



# INDIGENOUS PEOPLES' ORGANIZATION (IPO) AUSTRALIA



Indigenous Voice Senior Advisory Group  
National Indigenous Australia's Agency  
Voice Secretariat  
Reply Paid 83380  
Canberra ACT 2601  
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30 April 2021

Dear Indigenous Voice Senior Advisory Group

Please find attached the submission on the Indigenous Voice Co-Design Process Interim Report to the Australian Government.

The Indigenous Peoples' Organisation-Australia trust this this contributes to the deliberations in developing a national representative body that reflects the Australian Government's international obligations to recognise Aboriginal and Torres Strait Islander peoples' self-determination.

We look forward to reviewing the next rendition of this proposal.

Yours Sincerely,



Cathryn Eatock



Brian Butler

Co-Chairs: Indigenous Peoples' Organisation-Australia

## **SUBMISSION TO THE INDIGENOUS VOICE DISCUSSION PAPER**

The Indigenous Peoples Organisation-Australia (IPO) is pleased to accept the opportunity to forward a submission on the Indigenous Voice Discussion Paper. Please find our considered response to the Indigenous Voice Co-Design Process Interim Report to the Australian Government.

### **1. INDIGENOUS PEOPLES ORGANISATION**

The Indigenous Peoples Organisation-Australia (“IPO”) is national coalition of 285 Aboriginal and Torres Strait Islander peak organisations, community organisations and individual members across Australia. The IPO was established to facilitate constructive and collaborative advocacy of Indigenous rights at the United Nations and to promote the enactment of internationally recognised Indigenous rights within Australia. The IPO operates through the direction of a national executive with two elected Co-Chairs.

### **2. Rationale**

Over recent decades there has been a significant lack of Aboriginal input into government policy approaches. The defunding of the National Congress of Australia’s First Peoples in 2013/14 resulting in its winding up in 2018, after having only being established in 2009, has left a void. The National Congress had been established to respond to the void of Aboriginal and Torres Strait Islander input into Government, following the winding up of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004. The IPO has been deeply concerned at the lack of an elected Indigenous representative voice to provide input into policies, programs and legislation; which significantly impacts Aboriginal and Torres Strait Islander peoples over recent decades. These cuts in funding also highlight the vulnerability of Aboriginal and Torres Strait Islander governance bodies left to the whims of Government.

The dearth of Aboriginal and Torres Strait Islander capacity to provide input into policy approaches has seen an increase in punitive policy approaches, such as in the Cashless Debit Card which targets communities of high Aboriginal populations, removes access to 80% of welfare payments and prevents purchases at cheaper options and second hand stores, and is humiliating and instils a sense disempowerment. The Community Development Program has instigated a disproportionate number of financial penalties upon Aboriginal people in remote Aboriginal communities and prevents communities from attending to cultural or sorry business, that may take them away from onerous work obligations to receive welfare payments. Programs, such as these, that cut access to cash also remove agency and inhibit women’s capacity to escape family violence.

This period has also been marked by substantial cuts in funding to the Aboriginal service sector with \$534 million cut from Aboriginal services in the 2014 budget by the Abbott/LNP Government. More recently, the destruction of the 46,000-year-old Juukan Gorge caves reflects the desperate need for Aboriginal and Torres Strait Islander input into legislation, policies and decision making around sacred Aboriginal and Torres Strait Islander cultural heritage sites across Australia.

The ongoing high rate of Indigenous incarceration and deaths in custody indicates an abject failure by successive governments since the Royal Commission into Aboriginal Deaths in Custody. That is, to appropriately respond the recommendations of the Royal Commission and address the crisis, loss of life and over incarceration of Indigenous peoples. We know many of the contributing issues involve structural racism, difficulty securing bail and a lack of alternatives to incarceration, and a failure to provide appropriate health responses to health issues. However, fundamentally it reflects the failure to implement self-determination for Indigenous peoples, which was called for some 30

years ago by the Royal Commission into Aboriginal Deaths in Custody. The IPO recognises that all the Recommendations put forward by the Royal Commission have not been implemented.

