

# Indigenous Voice

## Submission

April 2021

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## Acknowledgement

The Queensland Family and Child Commission (QFCC) acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies on which we walk, live and work upon.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to their Elders past, present and emerging.

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## Background

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the *Indigenous Voice – Discussion Paper*.

The QFCC works collaboratively to influence change so Queensland is a safe place where children, young people and their families thrive in supportive communities.

The QFCC seeks to give practical effect to the rights of children and young people in Queensland. Under the *Family and Child Commission Act 2014* the QFCC is responsible for promoting the safety, wellbeing and best interests of children and young people.<sup>1</sup> This includes the promotion of children’s rights including the rights that are unique to Aboriginal and Torres Strait Islander children.

We recognise that these lands have raised generations of strong, thriving Aboriginal and Torres Strait Islander children for more than 60,000 years. We are committed to continually recognising the power and wisdom of Aboriginal and Torres Strait Islander families and their cultures, and the important role they play within our community.

In addition, we recognise the dedication and hope of all those involved in the Uluru Statement from the Heart process and acknowledges the wisdom they have in managing their own affairs and providing solutions for their communities.

The QFCC acknowledges that legislation, policy and service delivery has traditionally excluded Aboriginal and Torres Strait Islander voices and the impacts of this cannot be understated. The inclusion of an Indigenous Voice both at a Local and Regional, and a National Level, that allows Aboriginal and Torres Strait Islander to have a say in their own affairs is a crucial step to addressing the disparity and trauma in Aboriginal and Torres Strait Islander communities.

True partnership with Aboriginal and Torres Strait Islander peoples will be important in the design of the Indigenous Voice. Children and young people should also be included at every step, so they can participate in the establishment of a Voice that will help them have their say on decisions that affect them.

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<sup>1</sup> *Family and Child Commission Act 2014* (Qld), s. 4.

# The significance of the Uluru Statement from the Heart

## Summary

- The design of the model of an Indigenous Voice should take into full consideration the views and aspirations of Aboriginal and Torres Strait Islander people as expressed in the Uluru Statement from the Heart.
- The Indigenous Voice should advocate, and drive accountability, for the rights of Aboriginal and Torres Strait Islander children and young people.
- The QFCC would support constitutional enshrinement of the Voice to make sure it is a permanent, trusted mechanism for participation in decision-making.

The QFCC acknowledges the significance of the Uluru Statement from the Heart.

In May 2017, 250 Aboriginal and Torres Strait Islander leaders gathered to present the Uluru Statement from the Heart (the Uluru Statement) to the Australian public. The Uluru Statement calls for a First Nations Voice to Parliament enshrined in the Australian Constitution, a Makarrata Commission<sup>2</sup> to supervise a process of agreement-making with Australian governments and to also oversee a process of truth-telling about Australia's history and colonisation.

The rights, safety and wellbeing of children and young people are at the heart of the Uluru Statement, which states:

We seek constitutional reforms to empower our people and take a *rightful place* in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.<sup>3</sup>

The Uluru Statement from the Heart acknowledges the 'powerlessness' Aboriginal and Torres Strait Islander communities feel, and the devastating position First Nations children find themselves in:

Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.<sup>4</sup>

The ongoing impacts of colonisation and discriminatory laws and policies continue to disadvantage Aboriginal and Torres Strait Islander people. This has contributed to Aboriginal and Torres Strait Islander people being the most incarcerated people on the earth,<sup>5</sup> Aboriginal and Torres Strait Islander children being taken from their families


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<sup>2</sup> Makarrata is a concept from the Yolngu people of Arnhem Land, it means coming together after a struggle to heal. It has been used as an alternative term to treaty.

<sup>3</sup> Referendum Council 2017, *Uluru Statement from the Heart* (Statement, First Nations National Constitutional Convention, 26 May), <https://ulurustatement.org/the-statement>, accessed 28 April 2021.

<sup>4</sup> Referendum Council 2017, *Uluru Statement from the Heart* (Statement, First Nations National Constitutional Convention, 26 May), <https://ulurustatement.org/the-statement>, accessed 28 April 2021.

