



NATIONAL TERTIARY EDUCATION UNION
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National Tertiary Education Union (NTEU) Submission to the Aboriginal and Torres Strait Islander National Voice proposal

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Submission Prepared by:	NTEU Aboriginal and Torres Strait Islander Policy Committee (A&TSIPC)

Background

The National Tertiary Education Union (NTEU) has, for over two decades, been a leader in the Australian Union movement in building and fostering strong and ongoing relationships with our Aboriginal and Torres Strait Islander caucus, Aboriginal and Torres Strait Islander peoples and their communities.

Established by the 'Gubba Caucus', the [NTEU Ten Point Plan for a Post-Treaty Union](#) provides a detailed set of principles by which the NTEU will ensure ongoing Aboriginal and Torres Strait Islander involvement and direct participation across all levels of the union, in both elected and paid staff positions.

The NTEU has enshrined Aboriginal and Torres Strait Islander business as fundamental to the responsibilities and work of the union, with the establishment of the NTEU Aboriginal and Torres Strait Islander Policy Committee (A&TSIPC) to advise the union on cultural, social, employment, education and social justice matters pertaining to Aboriginal and Torres Strait Islander members, individual and their communities. An additional role of the A&TSIPC is to formulate, guide and influence internal policy positions. The A&TSIPC provides counsel to the union's National Council and National Executive on Federal, State and Territory Government legislation, policy, and programmes,

& the potential impacts a Government's position and/or specific agenda will have upon Aboriginal and Torres Strait Islander union members, individuals, and their communities.

NTEU position on a proposed National Indigenous Voice

NTEU is dismayed by the proposal for a National Indigenous Voice.

The NTEU position as it relates to Aboriginal and Torres Strait Islander recognition of sovereignty and subsequent mechanisms to recognise sovereignty, differ greatly to that proposed by the Federal Government through a National Indigenous Voice to Parliament.

As detailed, the current proposal does nothing to address Aboriginal and Torres Strait Islander people's sovereignty, which remains unceded. Full and unmitigated recognition of Aboriginal and Torres Strait Islander people's sovereignty is fundamental to all Aboriginal and Torres Strait Islander people, and without this recognition being preserved via a set of treaties, any proposed form of constitutional recognition or voice to parliament can and will only be seen as tokenism.

Treaties negotiated by Aboriginal and Torres Strait Islander groups and/or clan groups could have appropriate mechanisms for representation in and to the Australian Parliament and Senate, with greater influence over legislation, policy and programs than that proposed by The Voice to Parliament. Treaties also go some way towards undoing the damage caused by the Australian Constitution – a document which not only ignored Aboriginal and Torres Strait Islander peoples' sovereignty, but also cruelly discriminated against, with sections of the Australian constitution working to exclude all Aboriginal and Torres Strait Islander and peoples of colour from society altogether.

Detailed response - National Indigenous Voice to Government/Parliament proposal

The proposal details a series of matters pertaining to the establishment of a Voice to Parliament and an Independent Indigenous Policy Body. The underlying assumption of the proposal for a National Voice to Parliament, is that this is the preferred and only method of consultation and recognition agreeable by the Federal Government. This proposal relies solely upon the goodwill of current and future governments, no matter if the body is protected by legislation, as legislation can be easily repealed or amended.

Establishing a National Indigenous Voice to Parliament as a private incorporated body or agency may provide a greater arms-length between the Voice and Government, although funding for the new body would need to be ongoing and secured to ensure protection from any future government agenda regarding Aboriginal and Torres Strait Islander consultation. Funding can be impacted by

efficiency dividends/direct budget cuts initiated by the government of the day, and this will impact the ability of any advisory or consultative body to undertake its work.

Proposed Functions, Role and Scope of National Indigenous Voice

Role

The National Voice will have a right and responsibility on behalf of Aboriginal and Torres Strait Islander Australians to advise Parliament and the Government with regard to any matters of national significance to Aboriginal and Torres Strait Islander Australians.

While the role of the National Indigenous Voice somewhat empowers the body to “advise” the Government regarding any “matters of national significance to Aboriginal and Torres Strait Islander Australians”, it would suggest that Aboriginal and Torres Strait Islander people can only advise Government on matter pertaining directly to Aboriginal and Torres Strait Islander peoples.

What are the matters of national significance to Aboriginal and Torres Strait Islander people and who defines what is significant to Aboriginal and Torres Strait Islander peoples?

Do matters of national significance extend to seeking the opinion of Aboriginal and Torres Strait Islander community members on matters that are not seen by others as being nationally significantly to Aboriginal and Torres Strait Islander peoples? As an example, does this extend to provision of advice from Aboriginal and Torres Strait Islander communities pertaining to climate change policy and associate legislation and if so, will this advice be heard or actioned?

Core Functions and Scope

National Voice to advise Commonwealth Parliament and Government on nationally significant matters of critical importance to the social, spiritual and economic wellbeing, or which has a significant or particular impact on Aboriginal and Torres Strait Islander Australians. A National Voice would have a proactive, unencumbered scope to advise on priorities and issues as determined by the National Voice.

