



## NEW SOUTH WALES ABORIGINAL LAND COUNCIL INITIAL RESPONSE TO THE INDIGENOUS VOICE CO-DESIGN PROCESS INTERIM REPORT 2020 APRIL 2021

This submission is made by the New South Wales Aboriginal Land Council (**NSWALC**) in response to the Indigenous Voice Co-design process Interim Report 2020 (**Report**) and the Commonwealth proposals for “an Indigenous Voice” intended to “provide a way for Indigenous Australians to provide advice and input on matters that are important to improve their lives” National Indigenous Australians Agency (**NIAA**).

The NSWALC requests that our submission is published as soon as it is received by NIAA on the website established for the consultations on the Commonwealth’s Voice proposals: [www.voice.niaa.gov.au](http://www.voice.niaa.gov.au). The NSWALC will also be publishing the submission on its own website: [www.alc.org.au](http://www.alc.org.au).

The NSWALC is committed to pursuing cultural, social, and economic independence for Aboriginal peoples. As a self-funded statutory corporation established under the *Aboriginal Land Rights Act 1983*, the NSWALC has a legislated objective to improve, protect and foster the best interests of Aboriginal peoples and communities across the state. The NSWALC also provides support to a network of 120 Local Aboriginal Land Councils, with a combined membership of over 25,000 Aboriginal peoples. Through our membership, NSWALC also serves the needs of 230,000 Aboriginal people in NSW, Australia’s largest First Nations population.

The NSWALC provides this submission in our capacity as the peak body representing Aboriginal peoples in NSW and as the largest Aboriginal member-based organisation in Australia. The NSWALC is also a member of the NSW Coalition of Peaks (**NSWCAPO**) made up of peak community-controlled peak organisations in NSW that came together to represent the interests of Aboriginal and Torres Strait Islander peoples in NSW. The NSWCAPO is a member of the National Coalition of Aboriginal and Torres Strait Islander Community-Controlled Peak Organisations (**Coalition of Peaks**). The Coalition of Peaks is a representative body comprised of more than fifty Aboriginal and Torres Strait Islander peaks and organisations from across Australia that have come together as an act of self-determination to work together with Australian governments on Closing the Gap.

The NSWALC has played an active role in advancing Constitutional recognition of Aboriginal and Torres Strait Islander people for many years. Most recently, the NSWALC and its members have engaged with and provided submissions into the following processes:

- The Expert Panel on Indigenous Constitutional Recognition;
- The Uluru Dialogues and the First Nations National Constitutional Convention;
- The Referendum Council on Indigenous Constitutional Recognition; and
- The Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.

The NSWALC, as a member of NSWCAPO and the Coalition of Peaks, has also been instrumental in the negotiations and agreement from governments to the historic Partnership and National Agreements on Closing the Gap (**the Agreements**). The Agreements commit all Australian governments to share decision



making with Aboriginal and Torres Strait Islander representatives, chosen by our peoples, on matters relating to improvements in our life outcomes.

Our recommendations in this submission seek to advance the human rights and interests of Aboriginal peoples in NSW, consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Agreements, and to further the empowerment, recognition and self-determination sought by the Uluru Statement from the Heart and the Partnership and National Agreements on Closing the Gap.

## Summary of NSWALC's initial position and recommendations

Aboriginal and Torres Strait Islander peoples are being asked to respond to a set of proposals that is very different from what was envisaged in the Uluru Statement from the Heart.

The government's Voice proposals are very different from a Constitutionally enshrined First Nations Voice to the Commonwealth Parliament.

The Uluru Statement from the Heart sought full recognition of Aboriginal and Torres Strait Islander peoples as First Peoples through a Constitutionally enshrined national Voice to the Commonwealth Parliament to advise on laws that have a significant impact on Aboriginal and Torres Strait Islander people.

Despite the rejection of all elements of the Uluru Statement from the Heart by the Coalition Government, the NSWALC continues to support it and notes that it has been overwhelmingly supported by many Aboriginal and Torres Strait Islander organisations and peoples and that this support continues to grow.

The NSWALC understands the proposals from the Coalition Government to be a range of Voice options at the national and regional levels that are primarily about advising government, rather than the Parliament, on potentially all matters involving policy and programs impacting on Aboriginal and Torres Strait Islander peoples. It will have no Constitutional protection and may be underpinned by Commonwealth legislation. The Coalition Government has also put forward Voice options that may have an advisory role to state and territory governments on matters relating to policies and programs within their jurisdictions that impact on Aboriginal and Torres Strait Islander peoples.

