



## Tranby National Indigenous Adult Education & Training response to the Indigenous Voice Co-Design process interim report 2020

### 1. Who is Tranby?

“Tranby” is incorporated under the Co-operatives National Law (NSW) as the Co-operative for Aborigines Ltd (trading name Tranby National Adult Education & Training).

Tranby is a National Indigenous Owned Registered Training Organisation (IRTO) and was incorporated in 1957. Tranby provides specialised vocational education and training for Aboriginal and Torres Strait Islanders adult learners. Tranby is a member of the Alliance of First Nations Independent Education and Training Providers Limited (the Alliance) incorporated under the Corporations Aboriginal and Torres Strait Islander) Act 2006, the peak body for IRTOs.

### 2. Tranby’s Support for Uluru Statement from the Heart

Tranby welcomes the opportunity to respond to the to the Interim Report to the Australian Government on Indigenous Voice Co-Design Process (October 2020). Tranby notes that the terms of reference for the co-design process specifically excludes making recommendations about constitutional recognition. Nevertheless, Tranby believes it is important to formally state its support for the Uluru Statement from the Heart (‘the Statement’) that was endorsed by a gathering of 250 Indigenous leaders following the First Nations National Constitutional Convention held at Uluru.

In particular, Tranby supports the Statement’s call for:

- a. a First Nations Voice to Parliament in the form of an advisory body on policy affecting Aboriginal people and Torres Strait Islanders, to be enshrined in the Australian constitution;
- b. a Makarrata Commission to oversee agreement-making between the Australian government and Indigenous people;
- c. a truth and reconciliation process to be facilitated by the Makarrata Commission.

### 3. Recommendation for By-Partisan Support for an Agreed Timeframe for Constitutional Referendum

Tranby calls on the Parliament to provide bipartisan support for an agreed timetable to hold in accordance with the Statement, a referendum on constitutional recognition of an Aboriginal and Torres Strait Islander advisory body to be included in the Constitution.



#### 4. Indigenous Vocational Education and Training (IVET) Existing and ongoing Problems with Policy Development - The Gap in Closing the Gap.

The 2008 National Indigenous Reform Agreement included closing the gap on childhood education up to and including Year 12. There was no target for IVET or higher education.

The 2020 National Agreement on Closing the Gap included a higher education target for Certificate III and above. Enrolment in Certificate III has often been a requirement for the ongoing Centrelink payment of unemployment benefits, based on the National Centre for Vocational Education research (NCVER) recommendation that completion of Certificate III improves employment prospects. This recommendation is based on mainstream non-Indigenous learners and became hard wired into government unemployment policy. There is no target for IVET adult Foundation Skills, that is language, literacy, numeracy and digital skills (LLND).

The Alliance (representing National Indigenous owned Registered Training Organisations) met with staff from the Ministers office and NIAA officers over a period of 18 months. At the request of Minister Wyatt the Alliance provided the Minister and NIAA with detailed recommendations relating to improving IVET outcomes and National Indigenous owned Registered Training Organisations. The Alliance recommendations were carefully formulated, consistent with existing Government policy and the recommendations of the prior Shergold and Joyce report that included IVET. Many of the key Alliance recommendations were included in the subsequent 2020 Report Productivity Commission Report on the National Agreement on Skills and Workforce Development (NAWSD) publicly released on January 15, 2021.

The key issue raised by the Alliance was that Alliance members had traditionally operated on a National basis and only accepted Indigenous adult students. The change from National funding to State based funding has had serious consequences for Indigenous adult learners. Just a couple of examples are Tranby no longer receives funding for Indigenous adult students outside NSW wishing to attend Tranby to undertake the 10861 NAT Diploma of Aboriginal and Torres Strait Islander Legal Advocacy Course. This is the only course of its type for Indigenous adults in Australia. Tauondi is based in SA and historically provided Indigenous only Foundation Skills and apprenticeship training for Indigenous adult students. Like Tranby, Tauondi only accepts Indigenous adult students to provide a culturally appropriate safe training environment. The Alliance in its submission noted that Indigenous adults often had difficulty engaging as children in mainstream school education and Alliance members had addressed those problems by having Indigenous only students online and on campus and creating culturally appropriate and safe learning environments. Tauondi had the same problem when National funding switched to State based funding and Tauondi was no longer funded for interstate Indigenous students.

The Alliance was concerned that Ministerial staff and NIAA officers did not engage in discussions about the issues raised with them or respond in writing in a considered meaningful way. We are therefore concerned about whether or not the outcomes from the Voice would have a meaningful impact on policy development on difficult or contentious matters where the public sector view had already been decided.



The Minister for Training, Minister Cash and her staff and Department of Training officers did carefully read the Alliance Report and recommendations and engaged in meaningful discussions. The Productivity Commission also engaged in informed and constructive discussions with the Alliance about National Indigenous Owned Registered Training Organisations and IVET students.

