

**INTERIM REPORT TO THE AUSTRALIAN GOVERNMENT**

**Indigenous Voice Co-Design Process**

**ACT Position**

The ACT Government is committed to the Uluru Statement from the Heart. We urge the Australian Government to commit to the full intent of the Uluru statement – a First Nations Voice to Parliament enshrined in the Constitution, a Makarrata Commission to supervise a process of agreement making between governments and first nations, and a national process of truth telling. This would involve constitutional change, legislative change to establish the Makarrata Commission, and the Commission-led process of truth-telling.

The ACT Government strongly supports a constitutionally entrenched Aboriginal and Torres Strait Islander Voice to Parliament. Aboriginal and Torres Strait Islander people need a mechanism to engage with all levels of government and have that voice heard. It must not be stifled by the government of the day and must be free to represent First Nations people in communities across the country.

June Oscar, the Aboriginal and Torres Strait Islander Social Justice Commissioner, has stated:

*The Uluru Statement recognises the need for an entrenched constitutional voice on the one hand whilst maintaining the long term aspirations of our peoples for a treaty on the other. One change can be achieved with constitutional change, and the other outside of the constitution through new legislation and the creation of Makarrata or Treaty Commission. Both have the potential to be meaningful and both represent the collective vision of our people's ... The Uluru Statement carves out a path for change and we need that to be embraced by our fellow Australians and our political leaders.*

**Local and Regional Voice**

Since 2008 the ACT mechanism to provide a local voice for Aboriginal and Torres Strait Islander people in the ACT has been the democratically elected Aboriginal and Torres Strait Islander Elected Body. The Elected Body consists of seven people representing the interests and aspirations of the local Aboriginal and Torres Strait Islander community and provides direct advice to the ACT Government to improve the lives of Aboriginal and Torres Strait Islander peoples living in the ACT.

It is the ACT's position that there is a need to recognise the diversity within the Aboriginal and Torres Strait Islander community locally, keeping what is currently working, and ensuring (as far as possible) that the process does not create division within the community. The ACT has a democratically elected voice and the Chair of the Elected Body is at the table as the community's representative at the Joint Council on Closing the Gap. In considering options for Local and Regional Voice, it may also be important to consider alignment with the Closing the Gap process and the priorities under the National Agreement on Closing the Gap.



The ACT is committed to self-determination and working with the ACT's Aboriginal and Torres Strait Islander community to ensure that priorities are developed and driven by community. The ACT Government recognises the need for a shared and collective approach to achieving quality life outcomes for the Aboriginal and Torres Strait Islander community.

The *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028* was signed by the Aboriginal and Torres Strait Islander Elected Body and ACT Government in 2019. It demonstrates the shared commitment and partnership of the ACT Government and the Aboriginal and Torres Strait Islander Elected Body to work together to improve life outcomes and self-determination for Aboriginal and Torres Strait Islander people in the ACT.

Self-determination is the underlying principle of the ACT Agreement, which is an ongoing process of choice to ensure the Aboriginal and Torres Strait Islander community can meet their social, cultural and economic needs.

We anticipate that every State or Territory will have a model that is developed in partnership with Aboriginal and Torres Strait Islander people in those areas.

For the ACT there also needs to be consideration of an expanded Regional Voice that includes the Aboriginal and Torres Strait Islander communities in the Canberra Region extending into NSW. The proposed framework will need to be dynamic enough to facilitate cross-jurisdictional engagement. Aboriginal socio-cultural regions do not follow State and Territory borders and consideration will need to ensure that Aboriginal cultural regions are respected.

To the greatest extent possible, the Regional Voice should not be divisive. That there should be no arbitrary decisions made prior to the co-design process.

How this will work will need to be led by the Aboriginal and Torres Strait Islander Elected Body from the ACT perspective and the relevant NSW Aboriginal Regional Alliance organisation. The ACT and NSW Governments will need to be the enablers in this process. The ACT is committed to facilitating this Regional Voice.

The Regional Voice should not detract from the Local Voice but should look at the wider regional issues and reach consensus on how to strengthen cross-jurisdictional cooperation for the joint ACT/NSW region.

