



Voice Secretariat

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CANBERRA ACT 2601

By email: Co-designVoice@niaa.gov.au

RE: The Jessie Street Trust submission to the Indigenous Voice proposal outlined in the *Indigenous Voice Co-design Process Interim Report to the Australian Government* (October 2020)

“In 1967 we were counted, in 2017 we seek to be heard.”

Uluru Statement from the Heart, 2017

Late one night in 1956, Jessie Street phoned Faith Bandler and said: 'You can't get anywhere without a change in the Constitution and you can't get that without a referendum. You'll need a petition with 100,000 signatures. We'd better start on it at once'¹. And so began the campaign for a national referendum to alter the Constitution so that Aboriginal and Torres Strait Islander people were counted in the Australian population. The campaign was also to ensure the Australian government had powers over Aboriginal affairs which were previously held by the states. The campaign led to the 1967 referendum achieving the highest “yes” vote recorded at an Australian referendum – 90.77%.

In 1989, the centenary of Jessie Street's birth, the Jessie Street Trust was formed to commemorate and continue the legacy of Jessie Street who was “perhaps the most influential but least well-known Australian feminist and human rights campaigner of the 20th century”.²

With the upholding of Jessie Street's legacy in mind, the Jessie Street Trust (JST) welcomes the opportunity to respond to the *Indigenous Voice Co-design Process Interim Report to the Australian Government* (October 2020).

The Jessie Street Trust would like the following points to be considered when preparing the final recommendations to the Australian Government:

- A Voice to Parliament and Government to represent the views of the Aboriginal and Torres Strait Islander peoples on matters directly and indirectly impacting their communities is a critical, foundational step to empowering First Nations communities and enabling participation;

¹ Michael Gordon, *Change gonna come, remembering the 1967 referendum*, SMH, 19/5/2017

² *ibid*

- Aboriginal and Torres Strait Islander peoples must be able to determine the means by which they are represented through the Local & Regional and National Voices; and
- Whilst we understand that constitutional enshrinement was not part of the scope of the co-design process, we believe that once this process has defined a clear model, the existence and core functions of the Voice must next be enshrined within the Constitution to ensure it is effective, independent and perceived as legitimate.

A National Voice to Parliament and Government

The JST fully supports the National Co-design Group’s proposals for a “National Voice to provide advice to the Parliament on national issues impacting Aboriginal and Torres Strait Islander peoples.” A National Voice would significantly progress Australia’s implementation of the principles outlined in the UN Declaration on the Rights of Indigenous Peoples, including Article 19, requiring that UN member states consult and cooperate with Indigenous communities ‘through their own representative institutions to obtain their free, prior and informed consent’³ when making legislative or administrative change that would impact them. Further, the JST supports the interim report’s proposition that the National Voice would *not* administer programs, provide funding, or be able to veto laws made by the Parliament.

It is, however, imperative that the National Voice be able to provide advice to the Australian Government, in the *early* stages of policy design. Evidence is overwhelming, that the success of programs aimed at specific communities is dependent on the ability of these communities to participate in the design of the policies and programs. Without sufficient consultation time, the Voice’s review process of proposed laws and policies risks becoming a tick the box exercise.

The JST also supports the proposal that a Statement of Consultation be provided with Bills addressing engagement with a National Voice as a key transparency mechanism. This will require the Voice to scrutinise proposed legislative reforms to assess their impacts on Aboriginal and Torres Strait Islander peoples and document their response and any advice provided to the government or Parliament. The Statement should be publicly available and tabled in Parliament at the time of the second reading speech, much as statements of compatibility are provided under the *Human Rights (Parliamentary Scrutiny) Act 2011*. We believe this process could provide a forum for the views of First Nations peoples to be duly considered in the parliamentary process by the democratically elected representatives of the Australian people. To be truly successful, we would encourage Parliament and the Australian Government to embrace this opportunity for open dialogue with First Nations peoples in good faith, consulting early and consulting often, to ensure Statements of Consultation are given appropriate consideration in democratic processes.

³ United Nations Declaration on the Rights of Indigenous Peoples, Article 19, available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

Legitimacy of Voice and determination of representation

As the interim report notes, legitimacy of Aboriginal and Torres Strait Islander peoples' representation is paramount. It is therefore imperative that regional and local Aboriginal and Torres Strait Islander communities determine how their representatives will be elected or selected to the Local, Regional and National Voices. The National Voice must be representative of the diverse populations and needs of Aboriginal and Torres Strait Islander people. Representatives must *not* be appointed by the Australian Government.