The core functions and scope of the National Indigenous Voice again appear to focus upon a limited or almost undefined set of significant matters of critical importance for Aboriginal and Torres Strait Islander peoples. Matters of social, spiritual and economic wellbeing are of great importance and are examples of high priority areas of importance for Aboriginal and Torres Strait Islander peoples. Yet who will determine what issues are significant or are to have a particular impact on Aboriginal and Torres Strait Islander peoples? The NTEU A&TSIPC feels the core functions and scope

of the National Indigenous Voice do not recognise the differing priorities for many Aboriginal and Torres Strait Islander communities across the country.

Parliament and Government

While it is stated the National Indigenous Voice would have a proactive, unencumbered scope to advise on priorities and issues as determined by the National Voice, The proposed obligation on the Australian Parliament and Government as detailed in the National Indigenous Voice *Proposal*

Explainer 1 - National Voice advice to the Australian Parliament and Government states:

The proposed obligation on the Australian Parliament and Government to consult would cover a very narrow range of proposed laws which exclusively relate to Aboriginal and Torres Strait Islander Australians.

While the National Indigenous Voice could determine priorities and issues as it seems fit, the obligation on the Federal Government and Parliament is to only consult on a narrow range of proposed laws that relate exclusively to Aboriginal and Torres Strait Islander Australians. This obligation on both the Australian Parliament and Government is light-weight and in reality stipulates very little onus put on the Parliament or Government to consult with Aboriginal and Torres Strait Islander peoples; outside of a yet to be determined narrow range of issues relating to Aboriginal and Torres Strait Islander peoples. As a result, priority issues determined by a National Indigenous Voice will be relegated to second or third order matters.

Requirement/Obligation to Consult.

It is also of concern that a National Indigenous Voice cannot be required by the Parliament or Government to provide advice on Aboriginal and Torres Strait Islander matters.

If a National Indigenous Voice is to have any leverage in Parliament or Government, any process directly impacting Aboriginal and Torres Strait Islander peoples must include a requirement for the Parliament or Government to seek input and advice on matters of national importance.

The proposal essentially creates a power imbalance and places a low-level responsibility upon the Parliament and Government to consult with Aboriginal and Torres Strait Islander peoples regarding a proposed piece of legislation impacting them. This proposal will enable the Parliament and Government to essentially determine the issues and priorities for Aboriginal and Torres Strait Islander peoples, and this proposal provides the framework for this to occur. This also suggests the Parliament and Government agenda, particularly in the legislative sense, is of greater importance than those issues and matters of significance as determined by a National Indigenous Voice.

System of Consultation and Transparency - Non-justiciability of the obligation

The detailed National Indigenous Voice proposal states:

Parliament and the Australian Government obliged to consult the National Voice on a narrow range of proposed laws which are exclusive to Aboriginal and Torres Strait Islander people and would be expected to consult on a broader component.

Parliament and the Australian Government to engage as early as possible in development of policy and laws.

The obligation would be non-justiciable, nor affect the validity of any laws.

Again, it appears the obligation upon the Parliament and Government to consult is not only limited, but cannot be challenged in the courts either through a failure to consult, or a failure to adopt the outcomes of that consultation process. Dispensing with the courts' ability to review the obligation sends a clear signal that the Government does not intend to take the obligation seriously, or worse, that it intends to consult only in name only.

Proposed National Indigenous Voice Membership Models

The detailed proposal on a National Indigenous Voice proposes two membership models, with either a Structural Membership Link or Direct Elections suggested.

The Structural Membership Link proposal appears, from the NTEU perspective, to be convoluted and possibly confusing for Aboriginal and Torres Strait Islander peoples and potential candidates for those positions. Should a National Indigenous Voice be implemented, a direct election of candidates to the National Indigenous Voice would be preferred option.

This option must be made available to all Aboriginal and Torres Strait Islander peoples, allowing candidates to nominate for either local/regional or national positions, without restriction. This way, representatives will be elected directly by local Aboriginal and Torres Strait Islander electors and would work to reduce any potential issues of nepotism and/or lateral violence.

National Indigenous Voice - core membership numbers

While a proposed National Indigenous Voice is not supported by the NTEU A&TSIPC, if a National Indigenous Voice were to be established, the proposal for an eighteen-member (18) committee comprising two representatives from each State, Territory and the Torres Strait would be the preference. It is essential that all States, Territories and the Torres Strait have both male and female representation to ensure Aboriginal and Torres Strait Islander cultural appropriateness and safety.

Appointment of National Indigenous Voice members and member terms

As proposed, the appointment of additional members (two) to the National Indigenous Voice to bring additional assistance and or skills, would be of value, providing those appointed members are:

- Aboriginal and/or Torres Strait Islander
- Merit based appointment based upon the required skill set.

