



Submission: Indigenous Voice to Parliament

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With thanks:

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About ANTaR

ANTaR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Peoples. We do this primarily through campaigns, advocacy and lobbying.

Our current national campaigns include:

- Constitutional Recognition and Equality – for Constitutional change to recognise Australia's First Peoples and remove discriminatory elements from our founding document; and
- Advocating for treaty and agreement-making processes across Australia.

We also engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities' services and infrastructure, health and human rights.

ANTaR is a foundational member of the Close the Gap Campaign Steering Committee, the Change the Record Campaign Steering Committee and the Redfern Statement Alliance.

ANTaR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTaR is a non-government, not-for-profit, community-based organisation.

Introduction

Thank you for the opportunity to provide some comments to inform the consideration of the proposed ***Indigenous Voice to Parliament***. We welcome the work to date of the Indigenous-led Co-design groups and commend their efforts. ANTaR has a long interest in the progress of First Nations Peoples in Australia and we have worked closely for many years with the Aboriginal and Torres Strait Islander peak organisations.

Fundamentally, Aboriginal and Torres Strait Islander peoples must have a Voice that speaks for their communities and that Voice must be heard in the chambers of Parliament Federally and in each State and Territory jurisdiction. The Voice must have agency, be respected for its authority and be quarantined from the political and financial undermining that have plagued previous national representative voices like the Aboriginal and Torres Strait Islander Commission (ATSIC) and more recently the National Congress of Australia's First Peoples.

Being informed by our First Nations leaders, stakeholders and colleagues – this submission will cover issues of sustainability, process, models design, agency, the role of States and Territories and authority. Finally it will address how the Voice proposal, as articulated by the *Uluru Statement from the Heart*, must sit within the complementary reforms that include Agreement Making (Treaty) and Truth Telling.

Finally, ANTaR supports the commitment made by the Federal government prior to the 2019 Election to bring the proposed Voice before the Australian people in a referendum to decide if it belongs as part of the formal recognition of Aboriginal and Torres Strait Islander peoples as the First Nations peoples of Australia. As has been noted in the most recent Australian Reconciliation Barometer (2020), the majority of Australians (in growing numbers) are expecting more for Reconciliation.¹

Nearly all Australians (95%) want Aboriginal and Torres Strait Islander people to have a say in their own affairs, and more than 80% of the general community believes it is important to protect a First Nations' representative body within the Constitution.

It is time that we stop pushing these issues off to ever distant, circular and now unsatisfactory processes. ANTaR looks forward to seeing the Voice models develop and

¹ Australian Reconciliation Barometer (2020) Summary report - https://www.reconciliation.org.au/wp-content/uploads/2020/11/australian_reconciliation_barometer_-2020_summary-report_web_spread.pdf

hope that the Uluru Statement can be honoured in this process, as a key step towards a reconciled Australia.

1. The Constitution and Sustainability

We note that the Terms of Reference² guiding the work of the National Group in drafting models were explicit in stating that any reference to Constitutional recognition is out of scope. Frankly, while not taking away from the important design work the Group has undertaken so far, this process has a question mark about its 'good faith' approach to what has actually been called for by the Uluru Statement.

The design of the models for the Voice will be, fundamentally, informed by their ability to overcome or address the issues that have hampered and/or undermined the existence of previous national representative bodies. It is not in good faith for the Government to instigate a co-design process, in partnership with First Nations Peoples, where they have already dismissed or denied essential elements of the Voice that has been intended.

ANTaR's view is that a discussion about Constitutional enshrinement of the Voice is necessary and answering the questions around how the Voice will be sustained and protected over the long-term is central to how it is designed.

We expect that, despite the limited parameters as outlined in the Terms of Reference, many of the submissions to be lodged in this process will make the same point.

