



Gandangara Local Aboriginal Land Council Submission to the Indigenous Voice to Parliament Proposal and Consultation Sessions

This submission is made by Gandangara Local Aboriginal Land Council (**GLALC**) in response to the Indigenous Voice Co-design process and the Commonwealth proposals for “*an Indigenous Voice*” intended to “*provide a way for Indigenous Australians to provide advice and input on matters that are important to improve their lives.*” The process and proposals have been run by the National Indigenous Australians Agency (**NIAA**).

Background – About GLALC

Gandangara is a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**). Local Aboriginal Land Councils are statutory bodies corporate whose objects and functions are set out in the ALRA, s 51 as follows:

to improve, protect and foster the best interests of all Aboriginal persons within the Council’s area and other persons who are members of the Council.

GLALC has been Gandangara was constituted in 1984 and has been serving the interests of all Aboriginal people in South-Western Sydney and its Members since then. Our Members are those adult Aboriginal people listed on our Membership roll, currently numbering over 700 people. Our geographical remit spans six local government council areas, including Liverpool (where we are headquartered), Fairfield, Cumberland City, Canterbury-Bankstown (part), Parramatta (part), and the Sutherland Shire.

GLALC is committed to pursuing cultural, social, and economic self-determination for Aboriginal peoples. As a self-funded statutory body corporate established under the **ALRA**, GLALC has a legislated obligation to improve, protect and foster the best interests of Aboriginal peoples and



communities across the South-Western Sydney Area (s 52 ALRA). GLALC also provides support to its membership base of over 700 Aboriginal persons in the region through Community Benefit Schemes, business enterprises, and via the statutory functions to protect and preserve Aboriginal culture and heritage, and pre-eminently, to acquire and manage land in line with Aboriginal Land Rights.

GLALC has a strong track-record as a self-sufficient and self-determining Local Aboriginal Land Council, with over \$75m net assets and several entities established to deliver community and social services to its members and the wider public. These services include a private General Practice Medical clinic (Gandangara Health Services Ltd), a community and patient transport arm (Gandangara Transport Services) and a unique health brokerage service to assist Aboriginal and Torres Strait Islander peoples navigate the primary health care system (Marumali Ltd). GLALC is thus a major ‘success story’ of the representative function and potential of Local Aboriginal Land Councils, in its autonomy and self-sufficiency derived from Aboriginal Land Rights. Without the community and social services that GLALC provides to over 12,000 Aboriginal persons within the South-Western Sydney district (ABS, 2016), the disadvantage experienced by an already under-resourced demographic would be much more marked.

The Voice Proposals – General Assessment

GLALC provides support for the concept of an Aboriginal and Torres Strait Islander ‘voice’ to Parliament, respecting cultural protocols in giving that voice. Any platform that can work together with existing legislative structures to work in the best interests of Aboriginal peoples to rectify historic dispossession and disadvantage should be commended, provided that it does not usurp what is already well-established and in place. Below we respond to particular issues raised by the models proposed and the feedback from the Aboriginal community consultations held across the country.

Preliminarily, the language of the concept is problematic. The term ‘Voice’ is not original (Gadigal, Session 1), and is a ‘soft’ metaphor (Dharawal, session 2). More agency for Aboriginal and Torres



Strait Islander advisory responsibilities can be captured by stronger language consistent with the function of the proposed establishment.

Sustainability and viability of 'the Voice'

The initiation of the 'Indigenous Voice' proposal comes from the 2018 results of the recognition campaigns. Regarding the 'Voice' proposals, GLALC agrees with NSWALC's position that **Aboriginal and Torres Strait Islander peoples are being asked to respond to a set of proposals that is very different from what was envisaged in the Uluru Statement from the Heart. The government's Voice proposals are very different from a Constitutionally enshrined First Nations Voice to the Commonwealth Parliament** (Interim Report Response, p. 3).

The Uluru Statement from the Heart advocated for a Constitutionally enshrined national Voice to the Commonwealth Parliament for First Peoples to advise on laws that have a significant impact on Aboriginal and Torres Strait Islander people. The enshrinement of a Voice in the Australian Constitution (not as a preamble but with specific clauses) is a critical element in ensuring that the function of Aboriginal and Torres Strait Islander advisory Voices are held permanently. This matter was raised repeatedly by Aboriginal communities in the Community Consultation sessions (Gadigal Session 1; Gumbaynggir Session 2; Mount Gambier Session; Barngarla Session 1 and 2; Ngunnawal and Ngambri Session 3). The issue of resourcing the Voice proposal was another matter continuously raised by communities. The sustainability of the proposals is affected by financial commitment from the governments.