International law establishes self-determination as a fundamental underpinning right. The Declaration on the Rights of Indigenous Peoples, which Australia endorsed in 2009, and was recognised in international law when endorsed by the United Nations General assembly in 2007, sets out Indigenous peoples' rights to self-determination through Articles 3 and right to establish their own governance and representative structures through Articles 4, 5, 18, 19, 20, 21, 22 & 23. *The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* elaborates on existing human rights standards, establishing a global framework of minimum standards for Indigenous peoples. Professor James Anaya, the former Special Rapporteur on Indigenous Peoples, confirms that the Declaration confirms broader rights that Indigenous peoples are entitled to through various human rights conventions. The Declaration echoes Article 1 of the two main treaties of the Declaration on Human Rights, the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, through Article 3 of the Declaration which states:

*'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.<sup>1</sup>*

It has now been more than 10 years since Australia endorsed the Declaration in 2009, and it is time that the Federal Government operationalised the Declaration through national legislation (with legal effect) and the establishment of an elected representative governance body. The Voice proposal outlined through the Indigenous Voice Co-Design Process takes significant steps in meeting this shortfall. The proposed Voice model should actively frame itself in terms of meeting the Australian Government's global obligations to enact the Declaration on the Rights of Indigenous Peoples.

A national representative body is critical to enable Aboriginal and Torres Strait Islander people to provide direction to parliament and government in addressing the range of national issues, policy and legislation that impacts Aboriginal and Torres Strait Islander Peoples. A National representative body will have a critical role in advocating for the recognition and protection of the human rights of Aboriginal and Torres Strait Islander peoples. It will provide a mechanism to give meaning to and pursue the exercise of our rights, including those recognised in the *'United Nations Declaration on the Rights of Indigenous Peoples'*, including our right to determine our political status and pursue our economic, social and cultural development.<sup>2</sup> Article 18 of the Declaration states:

*'Indigenous peoples have the right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.'<sup>3</sup>*

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<sup>1</sup> United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>2</sup> Australian Human Rights Commission, *"Our future in our hands"- Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples, Report of the Steering Committee for the creation of a new National Representative Body*, (Sydney: AHRC 2009), <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/our-future-our-hands>.

<sup>3</sup> United Nations (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## 2. THE NATIONAL VOICE

### **The Proposal of an Elected Representative Model**

The IPO firmly supports an elected representative model, that provides Aboriginal and Torres Strait Islander community determined direction into policies, programs, services and legislation that impacts our communities, before the Parliament. A regionally elected representative model will reflect the views of their communities and regions and be accountable to those communities through regular election cycles. In order for the Voice model to be accepted by the broader Aboriginal and Torres Strait Islander community the model needs to respond to Aboriginal community concerns to enact Aboriginal and Torres Strait Islander self-determination. An elected regionally representative Voice to Parliament goes some way to address the democratic deficit that Aboriginal and Torres Strait Islander people have been subject to as a self-determining people, recognised in international law, while only comprising 3% of the population.

However, it is critical that the elected Voice representative body has the capacity to review and provide direction to Parliament on legislation being put before Parliament. Significantly, it also requires capacity review and provide direction to Parliament on existing legislation, policies, programs and services. Further, Local and Regional Governance bodies must be able to raise issues with the national body for investigation, review and consideration of providing direction to Parliament on those matters. Additionally, capacity for the Voice Indigenous representative body to provide direction to the non-government sector, businesses and corporations, is also endorsed by the IPO. The national Voice body must also include capacity to publicly provide informed direction to all Parliamentary members on all issues impacting upon Aboriginal and Torres Strait Islander peoples and not be constrained to those laws proposed under Section 51 (xxvi).