Without a consideration of Constitutional enshrinement and protection of the Voice, it is incumbent on the Government to outline how it intends to address the concerns raised around giving the Voice tenor beyond electoral cycles, political expediency and cyclical resourcing constraints. Members of Parliament obscuring the actual proposal of Voice with suggestions of 'third-chambers of Parliament' have shown that enshrinement is necessary to lift Voice above party-political operations.^{3 4 5}

² National Co-Design Group - Terms of Reference (2020) - https://voice.niaa.gov.au/sites/default/files/2020-05/national-codesign-group-tor_0_0.pdf

³<https://www.theguardian.com/australia-news/2019/jul/12/peter-dutton-rules-out-voice-to-parliament-labelling-it-a-third-chamber>

⁴<https://www.theguardian.com/australia-news/2019/jul/18/barnaby-joyce-apologises-for-calling-indigenous-voice-a-third-chamber-of-parliament>

⁵<https://www.theguardian.com/australia-news/2018/sep/26/scott-morrison-claims-indigenous-voice-to-parliament-would-be-a-third-chamber>

To acknowledge the importance, value and authority of a First Nations Voice to Parliament, it must be brought into the Constitution and its structure and operations, while not necessarily detailed within the Constitution, must be given reasonable guarantees around resourcing and support. The Government should start preparing for a broad, non-partisan campaign to educate the broader Australian public about the necessity of the Voice and how it fits within the Reconciliation agenda.

The Voice, once created, will inevitably evolve to speak for the generation of Aboriginal and Torres Strait Islander peoples that inherit it. The flexibility to evolve, grow and adapt over time must be core to consideration of sustainability and Governments must be emphatic in their commitment to this First Nations institution.

2. The Process

Before turning to comments on the models as proposed, we think it is important to raise some concerns about the consultation and engagement process.

While the commitment by the Government, managed by the Minister for Indigenous Australians, to see a final report on the models for Voice by mid-2021 is commendable. ANTaR questions the short time given to provide written submissions, with that part of the consultation process concluding months before the regional consultations and the online survey are finalised in early May.

Whilst we note that the Government has extended the deadlines for written submissions until the end of April, we nevertheless believe more time should be given to submission lodgements and that the Voice consultations should be extended to cover more geographical areas and concentrated where the largest First Nations communities reside. First Nations communities and other non-Indigenous stakeholders are likely to have their views informed and clarified by the in-person consultations and yet the opportunity to express views in written submissions will have passed. We suggest extending the written submission process through until the end of May 2021 to allow for more input to inform the final report.

There are also questions around how First Nations Peoples will be consulted on the final models to be implemented. As the key constituency of the Voice, surely Aboriginal and

Torres Strait Islander peoples get the final say in approving or rejecting the model and makeup of the Voice that the Government supports implementing. Unless there is clear consensus from First Nations Peoples that what ultimately gets decided has their support, it cannot be considered a Voice.

Finally, we suggest communicating publicly the process 'phase' beyond the Government receiving the Final Report. To manage expectations and to hold the Government to account on the investment made by many people, communities and stakeholders who have taken time and spent resources to inform the Final Report and the Voice proposals, we propose that the National Indigenous Australians Agency make clear the intended timeline for consideration, response, second consultation process, decision and implementation from mid-2021 onwards.

3. The Models

International Models and Lessons

a) *The Sámediggi of Finland, Sweden and Norway*

The Sámi parliaments (Sámediggi) of Finland, Sweden and Norway were established in the latter half of the twentieth century based on widespread recognition that the ordinary electoral system does not ensure that Sámi voices are heard.⁶ Despite their varying levels of success in improving socio-economic inequality between the Sámi and the rest of Scandinavian society, the Sámediggi provide insights into how Australia could provide a similar voice to Aboriginal and Torres Strait Islander people.

The Sámi parliaments share similar structures across the three Scandinavian countries. Established in accord with the UN's International Covenant on Civil and Political Rights (Article 27) and the International Labour Organization's Indigenous and Tribal Peoples Convention (No. 169), the Sámediggi do not have a formal legislative function and cannot be considered parliaments in the Westminster sense. Rather, they are elected bodies who perform an advisory role to the government in representing Sámi interests across a range of matters related to language preservation, traditional livelihoods, land rights, and wellbeing.

⁶ Eva Josefsen 2010, 'The Saami and the National Parliaments: Channels for Political Influence,' Case Study prepared for the Inter-Parliamentary Union and United Nations Development Programme, <http://archive.ipu.org/splz-e/chiapas10/saami.pdf>

Each parliament consists of a national board elected every four years by voters whose names must be registered on a Sámi electoral roll, in addition to an executive board and committee system.⁷

Generally, scholars agree that Norway's Sámi parliament has had the greatest success in facilitating the Sámi's right to self-determination. Established in 1989, the parliament consists of a plenary serving as its highest body, with 41 representatives coming from Norwegian political parties, local lists and Sámi organisations elected from 13 constituencies. The practice of placing Sámi on the ballot under the name of Norwegian parties means that the Sámi parliament has moved beyond its advisory role to having a direct influence on the policies pursued by the national parliament.