Function and Structure

The Voice proposals nominate options at the national and regional levels that are primarily about advising government, rather than the Parliament, on potentially all matters involving policy and programs impacting on Aboriginal and Torres Strait Islander peoples. Additionally, the models suggest that advice from the Voice will be solicited by the Governments. Rather, the Voice should be able to advise on its own initiative.



The proposal advances the establishment of local and regional voices to have an advisory role to state and territory governments on matters relating to policies and programs within their jurisdictions that impact on Aboriginal and Torres Strait Islander peoples. Although communiques from the NIAA have emphasised the commitment of the Voice to “build on what is already working” not “replacing existing arrangements”, the proposals as presented fail to ameliorate the concerns of GLALC in this regard.

Local Aboriginal Land Councils as existing representative bodies

The Local and Regional Voice proposals do not properly consider the many Aboriginal and Torres Strait Islander representative and self-determined arrangements across the country. In NSW, the proposed Regional Voice options have the potential to undermine the Land Rights network and the cultural autonomy and authority of Local Aboriginal Land Councils. This is reinforced by the community consultation sessions in NSW, where participants expressed concern for how the Regional and local Voices would work in NSW (Gadigal, Session 5), and why the specific number of 35 regions was proposed (Dharawal, Session 1; Wiradjuri Session 1), as well as the questions as to why the existing LALC boundaries was not considered as a rationale for the NSW regional division.

If a newly distinct regional division were overlaid onto the existing regional and local LALC areas, how would this be justified? On the basis of Aboriginal clan boundaries? On the basis of the electorates? The government has not made the case for how the LALC network and its functions will be protected. Statements about ‘building on what works’ are vague and ‘not replacing current arrangements’ are vague at best. How does one determine ‘what works’? Does this statement imply that if LALCs – as statutory bodies corporate representing local and regional Aboriginal persons – are not functioning as optimally as they could (and on what grounds would this be determined?) that they are therefore ‘not working’? And if they are ‘not working’, does the Voice proposal mean to slowly replace them?

In NSWALC’s response to the Interim Report, it notes:



There is a significant risk that the government’s proposals could undermine self-determination and result in conflict and a weakening of the current Aboriginal and Torres Strait Islander representative structures and shared decision arrangements making with governments across the country (pg. 4).

This ‘weakening’ of the current representative structures may not be intentional; but the result may be the same in any case. This is partially since the proposals are viewed as being in competition with the LALCs and with NSWALC. As some community participants expressed, there was general confusion over the lack of clarity about how the Voice would interact with the LALCs in NSW. Specifically, some asked whether “the LALCs would co-exist with the Local and Regional Voices” (Kamilaroi, Session 2). Others vouched for the workability of the LALC model in general, in terms of community consultation and feedback to government, and that this model should be expanded upon by the Voice (Dharawal Session 1). Others again reinforced the importance of not duplicating representative bodies that have the same function as the Voice, as this would “thin out already overused resources”, specifically the Aboriginal Land Rights structure in NSW which function as ‘voices’ (Gadigal Session 1).

The same risk of weakening the LALC functions and the LALC network in NSW was evident in community responses not only through the concern of duplication and stretching of resources, but by virtue of the fact that those persons disaffected with LALCs see the Voice as a parallel alternative to the LALC model which would allow them to have their voices heard (Dharug Session 3). Participants spoke of the “fragmented” (Session 3) nature of the Western Sydney Aboriginal community. This could feed into a movement for representation under the Voice as an alternative to LALCs. Some members of this community, that of Greater Western Sydney – which encompasses the boundaries of GLALC – noted that they do not feel ‘recognised’ or represented by LALCs (Session 1).

If the Land Council *model* is failing to represent local people in Greater Western Sydney, the proposed Voice model will not do much better, particularly if resourcing is constrained. Through land rights, LALCs at least have the financial means to be sustainable under the ALRA. Importantly, the ALRA and, by extension each LALC, have a role in determining who is (or should be) accepted as a Member of a given LALC. If some persons are “not recognised” or accepted by a given LALC,



then that is a function of community decision-making. Being accepted as a Member of a LALC is coterminous with being ‘accepted’ as an Aboriginal person by the community, and the Common Seal placed on a person’s membership confers a ‘confirmation’ of that person’s status, under the ALRA s 4(1) as follows:

Aboriginal person means a person who—

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

That is, being Aboriginal is not self-referential; it is a status recognised and accepted by the community. In the case of a Land Council community accepting a member or a person as a known Aboriginal person, with demonstrable Aboriginal lineage and heritage, this comes by democratic voting of the membership at an Ordinary Members Meeting. Of course, the matter of identity is complex and cannot be prescribed by a piece of legislation (neither is the ALRA’s definition perfect in theory or the system perfect in practice). However, the checks and balances upon recognition and representation that LALCs hold, are important in view of the problems that could arise from vague and indeterminate parameters on inclusion under the Voice models. In fact, the case against election to national seats in the Voice is put as follows in the proposal:

“An election process might make it more difficult to reflect the diversity of Aboriginal and Torres Strait Islander cultures. It may make it more difficult to reflect the ways Aboriginal and Torres Strait Islander cultural authority works in different places across the country. There could also be challenges if there was a need to confirm Indigeneity of voters as part of a national election process” (pg. 9).

But, by the same token, direct appointment instead of election could equally make it difficult to reflect diversity and cultural authority. Confirmation of Aboriginality for the purposes of voting is of course challenging as the national Census data is hampered already by non-responsiveness, under-reporting and the fact that ‘Indigeneity’ is self-reported. However, if anything, these



statements highlight the risks in building local, regional and/or national Voices in parallel with – or totally apart from – the existing cultural and statutory authority of LALCs, many of which have decades-long practices in confirming the Aboriginality of their Members under the terms of the ALRA. For this reason, the potential diminution of the LALC function is at risk through the proposals as they have thus far been presented.

Consultation and Accountability

We assert the importance of clear accountabilities on the Regional and Local Voice to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, with documentary evidence supporting the obligations, methods and means of consulting with communities and reporting back the advice to government. Structurally, the linkages of the Regional and Local Voices to the National voice, and vice-versa, should be consistently clear and present at every step. Regional and Local Voices should have a transparent mandate that defuses any confusion within communities over who they are speaking with, where their 'voices' will go, who will act on those voices and how, as well as reasons as to why – if it be the case – the communities' voices are not acted upon.

Regional and local structures must be led and governed by Aboriginal and Torres Strait Islander peoples. Importantly, we suggest they be committed to the existing Aboriginal representative bodies such as LALCs and other Aboriginal Community Controlled Organisations to support and expand upon their roles and functions rather than overriding them. This commitment should be stated in a Deed of Agreement rather than in general terms that diminish accountability. The cooperation between the Regional and Local Voice and LALCs, for example, must respect the legislative basis of LALCs operations and their histories in the regions (the same can be said in a different way for Traditional Owners as Native Title holders in NSW). As NSWALC assert in their submission to the Interim Report:

It is dangerous to suggest that the community-controlled peaks can have an advisory function to the Voice(s) – this will result in a significant weakening of the community-controlled sectors ... It would be disastrous for Aboriginal and Torres Strait Islander interests if the community-controlled sector was weakened by the government's Voice proposals both in its capacity to represent the



interests of its members directly with governments and provide services and supports that had been directly negotiated with governments (pg. 11).

This statement describes the real risk of duplication of functions, and the consequent attenuation of LALC's functions as statutory, representative, and community-controlled organisations. LALCs ought not to 'report' to or advise the Regional/Local Voice on matters affecting their regions as a substitute for going directly to local government, state government or federal government directly. The danger of the Voice becoming one legitimate funnel for all advisory functions with Aboriginal communities – one that is neither embedded constitutionally nor provided for legislatively – can seriously undermine the values and virtues of Aboriginal Land Rights. Existing organisations should form the Local and Regional Voices. They are well established, in some cases for decades, and are already engaged with their local Aboriginal communities.

The discrete differences between Aboriginal people, communities and organisations can be illustrated by the stalling of Aboriginal and Torres Strait Islander cultural heritage reform. The draft Reform Bill has been sitting idle for years, until the Jukkan Gorge disaster awakened a renewed and collective interest in consulting with Aboriginal people to ensure that changes in legislation and policy were swiftly enacted to protect our cultural heritage. Even so, the different interests, rights and obligations of recognised Traditional Owners, Aboriginal Land Council members, and other non-affiliated Aboriginal persons with respect to culture and heritage reform has been evident from the start. How would the Regional and Local (not to say the National) 'Voice' account for and address this important polyphony, without having one voice speak for, or louder than, the rest?

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Gandangara Local Aboriginal Land Council – Public
Submission on the Indigenous Voice to Parliament Proposal