<sup>5</sup> Anthony T & Baldry A 2017, 'FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?', *The Conversation*, <https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>, accessed 27 April 2021.



and communities in excessive numbers,<sup>6</sup> and Aboriginal and Torres Strait Islander people dying years before their white counterparts.<sup>7</sup>

The Uluru Statement seeks to empower Aboriginal and Torres Strait Islander families and communities and provides a clear pathway to achieving structural reform for Aboriginal and Torres Strait Islander communities.

The QFCC supports an Indigenous Voice being enshrined in the Australian Constitution, as put forward by the Uluru Statement. Constitutional enshrinement of the Voice will ensure it cannot be diluted or removed by a future Parliament. It would make the Voice a permanent structure, increasing community trust in its value and purpose.

The QFCC recognises that all three elements of reform sought from the Uluru Statement – Voice, Treaty and Truth – are crucial to alleviating the trauma and disadvantage still felt by Aboriginal and Torres Strait Islander communities across Australia.

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<sup>6</sup> SNAICC – National Voice for our Children, the Family Matters campaign, University of Melbourne, Griffith University and Monash University, 2020, *The Family Matters Report 2020 – Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-home Care in Australia*, <https://www.familymatters.org.au/the-family-matters-report-2020/>, accessed 21 April 2021.

<sup>7</sup> Australian Institute of Health and Welfare 2020. *Deaths in Australia*. Cat. no. PHE 229. Canberra: AIHW. <https://www.aihw.gov.au/reports/life-expectancy-death/deaths-in-australia>, accessed 21 April 2021.

# Empowering Aboriginal and Torres Strait Islander children and young people

## Summary

- Local and Regional Voices, and the National Voice, should be designed to encourage participation of children and young people.

Statistically, Aboriginal and Torres Strait Islander peoples are younger than non-Indigenous Australians. At the time of the 2016 Census, more than half of Aboriginal and Torres Strait Islander people were under the age of 25.<sup>8</sup> For this reason, it is particularly important to make sure the Voice is established with the structure and capacity to hear from Aboriginal and Torres Strait Islander children and young people, and represent their views to all levels of government.

Article 12 of the United Nations *Convention on the Rights of the Child* explicitly calls for children to be able to participate in decisions that affect them.<sup>9</sup> The proposed Voice should serve as a robust platform to make sure Aboriginal and Torres Strait Islander children are heard by governments at all levels on policies and practices that affect their lives.

Government policy has a significant impact on children and young people, who have distinct rights, needs and interests. However, children are often excluded from participating in the decision-making process. The Voice proposal calls for a permanent youth advisory group to provide advice to the National Voice. While this is a positive step, there may be opportunities to expand on this to make sure the voices of children and young people are heard fully.

Young people should be represented as full members of the National Voice, and the Local and Regional Voices where practicable, and the structures for selecting members on each Voice should be designed to encourage youth participation. There may be value in considering setting the minimum age for participation lower than the current voting age of 18 years.

Children under the set minimum age should also be regularly and meaningfully engaged in the work of the Local, Regional and National Voices, whether through the youth advisory group or through other engagement activities. The youth advisory group should be established to hear from children and young people across the broad range of rural and remote, regional and urban areas. Advisory groups and engagement strategies should be established for Local and Regional Voices, as well as the National Voice, to make sure children and young people have opportunities to participate at all levels.

In particular, the Voice should seek participation from children and young people with direct experiences of the impact of government policy, including experience with the child protection and youth justice systems. The rights, safety and wellbeing of these children should be a priority for every Voice, so each Voice can be a strong advocate for children's rights at a local, state and national level.

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<sup>8</sup> Australian Bureau of Statistics 2017, *Census of Population and Housing: Reflecting Australia – Stories from the Census, 2016*, cat 2071.0.

<sup>9</sup> United Nations Office of the High Commissioner 1989, *Convention on the Rights of the Child*, resolution 44/25, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, accessed 27 April 2021.

## Size and scope of the Voice

### Summary

- The size and scope of Local and Regional Voices should build on existing structures and be designed in partnership with Aboriginal and Torres Strait Islander peoples to properly represent the views of children, families and communities.