In contrast, the Sámi in Sweden and Finland struggled to develop stronger relationships with the national parties and exert influence on political affairs. Unlike in Norway, the relationship between the Sámi and the state has not been addressed by public debate within Sweden and Finland, meaning that there is less incentive for their governments to consult the Sámediggi on proposals impacting Sámi communities.⁸

Whilst Norway and Finland have constitutionally recognised the Sámi as an Indigenous people, the limitations of the Sámediggi are evidenced by the Swedish Sámediggi's failure to lobby for recognition of their status as Indigenous people in the Swedish constitution. Legal scholar, Harry Hobbs, argues that the experience of Sweden Sámediggi highlights how both meaningful consultation with First Nations Peoples and constitutional recognition are integral to the successful design of a First Nations Voice in Australia. On certain matters, the government will only consult Indigenous representative bodies if either legally required to or confronted by public pressure. Hobbs therefore proposes that a grassroots campaign for constitutional reform would exert moral and political pressure on the Federal government to engage meaningfully with the representative body.⁹

Points to note:

- Considering relationship between Voice and political parties;

⁷ Marilyn Harrington 2021, 'The Saami Parliaments,' Fact-Sheet, *The Australia Institute: Nordic Policy Centre*, https://d3n8a8pro7vhm.cloudfront.net/theausinstitute/pages/3413/attachments/original/1611278095/Sami_parliaments_factsheet_WEB_.pdf?1611278095

⁸Eva Josefsen 2010, op.cit.

⁹ Harry Hobbs 2021, 'The Sámi's voice,' <https://insidestory.org.au/the-samis-voice/>

- Importance of public support and awareness is helping Voice hold governments to account.

b) Maori Wards and the Maori Representation Act (Aotearoa)

The Treaty of Waitangi, negotiated between the British Crown and Maori Chiefs in 1840, is regarded as the founding document of **Aotearoa**.¹⁰ Despite this, the two accepted translations of the Treaty in English and Maori have sparked debate about discrepancies in interpretation. Whilst the English version of the Treaty states that the chiefs ceded their sovereignty to the Crown whilst retaining possession over their lands, forests and fisheries, the Maori version stipulates that sovereignty was never ceded. Repeated violations by the state against the Treaty of Waitangi led to the development of the Waitangi Tribunal in 1975.¹¹ Since then, the Tribunal has functioned as a permanent commission of inquiry into allegations of breaches against the Treaty of Waitangi made by Maori, and in 2014 it found that the Treaty of Waitangi was not a cessation of sovereignty.¹²

The 1867 Maori Representation Act established the grounds for a Maori voice in parliament, mandating that four fixed electorate seats be reserved for Maori. The number of seats increased to seven in 2002.¹³ Since 1993, proportionate representation has been facilitated by the Member Proportional Representation (MMP) system, which has seen the number of Maori MPs steadily increase throughout the 2000s and 2010s. Whilst encouraging parliamentary participation, the MMP system has done little to place Maori issues on the public policy agenda.¹⁴ This is because whilst there has been an increase in people of Maori descent in parliament, not all of those people descended from Maori are connected to Maori language and community. Maori seats therefore remain important for facilitating a Maori voice in parliament.¹⁵

¹⁰ <https://nzhistory.govt.nz/politics/treaty/treaty-faqs>

¹¹ Sandra Morrison & Ingrid L M Huygns 2019, 'Explainer: The Significance of the Treaty of Waitangi,' *The Conversation*, accessed online, <https://theconversation.com/explainer-the-significance-of-the-treaty-of-waitangi-110982>

¹² Dominic O'Sullivan 2020, 'Can colonialism be reversed? The UN's Declaration on the Rights of Indigenous Peoples provides some answers,' *The Conversation*, accessed online, <https://theconversation.com/can-colonialism-be-reversed-the-uns-declaration-on-the-rights-of-indigenous-peoples-provides-some-answers-147017>

¹³ 'Wendy McGuinness 2010, Effective Māori Representation in Parliament: Working towards a National Sustainable Development Strategy,' *The McGuinness Institute*, <https://www.mcguinnessinstitute.org/wp-content/uploads/2016/08/Project-2058-Report-8-Web.pdf>

¹⁴ Alexandra Xanthaki and Dominic O'Sullivan 2009, 'Indigenous Participation in Elective Bodies: The Maori in New Zealand,' *International Journal on Minority and Group Rights*, p.205-206.