The rationale for the changes from the model of the Voice envisaged in the Uluru Statement from the Heart and the case of the new proposals have not been made clear by the government.

There is no Aboriginal and Torres Strait Islander community mandate for the government proposals and the government has not made the case for its changed approach and proposals.



**A key matter for the Land rights network and Aboriginal and Torres Strait Islander people, organisations and communities across the country is to determine what is being proposed by the government is in the long-term interests of our peoples.**

The NSWALC is concerned that without Constitutional enshrinement and the changed role of the Voice(s), the proposals from the government are not likely to advance the empowerment, recognition and self-determination of Aboriginal and Torres Strait Islander peoples in NSW and across the country.

Further, the proposals do not take sufficient account of the many Aboriginal and Torres Strait Islander representative and self-determined arrangements across the country. In NSW, the government options have the potential to undermine the Land Rights and the community-controlled network that has been in operation for decades. The government has not made the case for how these current arrangements will be protected or, if it believes they need to be replaced, why they need to be.

The proposals from the government also lack clarity about the responsibilities and accountabilities of the government to any Voice structures. There must be clear accountabilities on government to engage with and respond to any Voice structures put in place.

**There is a significant risk that the government's proposals could undermine self-determination and result in conflict and a weakening of the current Aboriginal and Torres Strait Islander representative structures and shared decision arrangements making with governments across the country.**

Further, there needs to be clear accountabilities on the national Voice to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, organisations and peoples in any position it takes and in its advice to government.

Any regional or local Voice structures must be established in a transparent manner and have a clear mandate from the relevant community. Regional structures must be led by Aboriginal and Torres Strait Islander peoples and not driven, created, or established by government(s). Importantly, any new regional and local structures need to take account of and be agreed with relevant community-controlled organisations operating within the same area so not to diminish or undermine their roles and representative responsibilities.

The NSWALC is also concerned that the consultation process being led by the government and the manner in which the proposals are being developed and decided is not consistent with the commitments from all governments in the Partnership and National Agreements on Closing the Gap. These Agreements commit governments to shared decision making with Aboriginal and Torres Strait Islander representatives that have a significant impact on our peoples.

The face-to-face consultations have not been sufficiently advertised and with enough notice and Aboriginal peoples are not being properly supported to participate. There is a lack of transparency in how the consultations are being recorded and managed.

**Aboriginal and Torres Strait Islander communities need more information about what is intended by the proposed arrangements and more time to consider whether we should engage in and support the Voice(s) being proposed by the government.**

There is confusion about the role and influence of the NIAA officials and the members of the Indigenous Voice Advisory Group members in the consultations. Further, there is significant confusion about



the Commonwealth proposals, what precisely is on the table, and how it relates to the Uluru Statement from the Heart.

The NSWALC believes that further engagement and negotiation between Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, and the Commonwealth Government on a possible model is needed before a decision on this matter can be made.

**The NSWALC has significant concerns that the final Voice model will be decided by government alone.**

**The Voice proposals should not be agreed by government alone and instead should be negotiated and agreed between the government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.**

In response to the Report and with these matters in mind, the NSWALC provides its initial response and the following recommendations against three broad categories.

### **1. Recommendations to strengthen the current consultations**

- a) A complete list of upcoming face to face consultations be published on the NIAA website and where the NIAA is working with local Aboriginal and Torres Strait Islander community-controlled organisations to put together the face-to-face consultations in a way that encourage greater participation.
- b) Aboriginal and Torres Strait Islander facilitators who represent the relevant communities should be engaged for the face-to-face consultations rather than allowing them to be led by Indigenous Voice Advisory Group members who are accountable to NIAA and the Minister.
- c) Records and outcomes from the consultations are agreed with participating people and organisations and made public immediately following each consultation so that other participants and organisations can understand the issues being raised and how they might like to respond.
- d) Government officials attending the engagements to clearly identify themselves and their role in supporting the consultations and measures taken to ensure they are not able to influence or bias the consultation process.
- e) The date for written submissions be extended until the end of May 2021 to align with the conclusion of the face-to-face engagements.
- f) An independent organisation with relevant expertise and experience be engaged in a transparent manner by NIAA to observe the remaining consultations and provide an assessment on whether the face to face consultations were open, transparent and informed and enabled Aboriginal and Torres Strait Islander peoples to be heard on the issues; if the outcomes of the face to face and written consultations reflect the issues that were raised; and to make recommendations for future engagements on the issue.



