to respond to the concerns of Indigenous Peoples at "grass roots" level it would seem that an independent policy body may run the risk of imposing its agenda on these "grass roots" concerns. It has been proposed that there be a panel of qualified people and experts on whom the National Voice can call as well as the power to establish Committees to bring in external expertise. This would seem to better meet the requirement of "grass root" involvement and direction as they would be called upon to provide input into those policies determined as important at "grass roots" level. The budget implications and mechanisms of establishing Committees needs to be considered and a process established for this.

Legal Form

1. As noted above, it is clear from canvassing of the Indigenous people that they wish the body to be independent of government. If it is set up as a Commonwealth body, even if its independence be guaranteed in legislation, the perception will be that it is government controlled. Accordingly I would suggest the better option would be a privately incorporated body similar to the one established for the National Congress and the First Peoples Assembly in Victoria.

Membership boundaries

This raises many of the same issues referred to above in the paragraph on membership numbers.

1. The first issue is that it would be desirable for the boundaries to bear some relationship to the regional groupings, nations or clans, of the Indigenous population themselves. This is probably best expressed by Nyunggai Warren Mundine "We aren't one people and we don't think of ourselves as one people. We think of ourselves in terms of the countries or nations we're born into or descended from." It has been stated that the "iron rule" in most of the hundreds of Aboriginal nations is that you can only speak for your own mob. Governance structures have been established under land rights legislation and under Native Title laws that relate to traditional owner groups and otherwise. These areas do not necessarily follow along state and territory lines.
2. The second issue relates firstly to the fact that the structure of the representative governments, state and territory, with which the Regional Voices will interact have of course state and territory boundaries and secondly and possibly more importantly for establishing agreement as to the constitution of the Regional Voices, the current representative communities that have already been formed by the Indigenous population (for example Victoria First Peoples Assembly, Thriving Communities in Queensland, Torres Strait Regional Authority, ACT Aboriginal and Torres Strait Islander Elected Body and others in planning) have been and are being developed along State and Territory lines.
3. The third factor is the numbers of the population in each of the area boundaries.

Any decision will necessarily involve a compromise with perhaps the best approach being to start from the Regions representing the language social and nation groups of Indigenous Australia as determined by the AITSIS map, overlay the population in each of those regions so that they are approximately equal, and then fit these as best as possible into State boundaries.

LOCAL AND REGIONAL VOICE

The framework for the Local and Regional Voice is much less determined in this Proposal than that for the National Voice. There may be several reasons for this and these are canvassed below.

1. One amongst these may be the multitude of organisational bodies that already exist at the regional level and the need to deal with their various roles, responsibilities and to have consideration for the structures they have already set up and the successes they have achieved. As mentioned above, these organisations obviously have a vested interest as with the successes they have achieved, they would reasonably want to protect those whom they represent. However, unless early discussions are held with these groups to determine how

they will interact with the new body, I would think that the Local and Regional Voice proposition will fail. There are many of these organisations which, so far as I can determine, have agreements with either or both State and Federal governments. For example,

- On a general level there are the Native Title Corporations and Prescribed Body Corporations which represent Traditional Owner Groups who claim right to Native Title and who administer any monies being compensation, royalties, or other categories of funds that arise out of a Native Title Corporation for the good of the Traditional Owner Group they represent.

- There are the Land Councils, land trusts and other land holding authorities who also may administer Native Title determinations but which also administer funds that result from other Indigenous land ownership determinations. The most prominent of these which have come to my attention are the large NSW Aboriginal Land Council, the Northern and Central Land Councils in the Northern Territory, the Cape York Land Council, the South West Aboriginal Land and Sea Council in Western Australia, the Kimberley Land Council, but there are many many others.

- In each State there have been set up or, are in the early stages of setting up, State-wide representative assemblies. In Victoria the First Peoples Assembly is operating, in the ACT there is the ACT Aboriginal and Torres Strait Islander Elected Body/Regional Authority, and there is the Regional Authority in the Torres Strait Islands. All of South Australia, Queensland, Northern Territory, Western Australia are in the process of or have committed to setting up Indigenous organisations with which to negotiate treaties.

