

Acknowledgement & Respect

We acknowledge the Gunaikurnai people as the traditional custodians of this land and waters on which we live and pay our respects to their ancestors, elders and emerging leaders.

Introduction

Having read and considered the entire report, we congratulate and thank the Co-Design Group (CoDG) for their:

- i. transparent and clear reporting of CoDG discussions, points of agreement and matters yet to be agreed;
- ii. thorough review of past and present arrangements to include Aboriginal and Torres Strait Islander (ATSI) people in Australia's Governing decision-making processes;
- iii. proposals to markedly improve these arrangements at the National, State & Regional levels; and for their
- iv. extensive consultations with both indigenous and non-indigenous Australians in preparation for their final report and recommendations to the Federal Government.

We are pleased to be part of this movement for Constitutional Recognition of Australia's First Nation's People that will give the Federal Government a means by which it can legislate to establish a National Indigenous Voice (NIV). We consider this to be a National Priority and the most critical reform for all Australians to make asap.

Context

We understand that previous Federal Governments of all political parties (John Howard 2007, Kevin Rudd 2007 & Julia Gillard 2011) raised the need for Constitutional Recognition of Australia's Indigenous people. Fourteen years later, the resolution of this is still outstanding despite considerable time, effort, inquiries, reports and public cost. The Federal Government and PM should do everything in their power to expedite this matter.

This Interim Report is part of the Federal Government's public commitments to:

- i. broad consultations with ATSI communities that culminated in the Uluru Statement from the Heart 2017
- ii. recommendations by its 2018 Joint Select Committee on Constitutional Recognition; as well as

- iii. the intention to establish a NIV by forming a Referendum question, holding a successful Referendum and establishing the NIV within that term of parliament.

Following the Uluru Statement from the Heart 2017, the Federal Government's 2018 Joint Select Committee on Constitutional Recognition recommended the Australian Government initiate a process of co-design to develop detail for an Indigenous voice.

What a NIV would look like and how it would work to improve the lives of ATSI people in particular and Australian society generally is the subject of this Interim Report and of recent broad community consultations with the support of the National Indigenous Agency of Australia (NIAA), based within Minister Ken Wyatt's Indigenous Affairs Office and with the support of the From the Heart campaign and websites. We subscribe to these websites and receive updates via email.

Having initiated this process, the Federal Government is obliged to show goodwill and integrity to progress this matter to the satisfaction of all Australians and ATSI people in particular. We do not want a repeat of the Marriage Equality Referendum/Plebiscite political debacle.

Despite this Scott Morrison publicly stated in March 2021 (ABC News) words to the effect that:

'There will not be a Constitutionally enshrined National Indigenous Voice and there is no evidence of community support for this.'

This undermines the very co-design process that the Federal Government has put in place to consider options and whose Interim Report we, among many other Australians are in the midst of responding to. Is the PM deliberately thwarting this achievement or is he simply trying to delay this achievement. This only exposes a vast disconnect between voters and the Federal Government/PM on this matter.

We agree with the submission made by the Bass Coast South Gippsland Reconciliation Group:

"It should not be a legislated Voice – it must be above partisan politics – and the Constitution grants it permanency, security, respect, and a central place in the national dialogue and policy-making, where culturally-informed comment and advice will be taken seriously."

It is vital that the Federal Government and the PM bring goodwill and integrity to its consideration of these changes to Australia's colonial governance system. The opportunity inherent in this change will only enhance goodwill between the Australian Parliament/Government/Society and Australia's First Nations Peoples (AFNP).

This is Australia's opportunity to reconcile our differences - to heal - to put our indigenous and non-indigenous relations on an equal and respectful footing. This will not mean 'Business as Usual'. This will benefit all Australians and the majority of Australians want this and believe this is a national priority (From the Heart polling 2020).

Another matter that has been covered in the news and conflated with the establishment of the NIV is the resurgence of the Australian Republican movement. These two matters must remain distinct and Constitutional change to enshrine the NIV cannot be contingent on Australia becoming a Republic. The time for change is now. The voters will not tolerate further delays.