¹⁵ Rawiri Taonu 2017, 'New Zealand elections: Maori seats once again the focus of debate,' *The Conversation*, accessed online, <https://theconversation.com/new-zealand-elections-maori-seats-once-again-focus-of-debate-83293>

The Local Electoral Amendment Act 2002 allows a local government to create local Maori wards and Maori constituencies, thereby replicating the model of fixed Maori representation in the House of Representatives. However, it is not mandatory for the government to do so and the decision can be overturned by referendum.¹⁶

Points to note:

- Opportunities for the Voice to also operate as a standing tribunal on issues relating to future treaty commitments.

c) *Métis, Inuit and First Nations People of Canada*

From the period of first colonial contact until the present, treaties have formed the basis of legitimising Canada's access to Aboriginal lands. Although the Indian Act outlawed treaty-making between 1927 and 1951, the question of Aboriginal land title was revived by the landmark Calder Case (1973), prompting the Canadian Government to develop a 'comprehensive claims policy' which established a process for Indigenous groups to claim title to their territory.¹⁷

Since 1982, the rights of Canada's three Aboriginal groups have been recognised by the Canadian constitution. After a series of campaigns and demonstrations by Aboriginal rights activists, Section 35 of the 1982 Constitution Act was amended to recognise and affirm the existing and future treaty rights of Canada's Métis, Inuit and First Nations People.

The Charlottetown Accord of 1992 proposed a Third Order of Government in which a House of First Peoples or Aboriginal Parliament would be established to advise the House of Commons and the Senate on constitutional matters related to Canada's Indigenous groups. However, the Accord was rejected by the majority of the Canadian public and the Indigenous population who disagreed with the particular model of representation the Accord proposed, arguing that it failed to recognise Indigenous peoples as distinct nations with special rights.

¹⁶ Janine Hayward 2011, 'Mandatory Maori wards in local government: Active Crown protection of Maori Treaty rights,' *Political Science*, vol. 63, no. 2, p. 186.

¹⁷ John Curry, Han Donker & Richard Krehbiel, 'Land claim and treaty negotiations in British Columbia, Canada: Implications for First Nations land and self-governance,' *The Canadian Geographer*, vol. 58, no. 3, p.292-293.

Today, the absence of a single overarching body supporting Indigenous representation has caused the three Indigenous groups of Canada to rely on courts and the language of rights to assert their claims. Different peak bodies, including the Assembly of First Nations, the Congress of Aboriginal Peoples, the Inuit Brotherhood of Canada, the Métis National Council, and the Native Women's Association of Canada, all independently advocate for Indigenous rights, whilst there has been move away from national politics to local and decentralised forms of Indigenous self-government.¹⁸ In Canada modern treaties continue to be negotiated between First Nations people, the state and oftentimes provinces and territories. This is particularly the case in British Columbia, where unlike the rest of Canada, treaties were never finalised.

In 2009, the Truth and Reconciliation Commission of Canada was established with the purpose of researching and bringing to light the abuse and assimilation that occurred in First Nations' residential schools.¹⁹ Along with the Waitangi Tribunal of Aotearoa, it offers an international precedent for processes of Truth-Telling in Australia.

Points to note:

- The Voice should have a role in ensuring accountability for treaty commitments
- As in Canada, Australia's First Nations are each distinct peoples and polities and the Voice needs to be able to reflect this diversity.

Australian National Models and Lessons

d) *Aboriginal and Torres Strait Islander Commission (ATSIC)*

The creation and operation of ATSIC was the most prominent and extensive period of First Nations self governance and self determination since colonisation. Between 1990 and 2005, ATSIC evolved to carry both administrative and representative arms and featured in its leadership, some of the most senior and respected Aboriginal leadership in Australia. Under the legislations that established it, ATSIC was to:

- *advise* governments at all levels on Indigenous issues

¹⁸ Roberta Rice 2013, 'Indigenous Representation and Political Parties in Canada and Latin America,' *Oxford Handbook of Indigenous People's Politics*, edited by JA Lucero, D Turner, and DL VanCott, online: <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780195386653.001.0001/oxfordhb-9780195386653-e-005>