- There are a multitude of other "sub-State" representative bodies, for example only, as there are many, the Yorta Yorta Aboriginal corporation originally negotiated separately with the Victorian government as it did not agree with the Victorian First Peoples Assembly. (I have been unable to determine the current position.) NSW has the Murdi Paaki Regional Assembly representing 16 communities in Western NSW. It has also the successful Empowered Communities Organisation. There is the Ngarrindjeri Regional Authority operating out of Alice Springs. There is Deputy Ombudsman in NSW, there are the Aboriginal Shire Councils in Queensland. There are numerous Peak Bodies.

2. As noted in the comments on a National Voice, how do you determine who are the peoples of the Nation or Clan in that particular region who have the right to a say when some belong to several Clans or Nations.
3. The Local and Regional Voices are each to engage through all levels of government. Presumably this means local government and state government as the National Voice is engaging with the Federal Government. Without some coordinating body for the Local and Regional Voices this is likely to result in inefficiency, duplication and certainly lack of cost effectiveness and significantly problems with service delivery. How is this to be managed?
4. The remit of the Local and Regional Voice is to engage on policy, programs and services. How is this to interact with the National Voice and how will the responsibilities of each be delineated?
5. It is often the States and Territories which are responsible for the delivery of services to the Indigenous population. This also needs to be considered when looking at the remit of the Local and Regional Voices.
6. The Local and Regional Voices are to provide advice to others as well as government. What others? Does this mean that all persons/organisations who have any question or relationship with the Indigenous peoples are to go through each Regional Voice rather than through a government department? What administrative structure is to be set up to support this? Who is to give legitimacy to the decisions of the Local and Regional Voice as

against legal challenge? It is important that the Local and Regional Voice be given legitimacy above all other regional Indigenous organisations to avoid issues of dispute amongst members, both within Nations/Clans and in between Nations/Clans. A recent example is the important Noongar settlement in Western Australia reportedly worth \$1.3 billion to the Noongar people. Agreement, hailed as a treaty even, was made in 2015 with the Noongar people only to have the agreement challenged soon after it was concluded, and that challenge only recently, in 2021, settled in the courts, confirming the original agreement after much time and great expense. And even now a further claim has recently made by a Noongar person for \$290 billion. Issues like these make it abundantly clear that the advice needs to carry some certainty.

7. Who will arbitrate if the advice of one Regional Voice conflicts with the advice of another?
8. The scope of the Local and Regional Voice is proposed to go beyond advice to government and talks about shared decision making namely to undertake strategic regional planning, to agree how investment and service delivery will align to this agenda, to co-design strategies, services, delivery, monitoring and evaluation. The proposed Voices were promoted as being advisory only. This needs to be clarified.
9. Who and what process is to be used to determine which of the competing claims for being a Local and Regional Voice is to be successful? Again, legitimacy is an important consideration here.
10. 35 regions are proposed. Is this on the basis of the numbers of regions that were in the ATSIC region numbers and if so how were these determined? Why was this number chosen for ATSIC and were the “grass roots” people happy with this number? If the number of members of the National Voice is, say 18, the larger number being proposed, how is this to relate to the Regional Voices. Further comments on regions and boundaries have been made above.
11. What is the time period for setting up the Voice structures? There is very little detail in the framework proposal. What are the basic criteria on which an organisation would qualify as a Voice structure? I accept that each community could determine its own representative structure but there must surely be some already existing “democratic” or cultural way to determine a representative structure. There are many representative structures as mentioned above. To repeat an earlier comment, could some review be conducted of these structures to determine which would provide the best representation.
12. “All levels of government come together in a coordinated way”good luck! This is a statement and an admirable aspiration but more “bones” needs to put on how this is to be achieved.

CONCLUSION

Much work needs to be done before this proposal will produce a body that would find legitimacy amongst either or both Indigenous and non-Indigenous peoples and indeed would produce a body that would unite a nation. I believe it is imperative to look at what is already being done before this step is taken. While I appreciate the difficulties that will arise from broadening the discussion, and the benefits of taking issues one step at a time, I believe that this Proposal has to fit into a transparent broader narrative to be successful.