The Australian Human Rights Commission's *Wiyi Yani U Thangani (Women's Voices) Report* has highlighted the urgent need to ensure that Aboriginal and Torres Strait Islander women and girls, as some of the most marginalised groups in the Australian community, are given increased opportunities for self-determination and participation in the policy-making process which impacts their lives.⁴ The report records the views of numerous and diverse Indigenous women from all around Australia consistently expressing the desire for greater representation. A key theme emerging from the *Wiyi Yani U Thangani* report is that Aboriginal and Torres Strait Islander women wish to be engaged by, and work cooperatively with, policy makers to develop programs that can effectively meet the needs of Indigenous communities. The National and Local and Regional Voices offer potential for capacity-building among Indigenous women, providing forums in which women could participate in deliberative processes, engage strategically to advocate for their communities and develop leadership experience. Critically, the proposed model explicitly identifies gender-balanced representation as a necessary requirement for effective representation of Aboriginal and Torres Strait Islander communities.

As the Interim Report states, it is critical that the National Voice and Local and Regional Voices be linked in order to develop policies that will result in achievable and sustainable outcomes and in order to improve the lives of indigenous Australians across a range of areas. For this to be achieved, it is imperative that the National Voice intersects with existing bodies and organisations.

We believe that in order for the Voice to effectively and legitimately 'speak' on behalf of First Nations peoples from diverse circumstances, it is critical that Aboriginal and Torres Strait Islander peoples determine the means by which they select their representatives, as well as by whom they will be represented.

The absolute necessity for a constitutionally enshrined National Indigenous Voice

Over the years there have been numerous Indigenous representative and advisory bodies to advocate and advise on the needs of Indigenous Australians, but many have been dissolved when administrative or other problems have arisen, leaving a vacuum. Enshrining the National

⁴ Australian Human Rights Commission, *Wiri Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future*, 2002, pp. 80-91, available at: <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>

Indigenous Voice in the Constitution is critical. Constitutional enshrinement is the preferred model articulated by Indigenous peoples in the Uluru Statement from the Heart.

The JST supports the arguments presented in the submission of the Public Lawyers⁵, outlining why the Voice needs to be enshrined in the Constitution. We agree with that submission's view that the existence and core functions of the Voice would be included in the written text of the Constitution, with additional functions, powers and procedures then outlined through legislation. This would ensure that the Voice could not be abolished, and that it could be adapted to future circumstances.

There are several reasons why the JST deems it essential that the Voice be enshrined in the Constitution. The Voice must be sufficiently independent of the workings of the government of the day in order to provide frank and authentic advice to Parliament about the impacts of proposed policy and legislative reform on Aboriginal and Torres Strait Islander peoples. Only constitutional enshrinement would provide the required stability, independence and certainty that would allow the Voice to give advice to parliament without fear or favour. The issue of insufficient independence from government has been highlighted as an important factor in the failures of previous advisory bodies. Constitutional enshrinement is also the only way that the Voice will have the legitimacy it requires, in the eyes of the Indigenous and non-indigenous public and politicians, to achieve its objectives and perform its functions.

The conclusion of the current co-design process will enable the Government to honour its election promise to hold a referendum to enshrine a Voice in the Australian Constitution. Once the model for the Voice has been settled, the words of a constitutional amendment can be developed for submission to the Australian people at a referendum. We believe the co-design of the Voice has been an essential initial step towards the development of a clear and sufficiently detailed proposal for constitutional reform. It is, however, critical that further work is done to socialise key concepts with the broader Australian public and build support for a case for constitutional enshrinement.

For true reconciliation to take place in Australia, for us to become a united country, recognition of and respect for Aboriginal and Torres Strait Islander Australians must occur. The Uluru Statement from the Heart, an extraordinarily powerful and succinct document, outlines the way forward: "We seek constitutional reforms to empower our people and take a rightful place in our own country. ... We call for the establishment of a First Nations Voice enshrined in the Constitution."

The Jessie Street Trust supports the call of the Uluru Statement from the Heart. The first essential step to realising its vision is establishing a Voice to Parliament and the Australian Government.

⁵ Public Lawyers consultation submission to the Interim Report of the CoDesign Process, submitted 22/01/2021