### **National Voice**

The ACT Government notes that the terms of reference for the co-design process specifically excluded making recommendations about constitutional recognition.

The ACT Government is resolutely committed to advancing the Uluru Statement, to ensure that Aboriginal and Torres Strait Islander peoples are recognised, and their voice is constitutionally enshrined. The Voice should be included in the Constitution, and legislation should be enacted to determine its composition, powers and procedures.

There have been a myriad of papers, consultations and committees on constitutional recognition. Removing the discriminatory provisions from our Constitution would have

lasting practical effects through the protection of human rights. Recognising Aboriginal and Torres Strait Islander people in a preamble is a strong symbolic gesture that does not diminish its importance in any way. The power of symbols is that they can inspire action. This in turn can result in positive practical impacts that lead to an improved quality of life for Aboriginal and Torres Strait Islander peoples.

The 2012 Report by the Expert Panel on Constitutional Recognition of Indigenous Australians (the Expert Panel) outlined recommendations that include substantive change to the Constitution, that recognises the true status of First Australians and that removes racial discrimination from the Constitution. The Expert Panel stated that:

*Aboriginal and Torres Strait Islander peoples were excluded from the deliberations that led to the adoption of the Constitution. The text of the Constitution excluded them. It was not until two-thirds of the way through the nation's first century that the exclusion was removed, and the Constitution shifted closer to a position of neutrality. The logical next step is to achieve full inclusion of Aboriginal and Torres Strait Islander peoples in the Constitution by recognising their continuing cultures, languages and heritage as an important part of our nation and by removing the outdated notion of race.*

The Expert Panel recommended that a new section 51A be inserted into the Constitution, giving recognition of Aboriginal and Torres Strait Islander peoples. The committee also recommended that a new clause 116A be added to the Constitution, namely:

*(1) The Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin.*

*(2) Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group.*

The Uluru Statement from the Heart, signed at the 2017 First Nations National Constitutional Convention, calls for structural reform including constitutional change. Structural reform means establishing a new relationship between First Nations and the Australian nation based on justice and self-determination. The gathering in Central Australia, held on the 50<sup>th</sup> Anniversary of the 1967 Referendum, created a historic consensus on structural reform and constitutional change. These reforms would later become the theme for 2019 NAIDOC celebrations: Voice, Treaty, Truth.

Following the Uluru Statement, a further inquiry was undertaken through the appointment of the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples. The four recommendations, made by the Committee in 2018, have provided the basis of the current Indigenous Voice consultations.

As the current Indigenous Voice work acknowledges, there has been a lot of work already undertaken over the years. The ACT Government is encouraged by the steps being taken that look to bring the aspirations of First Australians to fruition.

The ACT is supportive of a principle-based framework and the holding of a referendum once a model has been settled. This is in line with Recommendation 2 of the Joint Select

Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples' Final Report to the Federal Government.

In moving forward, the ACT recommends that the approach is mindful of the need to not create community division, that it can garner different options and is backed up by a dispute resolution structure. In addition, it is the ACT's preference to have two representatives with a gender balance as part of the membership on the National Voice arrangement.

There is a need to have the diversity of all community opinion represented at the table, an engagement model that allows for parties and the process to keep moving forward, and finally, an authorising environment for local and regional decision making.

In summary the ACT Government:

- is committed to the Uluru Statement from the Heart;
- urges the Australian Government to commit to the three elements of the Uluru statement – constitutional recognition, the Makarrata Commission and the national process of truth telling;
- strongly supports a constitutionally entrenched Indigenous Voice;
- supports the National Voice to be representative of the diverse populations and needs of Aboriginal and Torres Strait Islander peoples;
- supports the National Voice to speak to the Commonwealth Parliament and Government on policy and legislation;
- recognises that Aboriginal and Torres Strait Islander people need to be able to engage with all levels of government and have that voice heard;
- supports the National Voice to act and operate independently from the Parliament and Government; and
- urges the Australian Government to set up a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about Aboriginal and Torres Strait Islander history.