## 2. Recommendations on the design of the Voice proposals

- a) Consistent with the Uluru Statement from the Heart:
- The national Voice's central function should be on providing advice to the Commonwealth Parliament on laws that have a significant impact on Aboriginal and Torres Strait Islander peoples.
  - The Voice to Parliament should be enshrined in the Constitution before it is implemented and supporting legislation is enacted.
- b) For a national Voice to the Commonwealth Parliament:
- The obligations on the Parliament to respond to the national Voice and its advice should be clearly articulated and included in underpinning legislation, ensuring the views of Aboriginal and Torres Strait Islander peoples are taken account of before legislation is passed and how and why the Parliament has responded in a particular way is made public.
  - The roles and functions of regional / local Voices should be clearly linked to the roles and functions of the national Voice to the Commonwealth Parliament so as not to confuse, undermine or weaken the roles and functions of community-controlled organisations across the country.
  - Support for the operation of the Voice structures should be independent of government and funding for its functions, including its own secretariat and policy support, is protected in Commonwealth legislation.
- c) Should the government proceed with the establishment of a Voice to government, instead of, or as well as, a Voice to the Commonwealth Parliament:
- Instead of an advisory Voice, the relationship between the Voice structures and government should be based on formal shared decision-making arrangement and agreement, consistent with the Partnership and National Agreements on Closing the Gap.
  - The Voice structures are determined by representatives of Aboriginal and Torres Strait Islander people, are independent of government and long-term funding is provided for the Voice structures for their roles and functions, including for their own independent secretariat and policy support accountable to the Voice structures, not to government, consistent with the Partnership and National Agreements on Closing the Gap.
  - The roles, responsibilities and accountabilities of government are clearly articulated, and dispute resolution mechanisms are agreed between the Voice structures and government, consistent with the Partnership and National Agreements on Closing the Gap.
  - Clear obligations on the national Voice must be in place to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, organisations and peoples in any position it takes and in its advice to government.
  - The mandate of the Voice(s) fills an identified and agreed need and the interface between the government and the Voice is clearly articulated and defined including whether and how the Voice engages with various portfolios, departments, and Ministers.
  - The roles and functions of the land rights network in NSW (and across the country) and our existing representative functions and responsibilities embedded in the Aboriginal Land



Rights Act 1983 are not displaced or undermined by a national and regional / local Voice structures to the Commonwealth government or NSW government.

- The roles and functions of Aboriginal and Torres Strait Islander community-controlled organisations and representative arrangements across the country are not displaced or undermined by a national and regional / local Voice structures to the Commonwealth government and how the various structures co-exist and the empowerment, recognition, self-determination of the community-controlled organisations and representative arrangements and the responsibilities and obligations of the governments is clearly articulated and agreed between all parties.
- The roles and functions of the NSWCAPO and the Coalition of Peaks on Closing the Gap and the Partnership Agreement on Closing the Gap between the Coalition of Peaks and Australian governments are not displaced or undermined by a national Voice to the Commonwealth government and how the structures co-exist are clearly defined and agreed with the Coalition of Peaks and NSWCAPO.
- Any regional or local Voice structures must be established in a transparent manner and have a clear mandate from the relevant community – regional structures must be led by Aboriginal and Torres Strait Islander peoples and not driven, created, or established by government – and take account of and be agreed with relevant community-controlled organisations operating within the same area so not to diminish or undermine their roles and representative responsibilities.

d) Should the Voice structures also have a relationship with state and territory governments, the matters above also apply.

### 3. Recommendations on next steps

In addition to taking immediate steps to improve the transparency and legitimacy of the current consultation process:

- a) A complete independent report be produced on the outcomes of the whole consultation process, identifying the issues that were raised so that Aboriginal and Torres Strait Islander organisations and communities can understand the full range of matters across Australia and consider the best way to respond.
- b) A complete draft proposed model for the national and regional / local Voice structures is put together and is tested through a further round of genuine engagements with Aboriginal and Torres Strait Islander people, organisations, and communities, led by Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.
- c) Should the Commonwealth proceed with its Voice proposals, the final design of the national and regional / local Voice structures should be determined through a negotiated and shared decision-making process between the Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.



- d) The Commonwealth government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, should negotiate and agree the process steps for implementing the agreed Voice model(s), including its legislative basis and whether it should be protected through Constitutional enshrinement before it is implemented, and legislation enacted.
- e) Should the Voice structures also have a relationship with state and territory governments, the matters above also apply.

## Discussion of key issues

The following provides a discussion of the issues raised in the Report and the consultation process.

