

25 March 2021

Dear Prime Minister,

Thank you for the opportunity to comment on the Interim Co-Design Report on the Indigenous Voice co-authored by Professor Marcia Langton AO and Professor Tom Calma AO on behalf of your government. We acknowledge the significant contribution made by the 52 members of the three Co-design Advisory Committees who prepared this exceptional document. We commend the extensive research and community consultation undertaken to produce this comprehensive report, especially within the context of the COVID-19 pandemic.

We note that the main focus of this co-design task was to develop proposals for an *Indigenous voice to government*. As such, the report clearly outlines a range of options and models to enable First Nations peoples to advise all levels of government on significant matters that affect their wellbeing and how these can be addressed.

As a group of more than 80 non-Indigenous people from a wide range of personal and professional backgrounds, many of whom have had the privilege of working alongside First Nations communities over many decades, we know that Aboriginal and Torres Strait Islander peoples are best placed to comment and select between these options, and to determine the best way forward. This is not our role. Having said that we strongly support a model that includes representation from previously unheard Aboriginal and Torres Strait Islander people.

Instead our submission makes the following points.

- a) The interim co-design report builds on the work of several previous reviews that considered options to enable First Nations peoples to have a greater say in the laws, policies and government decisions that affect their lives. The most recent being the 2018 Inquiry of the Joint Select Committee (JSC) on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples. The JSC was established by Parliament following the rejection by the then Prime Minister of the historic 'Uluru Statement from the Heart' that proposed the constitutional enshrinement of a First Nations Voice.

The current report responds to the first recommendation of the JSC Inquiry: i.e. That the Australian Government initiate a co-design process for a 'Voice that best suits the needs and aspirations of Aboriginal and Torres Strait Islander peoples'¹. As requested, Advisory Committee members have proposed a series of options for a *National Indigenous voice to government* and how this could operate in all jurisdictions, at all levels. These possible models are now subject to public consultation.

- b) But decision about the parameters of the *legislated voice* is only one step towards establishing a framework that will ensure that First Nations peoples have 'a permanent avenue for input into the policy and legislation governing their affairs'². The significant concerns that have been expressed about how easily a *legislated*

¹ Final Report of the Joint Standing Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Nov 2018). Commonwealth of Australia, ACT. Section 2.314.

² Ibid. Section 3.7.

voice can be abolished are well founded. The work done so far towards establishing an Indigenous Voice must be seen within context.

The second recommendation of Joint Select Committee is that: 'Following a process of co-design, the Australian Government consider, in a deliberate and timely manner, legislative, executive and constitutional options to establish The Voice'³. For Australia to progress as a nation it is imperative that each of these components be addressed.

- c) In narrowing the Terms of Reference for the co-design task to the legislative component, Advisory Committees were explicitly precluded from making any recommendations about constitutional recognition of an Indigenous Voice. Treaty-making between governments and First Nations peoples and truth-telling about our nation's history were also 'out of scope'. These limitations are at odds with the key tenets of the Uluru Statement from the Heart that was gifted to all Australians by First Nations people in May 2017.

Australia lags behind the rest of the world by not yet formally recognising its Indigenous people in the form of a treaty or to acknowledge the sovereignty and constitutional rights of their First Peoples in their founding documents. As evidenced by several polls⁴, this limited scope is also at odds with the strong and increasing support being shown by both Indigenous and non-Indigenous Australians for the Constitutional Enshrinement of an *Indigenous Voice to Parliament*. Moreover, respected Indigenous Leaders have publicly stated that just *legislating a voice* is not enough to achieve the structural changes required to ensure a better future for all Australians⁵.

- d) Decisions about the legislative, executive and constitutional parameters of the National Voice cannot be made in isolation. These components are integrally entwined. Therefore, before any decisions are made to implement a *legislated voice* a further structured process must be undertaken to consider how each of these aspects should operate and how they will interact with each other.

³ Ibid. Section 3.152.

⁴ 95% of Australians say 'it is important for Aboriginal and Torres Strait Islander people to have a say in matters that affect them' (Reconciliation Australia Barometer, 2018).

Almost two thirds of voters (64%) support Constitutional change to enshrine an Indigenous Voice to Parliament, while 22% reject it. ('Federal Election Vote Compass' [ABC News](#), May, 2019). The 'Essential Poll' reports: a strong majority of Australian voters across partisan lines support constitutional recognition of a Voice to Parliament ([The Guardian](#) July 2019).

A survey of 2000 people commissioned by 'From the Heart Campaign' found a majority would support a constitutionally enshrined Aboriginal advisory body to Parliament if a referendum were held today (NITV, July 2020).

⁵ Pat Turner, a distinguished member of the Senior Advisory Group of the Indigenous voice co-design process and Lead Convener of the Coalition of Peaks (NACCO), expressed strong concern that the Federal Government was pursuing a 'convoluted and flawed process' 'to advise on a voice that speaks to government... not a Voice to Parliament'. A second eminent Senior Advisory Group member, Cape York Aboriginal Elder, Noel Pearson said that group members rejected a reduced model and wanted a 'Voice to Parliament, not just a voice to government' (Croakey, 28 October 2020. Also see Pat Turner's address to the National Press Club, reported in [The Age](#) 3/10/20 & [Sydney Morning Herald](#) 30/9/20).

Based on the above we propose that:

1. Following a decision about the most suitable, representative model for an Indigenous Voice and before it is legislated, the government honour its election commitment to hold a Referendum on the *constitutional enshrinement* of an Indigenous Voice.
2. The Referendum design and information campaign be by bi-partisan committee led by First Nations representatives, ensuring that the Australian people have access to clear and comprehensive information about the Indigenous Voice.
3. The issue of constitutional amendment for a new provision for an Indigenous Voice that operates independently of Government and Parliament be put to the Australian people for a vote in the next term of Parliament.

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