It is clear to most Australians that our colonial system of governance is no longer 'fit for purpose' in relation to its adverse impacts on Australia's FNP. We are a much more humane society now and want to end the oppression of Australia's First Nations People in all its forms and legitimately include the longest, continuous nations and cultures on earth in Australia's story. We all need to listen to and take these proposals seriously so as to accommodate FNP's needs in our new and more humane governance system. The proofs of our failing of ATSI people are numerous, inter-generational and touch all areas of life. A whole of government/Constitutional approach is required to put an end to our colonial systems of racism, discrimination, abuse and neglect that we must own up to and remove.

It is time we took on what previous Governments and ATSI people are proposing. The outcomes of these changes could not be any worse for Australia's FNP than colonial rule has been and would improve their lives in many respects – it is the change they need all Australians to make - now.

Next Steps - Continuation of CoDG work

Another point of contention for us is that The Terms of Reference (ToR) for all groups involved in the co-design process specifically exclude any consideration of:

- i. Final decision on which options progress to testing;

- ii. Making recommendations on constitutional recognition, including determining the referendum question or when a referendum should be held;
- iii. Making recommendations on the establishment of a Makarrata Commission (as called for by the Uluru Statement from the Heart), agreement making, treaty and truth-telling; and
- iv. Overall budget, deliverables and associated timing and the overarching timeframe for the co-design process.

However, the CoDG may “provide advice to the Minister on the outcome and potential next steps”. We believe these matters are the on-going work of the CoDG and could be flagged as such in the Final Report and recommendations to the Federal Government. We propose that the Co-design Group’s processes be adopted for a fourth stage (ie. after the Final Report) - to develop specific proposals for:

- a. the final Referendum Question
- b. the enabling Constitutional amendments and subsequent Legislation to establish a NIV as outlined in the Interim Report (to be enacted within the following term of Parliament after the Referendum); and
- c. a public information/education campaign in the lead up to the Referendum.

We believe it could also be the work of the CoDG to explain and specify how best a Makarrata Commission, agreement making, treaty and truth-telling processes could be established – in a fifth stage.

Next Steps – The Federal Parliament

The aim of the Australian Parliament/Government must now be to ensure a successful Referendum Question on Constitutional Recognition of Australia’s FNP as a matter of priority and then to pass enabling Legislation within the following term of Parliament that would establish a timely NIV. There should not be any further delays.

The Federal Government will receive the Co-Design Group’s Final Report and Recommendations by the end of July 2021 (given the extension to community consultations). There should be no delay in accepting all recommendations and in releasing this document to the public for further information, consideration and comment.

Transparency is essential. A national public information campaign is required to ensure all Australian’s are aware of and understand

the Why, What, How & When of Constitutional Recognition of FNPs and of the National Voice. Following the release of the Co-Design Group's Final Report, the Australian Parliament as well as all Governments and Ministers must publicly declare their strongest possible support for Constitutional Recognition and the National Voice and make it their priority to ensure a successful Referendum and to pass enabling Legislation within the following term of Parliament.

A bi-partisan approach is required to ensure that this does NOT become a divisive matter, open to misinformation and scare mongering any longer. All public information should be evidence/data based. Of course, the Federal Government can put their alternative proposal for a legislated NIV and no Constitutional Recognition of FNPs. Both proposals/perspectives should be clear about Why they are better for both ATSI and non ATSI people and Australian society generally.

As the Interim Report makes clear, Australia has been working steadily towards this objective. It documents the history and culmination of decades of hard work by indigenous and non-indigenous Australians (including governments) towards Constitutional Recognition of FNPs and the establishment of a National Indigenous Voice. The Interim Report is clear about what a First Nations' National Voice will achieve:

- a. Better outcomes/positive impacts for all First Nations' people
- b. Recognition and affirming of:
 - i. the Sovereignty of First Nations' peoples'
 - ii. the right of First Nations' peoples' to Self Determination
 - iii. integrity of First Nations' peoples' cultural identities and practices
- c. an end to wholesale discrimination and oppression of First Nations' people by our Governments and Parliaments; and
- d. Creation of formal opportunities for real dialogue, negotiations and agreement making between Australia's indigenous and non-indigenous people including reparations, Truth telling and Treaty for all Australians

The establishment of a First Nations' National Voice enshrined in the Constitution will empower indigenous Australians and give them agency over their own lives. This is lacking under our current colonial Constitution and governance system. As the Uluru Statement from the Heart makes clear, this is a matter of cultural identity and survival especially of younger indigenous Australians. The future of the oldest, continuous culture on earth is at stake. Our

Parliaments, Governments and all Australians have this Duty of Care.