¹⁹ Bonny Ibhawoh 2019, 'Do truth and reconciliation commissions heal divided nations?' *The Conversation*, accessed online, <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925>

- *advocate* the recognition of Indigenous rights on behalf of Indigenous peoples regionally, nationally and internationally, and
- *deliver* and *monitor* some of the Commonwealth government's Indigenous programs.²⁰

It operated without bipartisan support in Federal parliament and was impacted by the changing political imperatives and a changed government in 1996. ATSIC experienced issues managing the two separate responsibilities of administration and representation and there were also other institutional issues that impacted its operations. However, unlike mainstream bureaucracies, ATSIC was not afforded the time and resources to evolve and adapt over time. As has been detailed in other examples, ATSIC's ending has consistently been pointed to as the reason why a new Voice for Aboriginal and Torres Strait Islander peoples must be enshrined in the constitution to give it the necessary tenure.

ATSIC also offers a guide to how Voice has been expressed and formalised at both the national and regional level, with the ATSIC regional authorities continuing through bodies like the Torres Strait Regional Authority and Murdi Paaki in Central-North-West NSW.

As former Howard Government Minister, Amanda Vantstone, has acknowledged publicly, dismantling ATSIC 'may have been a mistake'.²¹ The Voice should look to the ATSIC experience and look to build upon the good parts of its design and operation and make sure that it is supported, with commitment to the long-term.

Points to note:

- ATSIC is the most referenced example as to why a national Voice model must be protected. A long-term commitment to a new body's evolution is needed to ensure it can grow and adapt.
- The ATSIC experience and design, with its representative and administrative arms should be considered for future development of the Voice.

e) *National Congress of Australia's First Peoples*

²⁰ The end of ATSIC and the future administration of Indigenous affairs (2005) Current Issues Brief No.4 2004-05, Published by Information and Research Services, Parliamentary Library, Department of Parliamentary Services, 2004.

²¹The Australian (2018) 'I May have been wrong on ATSIC' - www.theaustralian.com.au

Following the dissolution of ATSIC in 2005, the Government supported the formation of the National Congress of Australia's First Peoples (Congress) in 2010 following the work of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma to propose a new representative body.²²

The Rudd Labor Government supported its establishment and Congress was created as a public company limited by guarantee and initially there were significant resources committed to its operation. However, by 2014, the Abbott Coalition Government had withdrawn previous government commitments to funding Congress and by 2019 the body had gone into administration.

It was difficult in such a short time for Congress to make its mark but it was prominent in leading to the broad policy reform agenda, the Redfern Statement,²³ launched in the lead up to the 2016 Federal election. Without even legislative protection or resourcing commitments guaranteed in some way, the Congress suffered the same fate as other national Aboriginal and Torres Strait Islander representative bodies.

Points to note:

- Congress was undermined, as a company limited by guarantee, by the funding uncertainty and the hostility shown by Government when it spoke, with its intended independence, critically of Government. The Voice will inevitably find itself at odds with the Government of the day over policy or strategy and should not have its resourcing threatened as a result.
- Like Congress, the independence of a National Voice is essential for its own credibility with the First Nations constituents it is created to speak for.

f) Proposed National Voice

Scope

ANTaR agrees that there is, of necessity, a relationship between the Voice and both Parliament and Government. However, as per the Uluru Statement from the Heart, the primary relationship should be with the Federal Parliament.

²² Our Future in Our Hands (2009) Australian Human Rights Commission - https://humanrights.gov.au/sites/default/files/content/social_justice/repbody/report2009/report.pdf

²³ The Redfern Statement (2016) <https://antar.org.au/campaigns/redfern-statement>

Unlike ATSIC, and as proposed, the Voice should not deliver any Government programs or services so that it is free to provide advice and an independent critique. However, over time, in respect and response to self-determination - the Voice may play a role in future administrative organisations led by First Nations peoples.

The Parliament and Government of the day may follow guidance on what they are obligated to seek input and advice on in terms of policies and politics. However, the Voice should be free to initiate its own advice on any parliamentary business it deems relevant to its responsibility as the preeminent representative body in the structure of Government.

Membership

Appreciating that this consultation process is intended to seek views on how membership of the Voice is established, it is likely that much more flexibility will be required to allow Nations and groups to determine how they best want membership to be set.

