

The Secretariat

Co-design Process for Indigenous Voice

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Please accept the following submission in response to the call for submissions on the *Indigenous Voice Co-design Process Interim Report to the Australian Government*.

Introduction:

As a non-Indigenous Australian citizen, I offer this submission in response to the invitation contained in the Concluding Remarks of the Senior Advisory Group for the *Interim Report* that “All Australians are encouraged to embrace the concept of an Indigenous Voice” (p.161), and the invitation in the *Uluru Statement From the Heart* to all Australians to “walk with us in a movement of the Australian people for a better future”.

I expect that – quite appropriately – most of the submissions responding to the *Interim Report* will be from Indigenous people and organisations, and their voices must of course be heard, heeded and given primacy in these matters. But this is also an issue for non-Indigenous Australians: it is manifestly unfair to expect Indigenous people, who have largely been the victims of European colonisation, to also bear the sole burden of the process of righting the wrongs of our history. However, as a non-Indigenous person I do not presume equal understanding of matters affecting Indigenous people, and if anything in this submission does not accord with the express wishes of Indigenous people I am very happy to concede the primacy of their view.

I have had a long-term interest in justice for Australia’s First Nations people, as a life-time social justice and community advocate and activist; as an active member of a range of community, civic and campaign groups and organisations; as journalist and academic, as an elected representative on Newcastle Council (from 1991 to 1999), and – most recently – as the author of the lyrics to a prize-winning song about the *Uluru Statement* (“Straight From the Heart - the Makarrata Song”), which won the 2020 Alistair Hulett national Songs for Social Justice Award, and was released nationally on Invasion/Survival Day this year.

That song was written in response to the Australian government’s reception of the *Uluru Statement*. Like many other Australians, I was – and remain - bitterly disappointed with the way our national government rejected the very reasonable and moderate request of the *Uluru Statement From the Heart* for a constitutionally enshrined Indigenous Voice to parliament. The arguments offered to defend this rejection (i.e., that it would become a third “chamber” of parliament and that it was not capable of winning sufficient support in a referendum) were demonstrably spurious and - I suspect - in some cases deliberately specious. Our national government’s response to the *Uluru Statement* thus stands as the latest entry in Australia’s shameful record of racism and injustice to our First Nations people. In my view (as a non-Indigenous descendent of colonial invaders), our key challenge as a national community is to confront and come to terms with the dark truths of our past, and to provide the basis for a better, more just, future, where Indigenous and non-Indigenous Australians

can genuinely walk together. When that moment arrives, Australia will have achieved full nationhood.

Government Reception of the Uluru Statement:

In the light of the national government's response to the invitation in the *Uluru Statement*, and its continued failure to adequately respond to issues such as Aboriginal deaths in custody and the many challenges (and acknowledged failures) of the Closing the Gap project, I hold little hope that the current Indigenous Voice Co-design Process will culminate in a significant and meaningful response by the present Australian government, notwithstanding the obvious competence, credentials, credibility and good-intentions of those involved in the process. I sincerely hope I am wrong in this, and that the *Interim Report's* claim that it "is a milestone in the Australian Government's commitment to co-design an Indigenous Voice in partnership with Aboriginal and Torres Strait Islander peoples" proves to be more than the vapid rhetoric of previous so-called "commitments". It is in that hope that I make this submission.

The Co-design Process:

It must also be said that the process adopted by the government to fill the various positions and bodies involved in the co-design process itself - which was accomplished by ministerial appointment with little or no apparent consultation with the broader Indigenous community - appears starkly at odds with the very principle of co-design, and with the stated objective of empowering Indigenous people to play a key role in decisions affecting them. Without meaning to reflect in any way on any of the calibre of the individuals who came to be appointed in this way (for whom I have great respect), such a process is hardly a promising start. It falls well short of the fundamental requirement for legitimacy that the *Interim Report* itself recommends for the national Voice (p.33). The appointment of members to a genuinely representative national Indigenous Voice to speak on behalf of Australia's Indigenous communities will require a much more participatory and inclusive process than was reflected in the selection of those involved in the co-design process.

I note – and strongly endorse - the public criticism of the co-design process along similar lines by Ms Pat Turner, who was obviously expressing a view shared by many Indigenous Australians. I know many non-Indigenous Australians who also strongly agree with her comments.

Terms of Reference:

Before commenting on some specific components of the *Interim Report*, I note that the Terms of Reference for the co-design process did not include consideration of the key request of the *Uluru Statement* for a constitutionally enshrined Indigenous Voice to parliament. This is the elephant-in-the-room omission from the options considered and recommended by the *Interim Report*. **Please note that I strongly favour the option of a constitutionally enshrined Indigenous Voice**, and regard all the alternatives considered within the report as inferior to it. That is not to say that they are without merit. Adopting the recommendations of the *Interim Report* will almost certainly be an improvement on the *status quo*, and most of them would be entirely compatible with a constitutionally enshrined Voice. But until that step is taken, they will fall far short of what

Indigenous Australians have already said they want, and what surveys indicate that the Australian people would be prepared to support in a referendum. The extent to which they do fall short of this will be one measure of the distance we have still to travel as a nation in pursuit of justice for First Nations people. Any model adopted for a national Indigenous Voice as a consequence of the Co-design process that does not include constitutional enshrinement will lack the structural legitimacy, certainty, and stability that would be provided by a constitutional requirement for a national Indigenous Voice to advise parliament and government. Options adopted from the *Interim Report* may be useful as waystations on the road toward proper structural justice for Indigenous Australians, but they should not - and must not - be the ultimate destination of that journey.

