

**SUBMISSION TO AUSTRALIAN GOVERNMENT  
ON  
INDIGENOUS VOICE CO-DESIGN PROCESS: INTERIM REPORT TO THE AUSTRALIAN GOVERNMENT  
FROM  
ELIZABETH RICE AND JOSEPH CASTLEY**

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### **Introduction**

The *Indigenous Voice Co-design Process: Interim Report to the Australian Government* of 2020 is very important in outlining some of the options for governance arrangements to “improve local and regional decision-making and a national voice”. However, many First Nations members are dissatisfied with the limitations that the Terms of Reference imposed on the co-design groups, which affected the context within which they were able to make recommendations about who the Voice will be speaking to and how it can be protected. We, as settler Australians, are also dissatisfied with these limitations.

With regard to governance arrangements for implementing the Voice, the Australian Government must accept the advice of the First Nations, as they are the experts on their diverse Nations and cultures, and on the ways in which the Australian Government can best work with them – on all issues, and particularly on the Uluru Statement from the Heart, the context in which the First Nations have placed the Voice.

### **Governance Arrangements for the Voice**

We have no comment to make on the specific options for how the Voice – at local, regional and the national levels – should operate, as it is only the First Nations who can adequately judge how appropriate and effective the options are for them. We ask only that the Australian Government take heed of the responses from the First Nations on these matters.

### **Audiences for the Voice**

#### Process for developing Interim Report

There were three groups associated with the co-design process - the Senior Advisory Group, the National Co-design Group and the Local & Regional Co-design Group. Each had separate Terms of Reference, but in each case, the Terms of Reference (in their *Out of scope* sections) struck at the heart of the Uluru Statement by excluding them from:

- “Making recommendations as a Group through this co-design process on constitutional recognition, including determining the referendum question or when a referendum should be held.”
- “Making recommendations as a Group through this co-design process on the establishment of a Makarrata Commission (as called for by the Uluru Statement from the Heart), agreement making, treaty and truth-telling.”

In other words, the co-design groups were silenced about the audience for the Voice and the mechanisms needed to protect it. These restrictions mean not just that the Uluru Statement from the Heart is being ignored, but also that the Voice is being co-designed in a vacuum. The Australian Government has once again missed an opportunity to work with the First Nations on crucial matters in which they are the experts.

#### Audiences for the Voice

First Nations voices need to be heard and heeded by all aspects of our system of government – by the Parliament, by the Executive (particularly in the development, implementation and review of governmental policy, programs and practice) and by the Judiciary.

Some have suggested that this need could be met through a legislated Voice to Parliament. However, enabling legislation is not sufficient to protect the Voice, as the fate of the *Aboriginal and Torres Strait Islander Commission Act* demonstrates, ie enabling legislation can be amended or repealed. Enabling legislation must therefore be underpinned by the enshrining of a Voice to Parliament in the Australian Constitution. Although changes to the *Commonwealth of Australia Constitution Act* are not easy to achieve, they are also not easy to undo.

### **First Nations' Expertise**

The First Nations have expertise that colonial descendants and other immigrant Australians do not, and cannot, have. It is more than time for all Australian governments and their agencies to recognise this. As I heard Aunty Glendra (Galiindurra) Stubbs, a Wiradjuri woman and Elder in Residence at UTS Jumbunna, say recently, First Nations need governments to listen to them and act on what they say. She also said that while it can be argued that this is the right of the First Nations as Indigenous Peoples, it needs to be recognised that it is also essential to success. As she said:

*This is because we are the only people who have the expertise on the central issues that **create** success.*

She then explained why:

- *We are the experts on our diverse Nations and their cultures*
- *We are the experts on the ways settler systems have affected – and continue to affect - our Nations and cultures*
- *We are the experts on the changes today's governments need to make to ensure self-determination for First Nations peoples*
- *We are also the experts on how our Nations can adapt to settler systems - without sacrificing the integrity of our own Nations and cultures.*

*We also have the 'on the ground' knowledge of our communities and how they work. That means we have the expertise to design, implement and evaluate what is needed for our families and communities – in all their diversity – to thrive.*

*Over the last year, governments have stressed that, to deal with the COVID-19 emergency, they are not playing politics but taking the advice of the medical experts. We ask them, in these emergencies in First Nations life, to take our advice in the areas where **we** are the experts.*

Aunty Glendra's comments were made in the context of First Nations deaths in custody, and of the failure of governments over 30 years to take sufficient action to prevent them. However, her comments apply equally to all elements of the Uluru Statement from the Heart, the First Nations own statement of what matters most to them – truth telling, treaty and a constitutionally protected voice to Parliament.

### **Conclusion**

Most of our submission is a critique of a key exclusion from the Terms of Reference for the three groups associated with the co-design process. We maintain that this critique is a legitimate response to the omission of such a critical issues, ie "the establishment of a Makarrata Commission (as called for by the Uluru Statement from the Heart), agreement making, treaty and truth-telling".

To remedy this we urge the Australian Government to stop shying away from a commitment to enshrining a Voice to Parliament in the Constitution, and to commence negotiations with the First Nations on the processes for implementing it.

**ELIZABETH RICE AND JOSEPH CASTLEY**  
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