While the Voice rightly can't be so big that it is unable to arrive at consensus for advice, the body of the Voice needs to be suitably large enough to ensure fair representation of Aboriginal and Torres Strait Islander peoples. This may be a number greater than the 16 to 18 proposed to allow for nation, gender, age, geographical coverage. Some regions may choose to use their own regional voices, either established through this process or those already in existence like the First Peoples Assembly of Victoria or the larger Land Councils to nominate their representation. As long as representation is fair, it does not need to be uniform.

A senate style system of providing equal representation for each State is inappropriate given the significant imbalance of population distribution for Aboriginal and Torres Strait Islander peoples. The proposed hybrid arrangement may, with adaptation, be a more workable model for determining membership. The terms of membership should be longer, closer to the 6-year terms of Australian Senators, with the membership renewal happening in a similarly staggered manner to ensure a level of continuity and to decouple the Voice membership determination process with that of the House of Representatives to avoid a further politicisation.

Governance and Function

ANTaR broadly supports the proposed governance structure for the National Voice in terms of what should be *obligated* and *expected* issues for advice and input. However, as stated previously, the Voice should be free to initiate its own advice process for any legislative

business or proposal it deems relevant. If the Voice has determined an issue, proposal or piece of legislation necessary for advice then the Parliament should be obligated to consider it - regardless of whether it had recognised it previously as being covered by the *obligated/expected* guidelines.

If compliance isn't allowable through Courts, then the Government should indicate how it intends to ensure compliance. Unfortunately, Aboriginal and Torres Strait Islander peoples have had a thoroughly disappointing experience with the 'good faith' intentions of Australian governments. Compliance with transparency mechanisms also needs to be enforceable.

The Voice should be given access to Ministers and senior Public servants through an 'estimates' process as another direct accountability mechanism. There should also be regular reporting mechanisms that highlight and summarise the work of the Voice and how Parliament/Government have responded to the advice and input of the representative body.

Australian Regional Models and Lessons

g) ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB)

The ATSIEB was established under the Aboriginal and Torres Strait Islander Elected Body Act 2008, and is made up of 7 elected representatives from the ACT's Aboriginal and Torres Strait Islander community to serve 3-year terms.²⁴

The ATSIEB's roles and responsibilities are broad and include providing advice to the relevant Minister, consult with First Nations communities in the ACT, to provide recommendations to the ACT government, to monitor and report and other representational roles.

The ATSIEB also holds 'senate estimate' style hearings where members of ATSIEB question senior ACT government public servants on the policies and services that impact Aboriginal and Torres Strait Islander peoples in the ACT.

Points to note:

- ATSIEB's role in directly holding senior bureaucrats to account through an 'estimates' style process should be considered for both the National and Regional Voice models.

²⁴ ACT Aboriginal and Torres Strait Islander Elected Body - <https://atsieb.com.au/>

h) First Peoples Assembly of Victoria

The First Peoples Assembly of Victoria (the Assembly) was formed in late 2019 as part of the next step in the ongoing process of treaty negotiation in Victoria. After the initial community consultations of the Victorian Treaty Advancement Commission, the Assembly was established with the election of 31 Assembly members drawn from the First Nations across Victoria. The Assembly is now negotiating the framework for future treaty negotiations between the State of Victoria and the Aboriginal and Torres Strait Islander peoples of that state.

The Assembly has become the representative Voice for First Nations peoples in Victoria and offers an obvious model for a state-level representative Voice that would provide representation onto a National Voice body.

Points to note:

- The Assembly is already a Voice for the First Nations Peoples of Victoria and has legitimacy to negotiate with and advise the Parliament and Government of Victoria. How bodies such as the Victorian Assembly are incorporated into the Regional Voice model will be critical.

i) Proposed Regional Voices

Scope

ANTaR supports the proposal for Local and Regional Voice that actively engages with First Nations communities and provides a two-way channel for input and feedback between the National Voice and community. The need for Voice in the State and Territory parliaments is clear and, where there isn't already a body that fulfils this function (like ATSIEB in the ACT) then the Regional Voice can help establish it in each jurisdiction.

The shared local decision making aspect of the Regional Voice model is worth pursuing, however it cannot be an unequal or subordinate relationship between Voice and governments on authority to make decisions.

The guiding principles are all sound but there is a deep scepticism about governments' ability to follow through on these principles due to hard experience. While commendable in

their broadest intention, the principles are meaningless without more direct, articulated actions to enliven them and give appropriate agency to the Regional and Local Voices.