### 1. Current consultation process

From experience, and whether a Voice model is enshrined in the Constitution or not, much of its strength, longevity, and capacity to further the empowerment, recognition and self-determination of our peoples relies on its legitimacy and support from Aboriginal and Torres Strait Islander peoples. The current consultation process will not achieve this.

The NSWALC is concerned about the transparency and robustness of the current consultation process in response to the Report.

For example, and in relation to engagements the NSWALC Councillors and staff have attended:

- Locations and dates for face-to-face consultations are not being provided with sufficient time for organisations like the NSWALC to support its members to participate.
- Government officials attending the consultations do not always identify themselves and their role in the consultations.
- The consultations are being led by Aboriginal and Torres Strait Islander people appointed by and accountable to the Commonwealth Government through terms of reference and contractual arrangements, rather than Aboriginal and Torres Strait Islander representatives agreed by our peoples for this purpose.
- It is not clear who is responsible for recording the meetings and its outcomes.
- The record of meeting and a summary of the outcomes are not checked back with and agreed by participants making it difficult to know whether the issues raised are being reflected accurately to government.
- Without summaries of the face-to-face engagements being made public it is difficult for organisations and communities to understand what issues are being raised across the country and to inform their own contributions.
- Whilst some written submissions are being made public and are available on the NIAA website, the records of meetings and summaries of their outcomes from the face-to-face engagements are not always being made public and in a timely way.
- Government officials have provided inaccurate information about the consultation and notification processes.
- Written submissions close before consultations are due to finish.



Further, the steps and timeframes following the conclusion of the consultations are not clear and it is difficult to see how the NSWALC, its members and other community-controlled organisations will be able to understand the issues that have been raised through the consultation process to inform how they might be responded to and how we can engage in the next steps.

To strengthen the consultation process, the NSWALC makes the following recommendations to be implemented immediately:

- a) A complete list of upcoming face to face consultations be published on the NIAA website and where the NIAA is working with local Aboriginal and Torres Strait Islander community-controlled organisations to put together the face-to-face consultations in a way that encourage greater participation.
- b) Aboriginal and Torres Strait Islander facilitators who represent the relevant communities should be engaged for the face-to-face consultations rather than allowing them to be led by Indigenous Voice Advisory Group members who are accountable to NIAA and the Minister.
- c) Records and outcomes from the consultations are agreed with participating people and organisations and made public immediately following each consultation so that other participants and organisations can understand the issues being raised and how they might like to respond.
- d) Government officials attending the engagements to clearly identify themselves and their role in supporting the consultations and measures taken to ensure they are not able to influence or bias the consultation process.
- e) The date for written submissions be extended until the end of May 2021 to align with the conclusion of the face-to-face engagements.
- f) An independent organisation with relevant expertise and experience be engaged in a transparent manner by NIAA to observe the remaining consultations and provide an assessment on whether the face to face consultations were open, transparent and informed and enabled Aboriginal and Torres Strait Islander peoples to be heard on the issues; if the outcomes of the face to face and written consultations reflect the issues that were raised; and to make recommendations for future engagements on the issue.

## 2. Consideration of the Commonwealth Voice proposals

The NSWALC has not considered some of the detailed issues raised in the Report on the government's Voice proposals as we believe there are fundamental and threshold issues that needs to be dealt with first in a substantive way.

Given there is significant confusion about what is being proposed and why, the NSWALC uses the following to provide its views on some threshold issues that require consideration before the government proposals should be advanced.





The NSWALC is very concerned that it is being asked to respond to a range of proposals that are not clearly defined and where the intent of the Commonwealth has not been fully disclosed. The Voice proposals being put forward by the Commonwealth are very different from what was put forward as part of the Uluru Statement from the Heart. The Uluru Statement from the Heart is about the full recognition of Aboriginal and Torres Strait Islander peoples as First Peoples through three key proposals. At the centre of its proposals is a Constitutionally enshrined national Voice to the Commonwealth Parliament to advise on laws that have a significant impact on Aboriginal and Torres Strait Islander people.

The Coalition Government has rejected all three elements of the Uluru Statement from the Heart. By the government putting forward its own and very different proposals, the NSWALC is concerned that there is no genuine community mandate for the proposals as they have not been developed through a process of self-determination. Should the government proceed with its proposals there is a significant chance that they will not be enduring or achieve meaningful change as they are being government driven rather than arising from a self-determined process.