In December 2020 Commonwealth portfolio responsibility and funding for IVET was transferred from the Minister for Indigenous Australians Ken Wyatt to the Minister for Training, Michaelia Cash. The peak body the Alliance only discovered the changes when NIAA advised that IVET was no longer their responsibility, after a series of phone calls the Office of Prime Minister and Cabinet confirmed that this was the case. The Alliance contacted Minister Cash's office regarding IVET responsibility being transferred to the Training portfolio.

The Alliance is unclear whether any other portfolio responsibilities have been transferred from the Minister for Indigenous Australians.

IVET has now had the third Minister in 4 months when the Training portfolio responsibility was transferred to Minister Robert. NIAA has advised it no longer provides funding for IVET students. The Alliance is seeking a meeting with the Minister Robert to inquire whether there are any funding for IVET students and National IRTOs in the 2021-2022 Budget, as recommended in the 2020 Productivity Commission Report on NAWSD.

#### 5. Who decides when to give Indigenous Australians a Voice on Policy Development?

The Voice may or may not have an impact on Commonwealth Government policy, as so many policies impact on Indigenous Australians in a different manner to non-Indigenous Australians. Funding and policies for Indigenous adult education were transferred from the Commonwealth to the States without consultation or an awareness that the consequences for Indigenous adult education was different to the impact on the mainstream non-Indigenous adults.

There are many policies that will have a differential impact between Indigenous and non-Indigenous Australians that may be policy blind spots. It was our hope that the Council of Peaks would address major issues such as targets for domestic violence and adult LLND.

### QUESTIONS THAT RESPONDENTS WERE ASKED TO CONSIDER BASED ON THE NATIONAL VOICE PROPOSAL

#### 6. Members of the National Voice

Tranby supports the proposed hybrid model as it is crucial to have State representatives nominated informed and supported by local and regional Voices. This is particularly important because the issues and problems vary between metropolitan, regional and remote groups. It is also important that National Voice members have access to a range of different views and be across a wide range of issues to be as fully informed as possible. Tranby does not support direct elections as it may create division rather than consensus and would be driven by which candidate or group is best able to fund an election campaign.



## 7. Membership of the National Voice

Tranby notes the options are 18 or 16 members either 2 members from each State and Territory and the Torres Strait or 2 from each State and the NT and 1 each from the ACT and Torres Strait. We note that during the consultation period, it was acknowledged that submissions could recommend

other options. Tranby suggests that each State and the NT should have 3 representatives nominated by the local and regional Voice groups that is one each for metropolitan, regional, and remote. Two each for the ACT and the Torres Strait. Gender diversity requirements can be met with a guaranteed 50/50 split of the total Voice membership and at a jurisdictional level based on the rolling two-year staggered basis over 4 years. Tranby does not support the inclusion of Ministerial appointments to fill any perceived skills gap. Ministerial appointments would raise concerns about:

- confidential discussions within the Voice before the advice is provided;
- the potential for Ministerial appointees to attempt to unduly influence decisions;
- the politicisation of the Voice by the Government of the day; and
- the perception that the Voice is not truly independent of Government.

## 8. Full time Research and Policy Support

Similar bodies providing policy advice to Government have full time research and policy staff for example the Australian Law Reform Commission.

Full-time policy support would mean that Ministerial appointees would not be required to fill any perceived skills gap amongst members of the Voice. Advice would be available from a range of professionally qualified research and policy advisers. These advisers must not be seconded from the Commonwealth and must have a clear background independent of Government. The Voice should have fully funded full-time staff to assist with research and help to generate an informed and considered policy response. An Informed policy response often requires undertaking grassroots, national and international research and considering issues that may be outside the knowledge or expertise of the existing Voice members.

## 9. Legal Capacity to form Sub-Committees

Tranby supports the recommendation that the Voice have permanent standing committees representing Indigenous Youth and people with disabilities. Tranby also recommends a permanent sub-committee responsible for cross-border issues. In some cases, these cross-border issues were created by Commonwealth devolving policy and funding powers on Indigenous matters to the States and Territories. A permanent sub-committee is required to monitor inequities and inconsistencies created by cross border issues including problems arising from that devolution of responsibility.

Tranby also recommends that the Voice have the capacity to establish specialist temporary sub-committees to investigate particular topics. The sub-committee would have one or two members of the Voice and be able to request assistance from third parties to investigate matters and put working papers together on matters the Voice refers to the sub-committee. This is a standard power of all bodies corporate and should be included in the recommendations for the establishment of the Voice.



#### 10. The national Voice re-active or proactive?

We note in the consultation that consideration is being given to the National Voice being able to raise policy issues and present policy papers independently of advice on Bills before Parliament. Tranby would support a proactive capacity for the National Voice.

