

Indigenous Voice Co-Design Groups
Voice Secretariat
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Dear Co-Design Groups

RE: Comment on Indigenous Voice Co-Design Process Interim Report to the Australian Government

I am a Kamilaroi man and a solicitor of the Supreme Court of New South Wales.

I am grateful to the co-design groups for their work on the Interim Report. By and large, the Interim Report has been illuminating and I agree with most of the proposals for the Voice's role, structure and composition. Thank you for opening the report for public engagement. I make the following comments in response, in my personal capacity.

In relation to the options canvassed for the National Voice:

- **I prefer the structural membership model** because of the issues noted with the determination of voting eligibility and potential incompatibility of a “one size fits all” voting model with the different practices of various of our communities.
- **I do not have a strong view on the prescribed number of members from the Torres Strait Islands or the ACT, but I query whether equal representation on the basis of one's State or Territory of origin is a legitimate aim of the Voice.** I respect the different culture of the Torres Strait Islands and appreciate the need for sufficient representation to advance the interests of that region. I also recognise the reality that our identity as Aboriginal and Torres Strait Islander peoples today is informed by the federal schema imposed by the colonial state. However, I suggest that the co-design groups consider how necessary it is to divide representation along federal lines, as opposed to the broader language regions and other connections that have developed among our own communities over millennia.
- **I do not support the proposal for ministerial appointments.** I suggest that, if a skill gap or demographic imbalance is perceived, we are responsible enough to address this ourselves, without the need for an intervention that would undermine the Voice's objective of self-determination.
- I do not think the Interim Report provides enough information to comment on the proposed term lengths for members, noting the brevity of the discussion at pages 39 to 40, **but I support the proposal for the longer term** because of the greater continuity and stability it would provide. I suggest that the co-design groups more clearly explain the reasons why the 3- and 4-year term lengths were chosen as the preferred alternatives. It is not clear why a term of some other length was not considered.
- **I am unable to form a preference for the options for legal form** and I note that the Interim Report fails to provide any real basis for distinguishing between the options presented. I suggest that the co-design groups explain the differences between these options more clearly. In any event, if each option equally ensures the Voice's independence from government, I would prefer whichever option is likely to provide the most secure and generous stream of funding, noting the importance of reliable funding to the success of community representative organisations.

- **I support the proposal for a separate, independent ethics council**, so that independent and frank advice can be provided. I await the further refinement of this option and the co-design groups' clarification of the consequences of the independent ethics council's advice. I am wary for the potential for the council's advice to be weaponised to pressure the funding or existence of the National Voice, especially in the absence of the Voice's constitutional enshrinement.

I also make the following observations in relation to the National Voice:

- Noting the discussion at page 37, it is still unclear to me why the preferred number of members for each State is either 16 or 18, and it would be helpful to better understand why this figure was chosen. The co-design groups should provide a more comprehensive account of how the number of members was decided.
- The development of the National Voice would be more transparent if the NIAA's discussion papers were also published, with an analysis of the extent to which they informed the co-design groups' proposals.
- I support the proposal to provide training and professional support to members, but I suggest that this support is delivered in a way that does not force assimilation with a particular model of representation. I suggest that this support is delivered in a way that also empowers members to discharge their function in a way that adheres to traditional and Aboriginal/Torres Strait Islander customs and cultural rules.
- I am wary of the suggestion for a character test and I suggest that the co-design groups clearly articulate: (1) what this test would entail; and (2) who would administer the test. While I appreciate the need for accountability and a dependable membership, we must remain cognizant of the over-representation of our mob in the criminal justice system and the over-policing to which we are subject, lest we perpetuate these systemic injustices among ourselves.
- I am likewise sceptical of the Australian citizenship requirement, for its apparent tendency to exclude those in our communities who question the sovereignty of the Australian state (leaving aside the likelihood of their participation in the Voice), and for its inconsistency with the High Court's findings in *Love and Thoms v Commonwealth* [2020] HCA 3.

In relation to the Local and Regional Voice Design, I generally support the nine key principles listed in the Interim Report. I particularly support the objectives that Aboriginal and Torres Strait Islander peoples have access to the tools and resources we need to have greater control over our futures and make better informed decisions for ourselves and our communities, and that government systems change to support community involvement in decision making to allow time for sharing information, genuine conversation and understanding.

Finally, in relation to the Interim Report generally, I make the following comments:

- **The Voice should be constitutionally enshrined:** I recognise that the question of constitutional entrenchment of the Voice is excluded from the co-design groups' terms of reference. Nevertheless, the enshrinement of the Voice will be crucial to the Voice's success, having regard to the following matters:
 - Constitutional enshrinement of the Voice was explicitly called for in the Uluru Statement from the Heart, and enjoys the support of First Nations and non-Indigenous Australians across the political spectrum. A Voice that is not enshrined in the Constitution would not have the same level of support or consistency with the Uluru Statement as a constitutionally-enshrined Voice.

- The popular legitimacy associated with the process of conducting a referendum (in which all Australians eligible to vote will participate) and the status conferred by constitutional enshrinement will make it more likely that the Voice can effectively represent and advocate for Aboriginal and Torres Strait Islander peoples.
- The stability and certainty conferred by popular legitimacy and constitutional protection will empower the Voice to speak necessary truths to Parliament and government without fear of abolition.

As such, I submit that the co-design groups should exhort the Australian Government to fulfil its 2019 election promise to facilitate a referendum on the inclusion of a First Nations Voice to Parliament during the next term of Parliament.

- **A referendum on the Voice should occur before the Voice is legislated:** In order to maintain the political momentum behind the Uluru Statement from the Heart, I submit that the referendum on the Voice should occur prior to its establishment by legislation. I am concerned that, if the Voice is created by legislation (or any other non-constitutional government activity) before a referendum, the groundswell generated by the unprecedented First Nations consensus achieved in the Uluru Statement will be squandered. A purely legislative voice could defer constitutional enshrinement, allowing a future government to dismantle or undermine the Voice and forcing Aboriginal and Torres Strait Islander peoples to reconvene and prosecute the same reform agenda again. The inspiration of the Uluru Statement from the Heart should not be taken for granted and the call for constitutional enshrinement must be heeded as a matter of urgency.
- **The importance of the Uluru Statement cannot be gainsaid:** I noticed that mention of the Uluru Statement is almost completely absent from the Interim Report. Indeed, one of the only references to the Uluru Statement in the Report is made to indicate that the co-design process will be ‘different’ to the Uluru Statement from the Heart (at page 157). Given the significance and uniqueness of the Uluru Statement, I encourage the co-design groups to centre the Uluru Statement in their final report to government. The Statement has the potential to inspire the nation and rally Aboriginal and Torres Strait Islander communities around a common reform agenda that has been endorsed by a broad range of different sectors of our mob.

Thank you for the opportunity to make a submission.

I eagerly await your further work and am looking forward to seeing how you will enable positive change in our communities.

Ganur Maynard