It is essential that ATSI peoples have formal, recognised, equal and legitimate ways of influencing all levels of government and parliamentary decision-making because:

- i. They are Australia's First Nations People
- ii. They have never ceded sovereignty
- iii. They now constitute only 3% of Australia's population (and so cannot be effectively represented electorally)
- iv. They continue to be adversely impacted by European occupation and governance
- v. Successive governments have been unable to substantially improve the standing of First Nations peoples

The right to organise and participate in society is a basic human right.

Conclusion

Overall, we strongly support:

1. the Reconciliation & Constitutional Recognition processes
2. the Uluru Statement from the Heart Sept 2017
3. the From the Heart campaign
4. the proposal for a First Nations' Voice to Australia's Parliament that is enshrined in the Constitution; and
5. the establishment of a Makarata Commission to manage the policies and processes for First Nation's Agreement making with Governments.

In particular, we strongly support the proposals and options for a NIV enshrined in the Constitution as outlined in the Interim Report and the submission made by the From the Heart campaign, regarding:

1. the need for Constitutional Recognition as well as a Legislated NIV;
2. comments regarding how best to ensure the representativeness/membership, independence and integrity of the National Indigenous Voice; and
3. comments about roles, structures, relationships with state/territory and regional bodies, policies, processes, resources, ethical/principled operations, succession planning and timelines etc. to ensure a legitimate and well functioning First Nations' Voice to the Australian Parliament

Membership - This is best left to Indigenous people to decide on their own acceptable form of representation for their own National body. This may include cultural decision-making practices that are not familiar to non-indigenous people and may vary between indigenous communities and groups across Australia.

Matters requiring the Government to consult with the NIV

Of particular interest to us, is how best to ensure that the Australian Parliament/Government is "obligated", "expected" or "unencumbered" to seek advice on particular policy and legislative matters at the earliest ie. from initial concept through to policy and legislative development, implementation, monitoring and evaluation. The interim report scopes this hierarchy to determine which matters the government/parliament must, is likely to or may consult the NIV on. These matters can be flagged up front in regard to how they may impact First Nations' people and how existing Parliamentary processes for tabling of Bills etc. can enable this. These practices should be adopted (see p50-54 of the Interim Report).

The Interim Report also provides a comprehensive review of Local & Regional Indigenous organizations and their shared decision making structures with Local/Council, State & Territory governments. Again, there is agreement on most matters with some improvements proposed eg. over the next three years to establish groups where they don't exist, support developing groups and to change or maintain group roles etc. where they already exist. This transition would mean that all ATSI individuals and groups would have a formal mechanism by which they could voice their concerns and aspirations at an appropriate decision-making level. This system would also be a means of developing, providing and refining services and programs to ATSI people and uphold the model of community led solutions.

The Interim Report also addresses how best Local & Regional Indigenous organizations would interact with and relate to the National Indigenous Voice. Again, we believe these are practical matters for Indigenous people to make decisions about and for all our Parliaments and Governments to implement and abide by with the best goodwill possible.

To repeat the From the Heart campaign priorities again, we also call on the Federal Government to:

1. honour its election commitment to a Referendum for Constitutional Recognition and a Legislated NIV;

2. co-design enabling legislation for the Voice to be passed after a referendum has been held in the next term of Parliament;
and
3. co-design a membership model for the National Voice that ensures previously unheard Aboriginal and Torres Strait Islander people have the same chance of being selected as established leadership figures.

We have taken a pro-active approach to informing and educating ourselves about various perspectives, concerns and aspirations of ATSI people. We believe this is a matter of national urgency, as expressed in the Uluru Statement from the Heart 2017 and give our unqualified support as non-ATSI Australians. We look forward to the Final Report and will stay up to date via our From the Heart and NIAA subscriptions.