While other models have been suggested, including the use of existing organisations, peak bodies or land councils, each of these bodies have been formed to address a specific service delivery purpose or focus area, and none can claim to represent the Aboriginal and Torres Strait Islander communities of their regions. Aboriginal Land Councils and Native Title Bodies are not representative of all community members and they do not always reflect general governance bodies of Aboriginal nations; for such purposes, other than the narrow issues directly related to the terms of their establishment. Additionally, many Aboriginal and Torres Strait Islander people are not members of Land Councils or Prescribed Native Title Bodies, formed through differing legislation for particular land use related matters. These bodies are limited in their geographic representation and where they are established, they cannot claim to represent all Aboriginal and Torres Strait Islander people.

While the IPO supports a model that accommodates nation-based decision making we believe the capacity of nations across Australia varies tremendously, due to the deleterious impact of dispossession in many regions and the ongoing impact of colonisation. However, we note that where nations do have capacity, those nations may establish amongst themselves, traditional selection methods that may feed into local and regionally conceived models of the Voice governance structure. For those nations without sufficient capacity within the proposed regional model a concerted period of nation building is needed to ensure the majority of nations are in a position to fully and effectively represent their nations as Aboriginal and Torres Strait Islander peoples look to move into future treaty negotiations processes.

Significantly, when considering models of representation, it must be considered that many Aboriginal and Torres Strait Islander people no longer live on their traditional country due to previous dispossession events and policies, and many have moved to regional towns and cities for educational, social or economic opportunities. However, Aboriginal and Torres Strait Islander peoples who have moved to other locations have not renounced their indigeneity nor their sovereignty or their rights as Indigenous peoples. To represent First Nations Peoples, the representative body that is established must accommodate the diversity of Aboriginal and Torres Strait Islander people across this continent. This can only be implemented through an elected representative model, with capacity to accommodate local and traditional decision-making processes, as reflected in the proposed model.

### **Objection to Government Appointment**

The IPO resoundingly objects to the Government, Minister or National Indigenous Australians Agency appointing any position on the representative body or staff member within the secretarial support unit or the advisory bodies. The proposed model suggests that up to two members may be appointed to the Voice body by the Federal Government. The proposal for the Government to appoint any members to the elected Indigenous Voice body, whether independently or in conjunction with those elected members of the Voice body, would completely undermine any claims by the body to be a representative or an Indigenous self-determining body. Were the Government to appoint any member to the Voice, it would leave the consultation process and the establishment of a representative body null and void, completely invalidating the body and the process to establish it.

Enabling Federal or State Government appointments to an Aboriginal and Torres Strait Islander representative governance body, whether a single position or several, would immediately remove any sense of, or claim to, community accountability of the Voice as a representative governance body, with those appointed positions perceived as illegitimate appointments aligned with government. Government appointments, in any form, are directly counter to the objective to give Indigenous peoples a voice to Parliament.

If expert advice is required to advise the elected representative voice to Parliament, that advice and the selection of those persons who provide advice must be left solely up to those representatives elected by the broader Aboriginal and Torres Strait Islander community to commission that advice amongst the secretarial support for the Voice. Indeed, the capacity to commission expert advice is a critical requirement of an effective elected representative Voice body.

Elected representatives should be drawn from the communities and regions they represent, much in the same way members of the Australian Parliament and other democratic processes do, and are not based on their expertise on any particular issue; and which may be a requirement of an employee position. The elected representative will deal with all issues impacting Aboriginal and Torres Strait Islander peoples and will need to assess and review each issue. This will require detailed briefings, the assessment of reviews and policy advice but it cannot be addressed by a perceived expert on any particular area. As with all democratic processes, those elected must reflect the broader community membership they represent. Accordingly, the framework of the Voice model must ensure that all representatives are elected from urban, regional and remote areas. To have any representative members appointed by Government would fundamentally compromise the proposed Voice body, to the extent that it could not be considered a representative body.