Membership

As stated in terms of the National Voice membership, it is likely that much more flexibility will be required to allow Nations and groups to determine how they best want membership to be set in Regional or Local Voice bodies. It will look different from region to region.

It will be important to see the First Nations, mobs and clans more directly represented and recognised at the regional level. An alternative to consider would be to have State Voice bodies that are membered by representation from each First Nation within that jurisdiction. Where a Nation falls across several state jurisdictions, it should be able to have representation on both Regional Voice bodies. This would simplify trying to arrange sub-state regions in an equitable way and ensure each distinct Aboriginal and Torres Strait Islander nation is recognised and represented. This would mean fewer bodies than the 25-35 proposed regions but greater and more specific representation of the ancient and abiding First Nation polities.

This model would also help address having too many overlapping representative bodies and create a clearer line of relationship with the State and Territory governments.

Governance and Function

ANTaR reiterates the points made under the National Voice model commentary regarding compliance and transparency.

The Regional Voice, if designed along the lines proposed above with a more direct relationship with the State and Territory parliaments, should also play the same role of providing advice to the State and Territory parliaments and their governments.

Where there are national issues that are predominantly impacting or relating to a single jurisdiction (for example, the Federal Government's push to expand the Cashless Debit Card across the whole of the Northern Territory), the relevant Regional (state) Voice should be able to work alongside the National Voice to hold the Federal government accountable. This may include being invited to participate in the Federal Voice 'estimates' processes with the relevant Federal Ministers and senior public officials.

4. Agency and Authority

Whatever shape the National and Regional Voices ultimately take, it is essential that they are guaranteed tenure, independence and the resources necessary to ensure their authority and capacity to speak and represent Aboriginal and Torres Strait Islander peoples. The independence of Voices from government should be embedded in the guiding principles and founding document, whilst the processes for determining membership and who is Indigenous should be established by Aboriginal and Torres Strait Islander people themselves. The Government should work to ensure that the funding model adopted guarantees the viability and sustainability of the Voice in the long term.

We join with the many organisations and individuals that have already expressed publicly and through this consultation process that guaranteed tenure must start with constitutional enshrinement. Support for the Voice, both nationally and regionally, will face questions of legitimacy without constitutional protection. The previous and current reservations expressed by members of the Federal government that a National Voice in the constitution is unlikely to achieve the support of the Australian people is inconsistent with poll after poll. Unfortunately, the Australian people seem to be a fair way ahead of their elected representatives at the Federal level.

Beyond establishing its position in the constitution, the Voice must be given agency through accompanying legislation that locks in the appropriate resourcing and mechanisms of accountability, transparency and continuity. Like other institutions that are established under the constitution, the legislative building blocks must have reasonable flexibility to allow the Voice to adapt, grow and respond to the evolving needs of Aboriginal and Torres Strait Islander peoples.

5. The role of the States and Territories

Within the current arrangement, the relationship between Aboriginal and Torres Strait Islander peoples and the local, State, Territory and Federal governments remains ambiguous. Whilst the Local and Regional Voice would advise all levels of government on issues impacting communities in that region, there is little mention of mechanisms which would formally oblige State and Territory governments to listen and act. This would be partly addressed by the proposal in this submission (under Regional Voice model membership) to

align First Nations polities with Voices that speak to State and Territory governments, mirroring the function of the National Voice with the Federal Parliament.

The Federal government has left the State and Territory governments to take the lead in negotiating treaties with First Nations peoples in their jurisdictions. Since 2016, Victoria, the Northern Territory and Queensland have each independently initiated official treaty negotiations with First Nations Peoples. Meanwhile, the South West Native Title Settlement, negotiated in 2015 between the Noongar people of southwest Western Australia and the two major parties, is considered by some commentators to be Australia's first treaty.²⁵

Besides treaties, there have also been moves by State and Territory governments to initiate Truth-Telling processes. The Victorian Government has now initiated the Yoo-rrook Justice Commission which is likely to become a major influence in the workings of the National and Regional Voices.

With the constitutionally determined responsibilities for much of the services relating to health, justice, employment and education residing with the States and Territories, the mechanisms for the Voice to be informing the parliaments of these jurisdictions is an essential and complementary reform that should be properly considered in this process.