Tranby is also concerned that the National Voice does not appear to be involved in policy development on Indigenous issues from the outset. Tranby recommends that the National Voice be engaged and briefed in the policy development stage, prior to recommendations for legislation being presented to Cabinet. Tranby is of the view that the advice from the National Voice should be included with the in-principle Cabinet Minute prior to approval of the Cabinet recommendations being referred to Parliamentary Counsel for the Bill to be drafted. This is not unusual many similar bodies are consulted at the policy formulation stage e.g. The Attorney Generals Department consults with ASIC and the ACCC on policy formation prior to recommendations to Cabinet being finalised. Treasury also consults with a range of Government related bodies at the policy formulation stage prior to referral to Cabinet for approval.

Tranby is concerned that it is too late for practical purposes to consult the National Voice after the Bill is drafted as it has already been reported back and approved by Cabinet with the Bill is attached. It is too late then in most cases to make anything other than minor policy as the policy and the Bill is already finished. Policy development usually takes around six months prior to a Bill being available, some legislative policy is developed over years. By the time the Bill is drafted policy is already locked in at a public sector level and are there is extreme reluctance to agree to changes unless it is likely to be blocked in the Senate. The Voice consultation and advice must be before the in-principle Cabinet Minute and the advice must accompany that Cabinet Minute in to Cabinet.

#### 11. Should the National Voice be a statutory authority or a private corporation?

Tranby believes the first part of the question is clear that the Voice is not for legal purposes the Crown or an agent of the Crown. What the National Voice actually is can only be answered by asking the same fundamental questions that were raised when Government/State owned entities were first established in the 1990s.

The fundamental questions are:

- who owns the National Voice – are there shareholders or is it closer to a company limited by guarantee;
- who has the power to give the National Voice legally enforceable directions – the Minister (like a Government/State owned Corporation) or the Parliament (like many statutory authorities on amending its legislation);
- who has the power to amend its Rules or Constitution;
- who can wind it up?

Statutory corporations are owned by the Crown, they can be wound up by legislation without the consent of the body.

Government/State owned corporations are owned by two Ministers of the Crown and as shareholders the Ministers can issue legally enforceable directions to the Government/State Owned



Corporation outside normal commercial practices such as issuing dividends exceeding profits from retained earnings.

Tranby suggests that the National Voice could be incorporated in the first instance, by Commonwealth statute as follows:

- the ownership structure should be broadly similar to a company limited by guarantee, that is it should be “owned” by Aboriginal people and Torres Strait Islanders;
- the National Voice must not be subject to Ministerial Direction – that is it cannot be forced by the Government or any Minister to make decisions about itself that are not in the best interests of the entity;
- The Rules or the Constitution of the National Voice should be included in a Schedule to the legislation. The legislation should provide that the Rules or Constitution may only be amended by a procedure similar to that of the replaceable rules of a company. That is the Rules or the Constitution may only be amended by a combined 75% vote of all members who vote, being members of the National Voice and the regional and local Voice of each State and Territory – the legislation should not include a specific power in the Parliament to amend the Constitution without the 75% vote in favour by the local, regional and National Voice;
- The legislation on the winding up of the National Voice should only provide for winding up of the National Voice on the same basis as an amendment to the Rules or the Constitution but consideration should be given to a further limitation of including it must be passed by a majority vote of each State, Territory and the Torres Strait;
- Consideration should be given to the possibility of changes to take place if a successful referendum is held in the future.

Whilst it is not legally possible to fetter the powers of Parliament by legislation, it is possible to empower the National Voice to manage its own internal affairs. Funding is provided through the Budgetary process and Treasury legislation so that is outside the scope of the legislation incorporating the National Voice.

#### 12. How do you think the Proposed National Voice could support you, your organisation, or your community to have a Voice on issues of National Importance?

Tranby and other National Indigenous Owned Registered Training Organisations are aware that the Commonwealth has largely transferred responsibility for the provision of key service delivery, policy development and funding to the States and Territories. The outcomes as the Productivity Commission noted have been very poor for Indigenous Vocational Education and Training. The Productivity Commission expressed concern about the absence at State and Territory level of accountability and transparency in relation to completion or success rates for Indigenous adults as well as criteria for funding registered training organisations and TAFE. The Productivity Commission also made recommendations related to funding LLND and Foundation Skills for Indigenous adults and the provision of funding as part of Community Service Obligations (CSOs) on a similar basis to TAFE for Indigenous Owned Registered Training Organisations.



Tranby and other the Alliance members continue to have specific problems with the failure to provide Commonwealth, State or Territory funding for interstate Indigenous adult students to National Indigenous Owned Registered Training Organisations for specialist cultural student support and vocational education training.

Tranby is a National Indigenous Owned Registered Training Organisation based in NSW and is a member of the Alliance. It is anticipated that the Alliance as the National peak body would consult directly with the National Voice on IVET matters. Tranby is unclear if this would be the case or if national consultation is intended to be limited to the local and regional Voice. If consultation is limited to a regional (State basis) Tranby would, as part of the Alliance, provide its support and feedback through the NSW Regional