## **Independence of the National Voice Representative Body**

The long-term viability and independence of the national Voice body must be assured and it requires sufficient resources to undertake its functions effectively and efficiently. Financial independence is critical to the representation and advocacy of Aboriginal and Torres Strait Islander concerns and the provision of free and frank advice to government, and that advice is independent from government influence. The importance of independence from government is crucial to 'enable the body to fulfil its advocacy function in a bold and robust manner', and not hindered by potential negative consequences in challenging the government. The establishment of a national body will need to proactively address the threat of abolition through legislative reform or the withdrawal of financial support by successive governments.

Of critical importance in this initial phase will be ensuring that the new National Representative Body is adequately funded and has the financial structure to be sustainable into the longer term. Both human and capital resources are required to effectively respond to the complexity of its governance procedures and functions to provide direction to government, and monitor and develop policies approaches.

## **National Membership Numbers**

The IPO would like to highlight the lack of options for membership of the national representative body. The current options provided two representatives per State does not adequately address the states that represent high Aboriginal populations, such as New South Wales and Queensland. However, from the options provided the IPO endorses the 18 representative model to recognise the unique position of the Torres Strait Islander Peoples, but with one of those representing the Torres Strait Islands and one representing Torres Strait Islander people on the mainland.

Additionally, with the large Aboriginal population in New South Wales of more than 265,685, out of a total population of 798,381 in 2016, the IPO considers there is a strong argument for three elected representatives in NSW and one for the 7,513 Aboriginal people within the Australian Capital Territory.

## **Membership Term Lengths**

Two models for term lengths are proposed as options in the Voice Interim Report. The IPO confirms the four-year term is preferential over the three-year term, with the four-year term staggered, with a half election spill ever two years. This approach will ensure consistency across election cycles. If the first term stood for six years, as opposed to four years, this would enable full representation to commence. If the spill was for a single candidate from each State this would ensure each state also retained consistency across election cycles.

It is recommended by the IPO that each representative provides an annual report to their constituents outlining the areas progressed on Aboriginal and Torres Strait Islander rights over the preceding year and any challenges faced. A term limit of two election cycles, eight years in total, would ensure a refresh of elected representatives over the longer term. The IPO also suggests portfolio sub-committees be allocated every two years, to enable sub-committee groups to progress policy, program and legislation initiatives or responses, across a range of areas, while noting decision making would require the full number of representatives.

## **National Advisory Group**

The IPO endorses the establishment of a National Disability Advisory Group and National Youth Advisory Group to provide critical advice related to these sectors. Additionally, the IPO firmly supports the capacity for the Voice Representative body to establish other National Advisory Groups as may be deemed necessary, in order to provide expert advice on critical areas such as violence against women and girls, Indigenous incarceration and deaths in custody, the removal of children, cultural heritage protection and land/water rights.

## **Policy Unit**

Given the amount of legislation, policies and programs which impact Aboriginal and Torres Strait Islander peoples, a well-resourced and adequately staffed Policy and Secretarial Unit is essential to review legislation, policies and programs, to provide informed evidence-based reviews and advice to the national representative Voice body. Elected representatives will require detailed policy advice on legislation policy and programs currently implemented that significantly impact on Aboriginal and Torres Strait Islander peoples, and which require capacity to review and assess those legislative and policy approaches proposed.

Areas subject to review would include all issues, policies, programs and legislation, either existing or proposed, that impacts on a significant number of Aboriginal and Torres Strait Islander peoples in a region or nationally. It should not be confined to approaches that specify only Aboriginal or Torres Strait Islander peoples, as some policy and legislative approaches claim to be universal while clearly targeting regions of high Aboriginal populations.

Additionally, the important principle of evidence-based decision making not only requires informed advice but also the capacity to commission reviews of policy and legislative approaches to ensure policy and legislative approaches are effectively reviewed, evidence based, targeted and effective. The area where advice is sought must be determined by the Voice body and through advice from the Policy Unit, in response to the requirements of the issue, and not be limited to a predetermined Panel of Experts. Capacity to undertake evaluations and commission reviews of programs, services, policy, and legislation is critical to providing evidence-based decision making and informed direction on these matters.