6. Relationship to Truth and Treaty

Following its call for a constitutionally recognised First Nations' Voice to Parliament, the Uluru Statement from the Heart proposes the establishment of a Makarrata Commission tasked with supervising the processes of truth-telling and treaty-making with the Federal Government. As Cobble Cobble Professor of Law, Megan Davis, points out, the three reforms proposed by the Uluru Statement from the Heart – known as 'Voice, Truth, Treaty' – are deeply interlinked.²⁶ More than the right to offer 'input' into government decisions or a symbolic gesture,²⁷ a constitutionally enshrined First Nations' Voice to Parliament would be a manifestation of First Nations' sovereignty and self-determination. It would complement the processes of truth-telling about Australia's history and support the negotiation of treaties

²⁵ George Williams 2020, 'Why Australia needs to settle this,' *The Australian*, accessed online, <https://www.theaustralian.com.au/inquirer/voice-treaty-truth-why-an-indigenous-agreement-is-vital-for-australia/news-story/8b97a44df6365441df7291743edb6d35>

²⁶ Megan Davis 2019, 'The Voice to Parliament: Our plea to be heard,' *ABC News*, accessed online, <https://www.abc.net.au/religion/megan-davis-voice-to-parliament-our-plea-to-be-heard/11300474>

²⁷ Dominic O'Sullivan 2021, 'Indigenous recognition is more than a Voice to Government - it's a matter of political equality,' *The Conversation*, accessed online, <https://theconversation.com/indigenous-recognition-is-more-than-a-voice-to-government-its-a-matter-of-political-equality-154057>

which fulfil the priorities and aspirations of First Nations Peoples through creating genuine structural reform.

We therefore stress the responsibility of the Federal Government to show greater leadership in upholding all three pillars of the Uluru Statement from the Heart. Whilst the Federal Government has committed to co-designing a First Nations Voice in consultation with First Nations Peoples, we question once more its Terms of Reference which have restricted the Co-Design Group from making recommendations on either constitutional recognition or the Makarrata Commission.²⁸

Recognising the truth of First Nations Peoples' sovereignty through a constitutionally entrenched Voice represents an important step in telling the truth of Australia's history, and negotiating treaties which begin the process of reconciling Australia with its First Nations People.²⁹ The development of treaty negotiations and Truth-Telling initiatives in states and territories represent important milestones in reconciliation; however, there is still room for the Federal Government to commit additional support to states and territories in the form of funding and resources. Additionally, there is a role to be played by the Federal Government in both the negotiation of treaties and the initiation of Truth-Telling at the national level. If reconciliation is to be achieved, Australia must collectively embark on an honest and full reckoning with its colonial past (and present), and acknowledge the dispossession and trauma of First Nations People upon which Australia was founded.

When Australia was established as a British colony in 1788, Aboriginal and Torres Strait Islander people never ceded sovereignty. In the absence of a treaty, the legality of the Australian state is disputed, whilst First Nations People have limited legal recognition of their rights to land and sea. Other colonising nations such as Canada and New Zealand have negotiated treaties with their First Nations peoples, whilst initiatives such as the Waitangi Tribunal and the Truth and Reconciliation Commission offer international precedents for Truth-Telling that the Federal Government could look to as examples.

A National Voice, and a framework of Regional Voices, will be an important first step - but there will be much more work to be done to fully honour the calls of Aboriginal and Torres Strait Islander peoples as articulated in the Uluru Statement.

²⁸ David Crowe 2020, 'Indigenous leaders barred from discussing constitutional reform,' *The Sydney morning Herald*, accessed online, <https://www.smh.com.au/politics/federal/indigenous-leaders-barred-from-discussing-constitutional-reform-20200211-p53zmv.html>

²⁹ Allison Holland 2020, 'Black Lives Matter has brought a global reckoning with history. This is why the Uluru Statement is so crucial,' *The Conversation*, accessed online, <https://theconversation.com/black-lives-matter-has-brought-a-global-reckoning-with-history-this-is-why-the-uluu-statement-is-so-crucial-149974>

Conclusion

Thank you again for the opportunity to provide a submission on this important piece of work.

ANTaR offers our ongoing support to a process that meets the expectations of Aboriginal and Torres Strait Islander peoples and we would also welcome the opportunity to meet with the Co-Design groups, to discuss any of the points raised in this submission.

Sincerely

Paul Wright

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