The QFCC supports the proposal to create Local and Regional Voices as well as a National Voice. Local and Regional Voices have the potential to provide opportunities for children and young people, families and communities to participate in government decision-making. They can connect people to governments at the local, state and national level and represent the community's views on the impact of policy on children's rights, safety and wellbeing.

The Local and Regional Voices could also play an important role in connecting communities to services provided by governments in their area. When working well, they could help to foster trust and understanding between communities and the governments that serve them and provide an opportunity for community members, including children and young people, to gain experience with government and advocacy that could lead to further opportunities to participate in the political system at all levels.

The QFCC agrees with the view that Local and Regional Voice arrangements should build on existing structures that are already working well. In that context, there may be some concern about the stated range of 25 to 35 regions. This will create a new set of regional divisions across Australia, which may not relate to existing state, local and community boundaries. They will not necessarily overlap with the traditional lands of Aboriginal and Torres Strait Islander peoples. Some of these new regions may incorporate more than one distinct community of interest with different needs and support requirements.<sup>10</sup>

To be successful, the Local and Regional Voices would need broad and consistent support, resources and training to build their capability to take on the relevant responsibilities of the Voice. Each Voice would need to be a trusted community institution and be seen to offer true community representation.

In the model presented, there is a risk that large Regional Voices may be required to present or adjudicate between contrasting views across different distinct communities. This could limit their effectiveness in working with governments and providing advice to the National Voice.

The size and scope of these Local and Regional Voices needs to be considered to make sure they can be truly representative. A review of existing community structures may help to identify the best size and scope for true representation.

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<sup>10</sup> Phillips DW & Montellow DR 2017, 'Defining the community of interest as thematic and cognitive regions', *Political Geography*, Vol. 61, pp. 31-45.

## Transparency and accountability

### Summary

- Each Voice should publish clear indicators and data to make sure it is accountable to the community.
- The Voice should publish material in child-friendly language and formats, so children and young people are empowered to engage with the Voice and participate in decision-making.
- Governments should be required to consult and engage directly with the Indigenous Voice, and there should be oversight mechanisms in place to promote government accountability to the Voice.
- The National Voice should be empowered to directly address Parliament, to make sure its advice is not subject to misinterpretation.

The model of the Indigenous Voice proposed in this discussion paper would benefit from stronger measures to make sure government and the Voice are accountable to the communities they serve.

The Local, Regional and National Voice should also be designed with measures to make sure they are transparent and accountable to the communities they serve. Among the stated principles to guide the Local and Regional Voices is transparency and accountability, which would require governments and voice structures to 'adhere to clear protocols and share responsibility and accountability, including downward to communities'.

This principle would benefit from clearer detail on how governments and the Voice will make sure they are accountable to communities. Clear indicators for success, collection and publication of relevant data, community engagement and regular evaluation would help to make sure each Voice is publicly accountable. The Voice should also have oversight responsibilities to hold governments to account for their role in meeting the needs of Aboriginal and Torres Strait Islander children, families and communities.

Each Voice should also publish material in child-friendly language and formats, so children and young people understand the role of the Local, Regional and National Voice, and can be empowered to participate in the Voice and in broader decision-making processes.

Transparency and accountability are also important to secure strong outcomes from the National Voice and Commonwealth Parliament. The proposed model would see:

- the National Voice tabling advice in Parliament
- a statement of consultation provided with Bills which would address engagement with the Voice
- the establishment of a new parliamentary committee to examine engagement and consideration of advice.

None of these mechanisms would allow for members of the Voice members to address the Senate or House of Representatives directly. Without this direct representation, it is possible the advice of the Voice may be misinterpreted by Members of Parliament during hearings and debates.

Further, the 'obligation' to consult the Voice would be 'non-justiciable', meaning a failure to engage with the Voice would not be able to be challenged in court and would not affect the validity of the law or policy. The model would be improved if this obligation was made a legal requirement.

Further development of the Voice proposal should consider the systemic mechanisms necessary to make sure governments, Local and Regional Voices, and the National Voice are appropriately transparent in their processes and properly accountable to their communities.