Appendix 1 - Summary - Key Points of Interim Report

The Interim Report covers:

- a. the drafting of legislation for a National Voice
- b. recommendations on matters of constitutional recognition of FNPs; and
- c. recommendations on the Makarrata Commission, treaty and truth telling

These are the aims of the vast majority of Australians now and can be considered a National priority.

Where we're at with the National Indigenous Voice

The Australian Government accepted the recommendation of the Joint Select Committee to co-design an Indigenous Voice and implemented this two-staged process:

Stage 1 to come up with models/options (ie. this Interim Report);
and

Stage 2 to engage with and gain input from indigenous and non-indigenous Australians.

After thorough, comprehensive and inclusive deliberations this past year, the National Co-Design Group (ie. Indigenous and Government representatives) has agreed on the key elements of a National Voice (with options to be finalised in the Final Report after Stage 2 public consultations).

The CoDG has given broad and deep consideration to all aspects of the NIV. The Interim Report is very clear about all the matters that the CoDG agree on and the few aspects that are still open for consultation and further consideration and finalisation. It gives a clear insight into concerns and alternatives raised and is very transparent about all its considerations. We look forward to the CoDG's final report that will also reflect community consultations and feedback especially from ATSI individuals and communities. The key design elements of the National Indigenous Voice are:

Role/Scope/Responsibilities – What the NIV would do

- a. Be set out in legislation for Constitutional change
- b. Be the National representative, authoritative, legitimate, and responsible body on all matters impacting indigenous people
- c. Provide independent advice to Governments and Parliaments on all legislation, policies and programs that impact indigenous

people – *at all stages from inception through to implementation, monitoring and evaluation*

- c. Not veto any Parliamentary decision making
- d. Not be a 3rd Chamber of Parliament
- e. Not provide/deliver indigenous services/programs or administer funding. This remains the responsibility of the Australian Government.

Function/Operations/Processes/Governance – How the NIV would work

- a. Have the capacity to initiate it's own research, investigations, consultations, engage expertise and respond to Governments and Parliaments *ie. adequate funding, resources, training and professional development*
- b. Work with and complement existing and improved Local, Regional and State indigenous and non-indigenous bodies and processes
- c. Work with indigenous and non-indigenous Australians
- d. Advocate on behalf of indigenous people
- e. Have the power to make agreements and to work in partnership with all levels of Government, Businesses, Community and the public
- f. continue to evolve over time as it is implemented, takes shape and matures (not prescriptive)

Membership & Structure - How the NIV would best be representative of ATSI people and communities

- a. To establish and retain integrity and confidence in the National body, it must be chosen by and representative of all indigenous people/communities (approx. 3% of Australia's total population). *Several options relate to this:*
 - i. Whether or not to limit the number of representatives to 16-18 or to not limit
 - ii. What process/es to be used – elections, appointments, mixture etc.; eg. 2 per state/territory/TSI
 - iii. Which indigenous people to include on the National body eg. – representatives of local/regional indigenous organisations or states and territories, non-representative people etc.
 - iv. Have equal gender representation and representation from youth and people with disability (via working groups)
 - v. Adequately reflect the diversity of the indigenous population across all geographical areas; and
 - vi. Have 4yr staggered terms (half members every 2yrs) provides continuity in overlapping years or 3yrly for all and max 2 consecutive terms each

- vii. Eligibility criteria,, misconduct etc matters to be developed and decided by an Ethics Standing Committee including grounds and processes for removal etc.
- b. Local/Regional models seem to best fulfil principle of direct community links ie. National Voice will not replace or duplicate these though there may be some changes or improvements made
- c. No members should be appointed or selected by the Australian Government.

Establishment of the National Indigenous Voice

- a. Be established via Constitutional amendment/s that require:
 - i. the formation of a successful Referendum question
 - ii. a transparent and accurate public information campaign
 - iii. the holding of a successful Referendum
 - iv. enabling Legislation to be passed by the Australian Parliament *within the next term of Parliament*

Where are we at with the Makarata Commission, Treaty & Truth Telling?

Excluded from scope of CoDG considerations by its Terms of Reference.