## **LOCAL AND REGIONAL VOICE**

The IPO welcomes the efforts to include local and regional Voice bodies, that may respond to the particular representative requirement of the local region. The IPO recognises the benefits of local Voice bodies, formed from Aboriginal and Torres Strait Islander people in that region, and which are participatory, accountable, transparent, inclusive, and that strive for collaborative consensus decision making, would reflect Aboriginal cultural mores and local decision-making processes.

## **Principle of Inclusive Participation & Cultural Leadership**

The IPO welcomes the inclusion of the principle of inclusive participation and cultural leadership. The principle of inclusive participation of all Aboriginal and Torres Strait Islander members, clans and organisational bodies is crucial to fully reflect the concerns and aspirations of our communities. Equally, the principle of cultural leadership, where we consciously privilege traditional decision making and custodial responsibilities is fundamental to respecting the cultural obligations of our decision-making processes.

However, the suggestion in the Voice Interim Report proposal that these local and regional representation bodies build on existing structures may unfairly promote those existing bodies with greater resources over local, less resourced inclusive governance bodies. The IPO suggests that local bodies specifically address broader local governance through either traditional decision-making structures or specifically established local governance that incorporate inclusive processes; and that address all areas impacting Aboriginal and Torres Strait Islander peoples, such as with the Community Working Parties of the Murdi Paaki region. Those bodies that have limited authority or address areas of limited responsibility are inappropriate to represent Aboriginal or Torres Strait Islander peoples at the local or region of level, though they may be members of local and regional bodies. In this respect strengthening the principles of local and regional bodies, including consensus decision making principles, or establishing overwhelming majority decision making, in the establishment of these bodies, may counter the potential for a well-resourced body to dominate or overly influence the establishment of local and regional bodies.

### **Principle of Community Led Design**

The principle of community led design is fundamental and acknowledges the responsibility of governments to support the establishment and ongoing operation of these local and regional governance bodies. The IPO recommends the independent assessment in determining when Local Governance Bodies meet the requirements of the principled and inclusive approach to form a Local Governance Body.

### **Principle of Non-Duplication and Links with Existing Bodies**

The principle of non-duplication and links with existing bodies highlights the need to incorporate issue specific bodies within local and regional governance Voice bodies. However, community experiences on women, health, justice, youth, cultural, or other specific areas where a peak may operate, should not preclude the capacity for Aboriginal and Torres Strait Islander experiences on the ground to inform feedback on policies, programs, services or legislation, and how to address these. Rather than being concerned about duplication, I would hope that such dedicated Aboriginal and Torres Strait Islander service organisations and peak bodies would seek to work collaboratively with local, regional and national Voice bodies to address community concerns and aspirations raised.

### **Principle of Respectful Long-Term Partnership**

The principle of long-term partnerships must respect Aboriginal and Torres Strait Islander self-determining decision making and actively support capacity development and its implementation on the ground.

### **Selection**

It is critical for the successful operation of this representative body that it is fully accountable back to the local Aboriginal and Torres Strait Islander community. Accordingly, the IPO recommends the national representatives are structurally linked to the Local and Regional body to ensure local accountability. Local accountability is essential to the success of any representative body and accountability is only assured through election processes where delegates are drawn from the local and regional bodies.



## **Structure**

In the selection of national representatives, it is critical that national representatives are tied to and come from regional representative mechanisms and that these regional representatives feed up from local governance bodies.

Within the Regional options proposed, the IPO supports the larger regional representative model of 35, which reflects and recognises the greater populations of Aboriginal and Torres Strait Islander peoples in NSW and Queensland, while also reflecting the larger geographic regions of Western Australia and the Northern Territory.