Member terms for the National Indigenous Voice should operate akin to the staggered four-year Parliamentary terms. A term limit of three-years may be restrictive when seeking to achieve proposed goals as set by a National Indigenous Voice or similar body. A limit of two consecutive terms would be appropriate for such a body and would provide the ability for younger community to potentially nominate for elected positions.

Independent Policy Body

While the proposal for a National Indigenous Voice is not supported by NTEU, the NTEU believes the establishment of an independent policy body to work alongside a proposed National Indigenous Voice would be appropriate. A National Indigenous Voice of similar body would require expert policy and legislative analysis, and an independent policy body with Aboriginal and/or Torres Strait Islander staff and management will ensure a National Indigenous Voice or similar body would have access to relevant data and policy analysis that is viewed through an Aboriginal and/or Torres Strait Islander lens. An independent policy body would be more agile in its response and assistance to a potential National Indigenous Voice, rather than reliance on assistance from a Government Department that may have numerous responsibilities outside of Aboriginal and Torres Strait Islander matters.

An independent policy body would be one step removed from the Government and Parliament and NTEU believes this would allow for greater scrutiny of proposed Government policy and legislation, with the ability to provide unfiltered advice to the membership of any proposed body.

Legal form of a National Voice

The two options as proposed incorporate options for either Commonwealth body with independence guaranteed under legislation, or a private incorporated body recognised to perform statutory advice function under special legislation, with a CEO appointed by the membership of a proposed National Indigenous Voice.

NTEU is of the view that either proposal could be usurped by the Government of the day through the revocation of legislation that underpins either option. There is precedence for a move such as

this, for example, the Aboriginal and Torres Strait Islander Commission (ATSIC), where legislation was repealed in 2004/2005.

General Membership

The proposal outlines several stipulations regarding membership of a National Indigenous Voice or similar body. Membership rules are fundamental to the work of representative organisation and NTEU is concerned that no specific detail has been given regarding minimum eligibility requirements. Without further information pertaining to membership eligibility, NTEU fears membership eligibility rules may restrict some Aboriginal and/or Torres Strait Islander community members from obtaining membership of a proposed body. For example, members of the stolen generation who may wish to join a National Indigenous Voice or similar body could be excluded. Member rules need to be flexible and accommodating, particularly for members of the stolen generation.

Local and Regional Voice – Principles based Framework.

While NTEU is not supportive of a National Indigenous Voice, the proposal for a principles-based framework that will guide the creation of local and regional network is meritorious. Local Aboriginal and Torres Strait Islander communities across Australia, in the main, have already established consultative mechanisms. It is concerning that while it is proposed a local and regional voice would feed into a National Indigenous Voice or similar body and that existing local consultative groups would continue, NTEU is unsure how local groups would interact and if the creation of a local and regional voice would simply create confusion.

Many Aboriginal and Torres Strait Islander community members who serve on representative and consultative committees have ongoing responsibilities to family and community and participation on yet another consultative or advisory committee will reduce the already limited time these community members have. Duplication of existing structures will serve no purpose and will simply cause confusion.

It is also concerning that while a principles-based framework to guide the implementation of local and regional voices has been developed, who will have responsibility for driving this process? Will local Aboriginal and Torres Strait Islander communities be burdened with additional work and responsibility to create a representative/advisory body that may already exist in a differing format? Who will support those communities, what funding will be provided to local and regional areas to assist in establishing those local and regional bodies?

Conclusion

As stated, NTEU is not supportive of a National Indigenous Voice to Parliament and/or Government. This proposal for a National Voice is simple tokenism at its best. It would appear Aboriginal and Torres Strait Islander peoples and their communities are involved in a constant cycle of talking to Government, with little to no action taken to address the dire needs of many Aboriginal and Torres Strait Islander communities.

Over the past two decades we have seen the end of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004/2005 and the National Congress of Australia's First Peoples in 2019. Those mechanisms for consultation, particularly the National Congress, were effectively ignored by the current Federal Government and Parliament, and the question must be posed – will a National Indigenous Voice suffer a similar fate? NTEU believes it will.

Aboriginal and Torres Strait Islander peoples are tired of being promised a consultative or advisory mechanism, yet when the particular body embarks upon a different agenda to the Government of the day - an agenda that suits the needs of Aboriginal and Torres Strait Islander peoples, we find these bodies experiencing budget cuts/efficiency dividends or worse having the underpinning legislation overturned by Parliament.

We have all travelled this road and it ends at the same destination. The definition of stupidity is trying the same approach over and over, expecting a different result. A new approach is needed, one that recognises Terra Nullius has been overturned and the sovereignty of Aboriginal and Torres Strait Islander peoples has never been ceded.

Aboriginal and Torres Strait Islander people's sovereignty and official recognition of sovereignty through treaties will achieve far more than a constant cycle of talking with no action. We have a once in a century opportunity to forge a new path for Aboriginal and Torres Strait Islander peoples, a National Indigenous Voice is not the way.