Government Commitment to Referendum:

My understanding is that the federal government has indicated that it is prepared to put a question on Indigenous constitutional recognition to a referendum if a consensus on it emerges. It appears to me that the major impediment to such a consensus at the moment is the federal government itself. The Indigenous community has repeatedly rejected mere symbolic constitutional recognition, and has called for a constitutionally enshrined Indigenous Voice to parliament. This has attracted broad support in the general Australian community. If a model for an Indigenous Voice is agreed, the government should fulfill its commitment by putting a proposal for a constitutionally enshrined Indigenous Voice to parliament to a referendum, as proposed by the *Uluru Statement*. In such a case, it would be logical for the proposition to be put at the next federal election, and (presuming it is carried) for the enabling legislation to be passed in the ensuing term of government.

With all the above important caveats, I do recognise and appreciate the hard and valuable work undertaken by those involved in the co-design process, and the thoughtful consideration they have given to the range of matters within its remit.

National Voice Design:

I endorse all the points outlined for the proposed scope of the National Voice (p.32 and p.44), noting that they could (and should) apply equally to a constitutionally enshrined Voice, as could (and should) the considerations related to its membership and method of appointment outlined in other parts of Chapter 2 of the *Interim Report*.

Membership:

In terms of the membership of the national Voice, I strongly support the report's recommendation for structured gender balance.

I would urge reconsideration of the membership number toward the upper end of the range considered in the report.

My view, informed by extensive personal and professional experience with a range of community, institutional and civic organisations over many years, is that the democratic and representative dividend derived from a larger group generally outweighs the much over-stated and over-rated

practical advantages argued for smaller groups (i.e., that they are “more efficient” or “more workable” - I note that the report drifts into this assumption in arguing for a smaller number). The national Voice will inevitably struggle with how to represent the wide diversity of Indigenous communities across Australia, and the smaller its membership, the greater this struggle for representative legitimacy and effectiveness will be. Logistical, budgetary, and other such operational factors have an obvious place in considering the appropriate number of members, but such considerations should not unduly undermine the much more important need for legitimacy, inclusiveness and representativeness. If the Voice is to function and be recognised as a preeminent representative body for Australia’s Indigenous people it should be designed to accommodate the largest number of representatives that is practically viable. I don’t presume to know exactly what that number is, but I have little doubt that it’s greater than 18, or even 20, the report’s currently recommended maximum membership of the Voice.

The arguments for the two models of how to select members of the Voice are well made in the report, and in my view would both be workable. They are both clearly preferable to any ministerial appointment model, and I strongly support the report’s rejection of such a model, and the recommended limitations on any ministerial appointments. It seems to me that Core Model 1 (selection by Local and Regional Voices and/or State and Territory Assemblies) is harder to justify democratically, and does present a greater risk than the direct election model (Core Model 2) of establishing and perpetuating an actual or perceived “national Indigenous leadership elite”, with less capacity for new leaders to emerge than with the direct election model, particularly if it is combined with longer (4-year) terms. Expanding the number of members of the Voice might allow for a hybrid model incorporating elements of both the Core 1 and Core 2 models.

Limited Tenure:

The report does not indicate that any limited tenure provisions for Voice members were considered by the National Co-design Group, and I would urge some consideration of these, perhaps limiting any individual to serving a maximum of either two consecutive 4-year terms, or three consecutive 3-year terms, depending on which term model is accepted. This would assist in ensuring a healthy turnover and refreshment of leadership talent on the Voice, and mitigate against any tendency (or public perception of a tendency) toward elitism, sinecurism and empire building.

Local and Regional Voices:

The arguments in the report supporting the principles-driven, locally adaptive approach outlined for Local and Regional Indigenous Voice bodies are persuasive, and the recommendations provide the required flexibility to establish bodies tailored to the local circumstances of Indigenous communities. I note that the report envisages a model in which local issues relevant to Indigenous people will be dealt with via regionally based Indigenous Voice structures. Where this involves local governments, it is important to note that local government boundaries in Australia rarely align closely with regional boundaries, and the regional bodies formed to represent local governments at a regional level are usually focussed more on advocating the (usually economic) interests of their regions to

state and federal governments, rather than on local matters. They often provide little opportunity for the involvement of local elected representatives and are therefore unlikely to “assist in facilitating the involvement of relevant local government representatives” (p.106) in a way the report imagines. In the Hunter, where I live, for example, the Hunter Joint Organisation comprises only the Mayors and General Managers of its ten member councils, and – where its existence is known at all - is generally regarded as remote from anything to do with local communities. However, many local governments have formed their own Indigenous committees and advisory groups. In Newcastle, for example, the Gurakai Committee established by Newcastle Council performs this function. In most cases, I imagine a Local and Regional Indigenous Voice body would find it more useful and relevant to engage with these more local bodies than with regional organisations of councils. The flexible approach recommended in the report will allow each Local and Regional Voice body to adapt to such circumstances.

Thank you for the opportunity to make this submission, and I look forward to the next stage of the co-design process in the hope that the good work undertaken in this phase assists in the national journey toward justice for Australia’s First Nations people, and more particularly advances the aim expressed in the *Uluru Statement From the Heart* for a constitutionally enshrined Indigenous Voice to parliament.

Sincerely

John Sutton

Newcastle

NSW

PS: I have no objection to this submission (including my name and the fact that I am from Newcastle) being made publicly available (in whole or part), and hereby expressly permit this, if such permission is required. This copy of my submission (which excludes my personal contact details) is otherwise a duplicate of one that I have lodged which includes my personal contact details.