## **Principle of Transparency and Accountability**

The IPO supports the principle of transparency and accountability listed within the Voice Co-Design Interim report. The IPO suggests a review of the governance mechanism to assess effectiveness of operation at the completion of the first, second and third terms of the national representatives. This will enable ongoing improvements and the opportunity to review, assess and make adaptations to increase the effectiveness and operation of the Voice representative bodies and their overall objective of implementing self-determination, as confirmed in the Declaration on the Rights of Indigenous Peoples. In addition, a review of achievements and priorities should be provided annually by each of the elected representatives to the Aboriginal community at each level of the Voice model, ensuring accountability is intrinsically tied to each representative position.

Resources for community developed initiatives are necessary to enable Aboriginal communities to respond to their regions circumstances and develop local employment and social initiatives to meet the requirements of those communities. Like small towns everywhere services need to be provided to Aboriginal communities, in Elder care, childcare, community maintenance, housing maintenance, building and car maintenance. Aboriginal and Torres Strait Islander communities need to be able to respond to local priorities, they need capacity to encourage local employment, with set wages and conditions, and the ability to respond to local community development initiatives.

## **LIMITATIONS OF THE PROPOSED VOICE MODEL**

### **Lack of Decision-Making Capacity**

The final report of the Referendum Council acknowledged that treaty was strongly supported across the community consultation dialogues and concern was raised that the proposed Voice body would have insufficient powers if it was an advisory body only. The lack of capacity to instigate community initiatives, address community concerns and propose policies, programs and legislation remains a serious concern.

The Aboriginal and Torres Strait Islander elected representative Voice body must be directed to the Australian Parliament and all elected representatives, rather than only to the bureaucracy of Government. It must also include formal structural means to raise issues with the Parliament.

The Voice model must go beyond a minimalist approach that fails to meet the minimum requirements of a self-determining representative body. This is an opportunity to work with Aboriginal and Torres Strait Islander peoples to counter the entrenched disadvantage Aboriginal people continue to face and meet Australia's international obligations. Australia needs to take

its place amongst the leaders of the global community, and in line with other former British colonies, in recognising the inherent rights of unceded First Nations Peoples.

Aboriginal people and Torres Strait Islander people across the continent are in agreement that we need to move beyond symbolism, that national representative bodies must have capacity to instigate initiatives and respond to the needs and aspiration of our communities. Fundamental to a Voice to Parliament is a requirement that Parliament must consider the Voice of Aboriginal and Torres Strait Islander Peoples. Adequate institutions and processes need to be developed to establish this body as an independent and Indigenous self-determining national representative body. We recognise that this requires substantial change but also note the substantial support among the broader Australian community, before an education and awareness campaign has been instigated. An Essential poll<sup>4</sup> found the Voice to Parliament was supported by 66%, with 13% unsure and 20% objected. Additionally, 70% supported constitutional recognition, 12% said they weren't sure and only 18% suggested they didn't agree; with this support reflected across the major political parties. Further, the poll found 59% support for a treaty, while 16% weren't sure and only 25% opposed the change. An ineffective Voice model and deficient national representative body without the capacity to provide frank and fearless feedback to the Australian Parliament, and all elected representatives, would not be accepted by the Aboriginal and Torres Strait Islander community nor the broader Australian community.

### **Constitutional Recognition**

While the IPO agrees that the longevity of the representative body needs to be assured, IPO believes that the constitutional enshrinement should occur after a model has been developed; that is acceptable and meets the requirements of self-determination, as outlined in the Declaration on the Rights of Indigenous Peoples.

Providing legal enforcement of an Aboriginal and Torres Strait Islander representative body through the constitution prevents a federal government from ignoring the direction provided by the representative body and ensures the body cannot be dissolved or defunded by a future government that may be less supportive of an Indigenous representative body. However, the IPO is of the firm view that the representative model should be determined and approved by the Aboriginal and Torres Strait Islander community and not determined by Parliament, as originally suggested in the 2017 Final Report of the Referendum Council.<sup>5</sup>

Accordingly, we support the requirement for an Aboriginal and Torres Strait Islander elected representative body in the constitution once a model is approved by the Aboriginal and Torres Strait Islander community but confirm this does not counter Aboriginal and Torres Strait Islander claims to our sovereignty, which remains unceded. The IPO argues that a treaty is required to address the entrenched and ongoing disadvantage, injustice and oppression that is a result of colonization but the IPO also acknowledges Aboriginal and Torres Strait Islander people cannot wait for the completion of treaty negotiation processes before enacting our decision making on legislation, policies, programs and services, that too often negatively impacts on us.

