

30 April 2021

Dear Voice Secretariat,

### **Submission regarding the Interim Report of the Indigenous Voice Co-design Process**

Thank you for the opportunity to comment on the Interim Report proposals. Designing the form and function of the Voice is important work that requires genuine collaboration and consensus building with First Peoples across Australia.

I am a young Wiradjuri man born and raised in Central West NSW, Wiradjuri Country. I am a lawyer and PhD Candidate researching Indigenous self-determination. I believe that there is great potential in a First Nations Voice to Parliament. But the efficacy and legitimacy of the Voice depends on its design and how it is constituted.

In this submission I briefly emphasise what I see as central design issues for the Voice.

#### **Constitutional enshrinement of the Voice**

Your terms of reference prevent you from making recommendations related to the constitutional enshrinement of the Voice, or the demands for truth-telling and treaty-making processes in the *Uluru Statement from the Heart*. While acknowledging this, I must echo the chorus of voices in this process emphasising the need for constitutional enshrinement. The certainty, stability, and political legitimacy afforded to a Voice enshrined in the *Australian Constitution* through referendum is essential to its ability to influence the political processes that dominate and control First Nations lives in this country.

The *Uluru Statement from the Heart* reforms are the result of purposeful consensus-building amongst First Peoples and present a sensible roadmap for re-shaping the relationship between First Peoples and the Australian public. A legislation-first Voice fails to reflect this vision, and risks the Voice being cast aside as a 'failed experiment' due to poor design. I encourage the Australian Government to hold a referendum on the Voice within the next term of the Australian Parliament.

#### **Role of Traditional Owners**

The current proposals do not place enough emphasis on the role of Traditional Owners and cultural authorities in representing First Peoples, or the collective nature of First Peoples' right to self-determination. For the Voice to be effective and legitimate, both the proposed National and Local/Regional Voices need to have a clear deference to cultural authority.

The emphasis on incorporating and engaging with existing policy structures at the state level is antithetical with the Voice elevating the unheard perspectives of First Nations.

Aboriginal and Torres Strait Islander people are diverse as individuals, and there is value in representing that diversity. However, it is not the same as enabling First Peoples' right to self-

determination and the need for First Nations to have input and control into the legislation and policy that dominate First Peoples' lives.

First Nations should be centred in this process, not government structures.

### Interim Report design proposals

The proposed 16-18 member National Voice appears insufficient to represent the diversity of First Nations across the continent. Limiting the proposals to either an 18-member body with 2 representatives for each state/territory, and the Torres Strait or a 16-member body with only 1 representative for the ACT & Torres Strait is too constraining. It is not appropriate to suggest that the Torres Strait should be limited to only one representative, given the complexity and diversity of Torres Strait Islander experiences in Australia. Serious consideration should be given to expanding the size of the National Voice to allow for broader representation of First Nations.

The proposal for a maximum of 35 local/regional Voices across the continent is similarly too limiting. While the Interim Report emphasises that these Voices should be constituted according to the desires of First Peoples' political and cultural needs, the proposals seem far from this reality. For example, for a state the size of New South Wales to be limited to 7 regions, with an emphasis on aligning with the pre-existing Local Decision Making regional alliances, it is not possible for communities to freely determine how their regional Voices might be constituted. There simply is not room for such flexibility and responsiveness to First Nations desires within the proposed structure.

To design and implement the Voice in a way that is effective, legitimate and transformative for Indigenous Affairs in Australia, there needs to be a *genuine* collaborative, consensus-building approach to formulating that design and function. The Indigenous Co-design process to date has not demonstrated this, with far too many arbitrary restrictions and boundaries placed on the Voice and what it could be.

I encourage the Senior Advisory Group to return to the core principles of a First Nations Voice to Parliament, as imagined in the *Uluru Statement from the Heart*. The Voice should be a first step of many towards transforming the political, legal and cultural relationships between First Nations, the Australian public, and the Australian Parliament.

Yours sincerely

Jason O'Neil