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<sup>4</sup> Murphy, Katharine, Essential Poll: Majority of Australians want Indigenous recognition and Voice to Parliament, 12 July, 2019. <https://www.theguardian.com/australia-news/2019/jul/12/essential-poll-majority-of-australians-want-indigenous-recognition-and-voice-to-parliament>

<sup>5</sup> Referendum Council, Final Report of the Referendum Council, Commonwealth of Australia, 30 June 2017, p38

## Aboriginal and Torres Strait Islander Aspirations for a Treaty

The Statement from the Heart's call for the establishment of a Makarrata Commission was endorsed at each of the 12 regional meetings and final Statement, and it remains the overriding aspiration of Aboriginal and Torres Strait Islander peoples. The call for a Makarrata Commission is a reflection of the broad demand for a change in relations between Aboriginal and Torres Strait Islander Peoples and the Australian State, to one of partnership and respect. It is a clear assertion of Aboriginal and Torres Strait Islander rights to our self-determination and decision making on issues that impact on us. The IPO supports the establishment of a Makarrata Commission to develop the terms for a Treaty. The development of Treaty must not be over ridden by the development of an elected representative Voice model.

Fundamental to any concept of self-determination is the ability of Aboriginal and Torres Strait Islander Peoples to form and develop our own distinct institutions; determine our social, cultural, economic and political priorities; and fully participate in decision making that affects us. While a National Body will play a significant social, economic, cultural and political role within Aboriginal and Torres Strait Islander Peoples society and national representative body and reflect that our systems of traditional law and customs have capacity to provide informed direction on matters impacting Aboriginal and Torres Strait Islander Peoples.

A Makarrata Commission would also oversee a process of truth telling, to acknowledge the history and impact of colonization on Aboriginal and Torres Strait Islander Peoples. While the *'Bringing Them Home Report'* outlined the experiences of the Stolen Generations this is only one aspect of the detrimental impact of colonization. Moving forward in partnership with Australia's First Nations Peoples requires an honest recognition of the ongoing impact and processes of colonisation and how they affect Aboriginal peoples' lives, before we can move forward in healing.

The just terms of a Treaty need to be developed through a series of detailed consultations, incorporating broad engagement with all regions, over a sufficient period of time to enable Aboriginal community to develop and ensure ownership of the terms of the treaty. The *Declaration on the Rights of Indigenous Peoples* establishes at Article 11.2 that:

*'States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs'.*

Australia, its citizens and Aboriginal and Torres Strait Islander peoples are ready for a revised and respectful relationship with Australia's Indigenous peoples through the establishment of a national Treaty. International law recognises the rights of Indigenous peoples as legitimate actors in the international legal system. As Bill Jonas argued:

*'Rights are not within the discretion of governments to give or withhold but are inherent. For Indigenous people, the international system has begun to acknowledge their collective rights to self-determination ... that rights reside in peoples' systems of organisation, governance and ultimately, sovereignty,'* where *'the credibility and legitimacy of a State's foundations, its sovereignty, depends on its inclusivity and the way it treats Indigenous peoples'.*<sup>6</sup>

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<sup>6</sup> Jonas, Bill (2002) *Recognizing Aboriginal Sovereignty-implications for the treaty process*, Speech by Dr William Jonas AM, Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights and Equal Opportunity Commission, Presented at ATSI National Treaty Conference, Tuesday 27 August 2002. <https://www.humanrights.gov.au/news/speeches/recognising-aboriginal-sovereignty-implications-treaty-process-2002>.