The government has instead put forward a proposal for a national Voice and regional Voices that will primarily have a role in providing advice to the Commonwealth Government on policies and programs that have a significant impact on our peoples. It has left open the idea that Voice or Voices will have a legislative basis, but this is not certain from what the Commonwealth has said publicly or from the available consultation materials. It has also left open as to whether the national Voice will have a role in advising the Commonwealth Parliament, but this too is not certain either. The Commonwealth has also left open the idea that the national Voice and or regional Voices will have a relationship with State and Territory governments and parliaments, but this is not clear, and we have not heard that this proposition is supported by State and Territory governments.

The government has also not articulated a rationale for its changed approach, what the problem is it is trying to address and how the Voice models respond to the identified problem. The Report, and during the consultations, the government, its officials, and representatives refer to the many discussions on Constitutional recognition as providing the basis and rationale for its proposals. However, this is misleading as the government is not talking about Constitutional recognition of Aboriginal and Torres Strait Islander peoples.

There are many community-controlled organisations across the country that have existed for decades and whose roles is to represent the needs of our peoples in service delivery and advocacy and policy advice to governments.

The NSWALC has an extensive network of 120 Local Aboriginal Land Council (LALCs). The NSWALC and LALCs work together to represent Aboriginal peoples in the development of land rights in NSW and of the development of cultural, social, and economic benefits derived from land. The Boards of the NSWALC and LALCs are democratically elected by Aboriginal peoples

**The Voice proposals from the government do not adequately address how they will intersect with the many community-controlled structures and current shared decision-making arrangements between governments and Aboriginal and Torres Strait Islander representatives.**

**It is dangerous to suggest that the community-controlled peaks can have an advisory function to the Voice(s) – this will result in a significant weakening of the community-controlled sectors.**

**These matters need to be worked through in full through negotiation and agreement with the community-controlled sector.**



in NSW. The NSWALC also acts as an advisor to, and negotiates with, governments and other stakeholders on behalf of its members.

The NSWALC is a member of NSWCAPO, consisting of the: NSW Aboriginal Land Council; NSW Aboriginal Education Consultative Group; Link-Up (NSW); Aboriginal Legal Services (NSW/ACT); AbSec - NSW Child, Family and Community Peak Aboriginal Corporation; the Aboriginal Health and Medical Research Council, First Peoples Disability Network and BlaQ (affiliate member).

The NSWCAPO has a long-standing relationship with the NSW Government and negotiated and agreed the Premier's priorities as they relate to Aboriginal peoples in NSW. Recently, NSWCAPO entered historic partnership arrangements with the NSW Government to share decisions on policies and programs that have a significant impact on Aboriginal peoples. The partnership arrangement establishes the following structure:

- 1) *NSW Joint Council* jointly chaired by the Minister for Aboriginal Affairs and NSWCAPO Co-Chairs and made up of NSWCAPO representatives and the Secretary of Premier and Cabinet. This is the formal decision-making body
- 2) *NSW Partnership Working Group* made up of senior government officials, NSWCAPO representatives and 'other Aboriginal and Torres Strait Islander partners'.

**A proposal for an advisory Voice falls below the commitments in the National Agreement on Closing the Gap to share decision making between governments and Aboriginal and Torres Strait Islander representatives.**

The partnership arrangements mirror national shared decision arrangements established under the Partnership Agreement on Closing the Gap between all Australian governments, including local government, and the Coalition of Peaks. The

NSWCAPO is a member of the Coalition of Peaks, a representative body comprised of more than fifty Aboriginal and Torres Strait Islander peaks and organisations from across that have come together to have their collective voice heard on issues that affect Aboriginal and Torres Strait Islander people.

Should the Commonwealth proceed with its Voice proposals, it is vital that the mandate of the Voice(s) not cut across or undermine the role of the community-controlled sector in Australia. Should there be a crossover of mandates between the existing structures across the country and new structures implemented by the government, there is a significant risk that the government (and other governments) will preference the advice it wants to hear and largely through its own structures.

The NSWCAPO supports a Voice to the Commonwealth Parliament as there is currently no formal way for Aboriginal and Torres Strait Islander peoples to speak to the Parliament about laws that will have a significant impact on our peoples. That said, any Voice to the Parliament must include obligations and responsibilities on the Parliament to respond and before any relevant legislation is passed. These obligations need to be detailed in any final draft of a proposed model.

Should the government persist with implementing a Voice to government, including State and Territory governments, the relationship between the Voice and government needs to be based on shared decision making. There have been advisory

**It would be disastrous for Aboriginal and Torres Strait Islander interests if the community-controlled sector was weakened by the government's Voice proposals both in its capacity to represent the interests of its members directly with governments and provide services and supports that had been directly negotiated with governments.**



bodies in the past to the Commonwealth Government that have not advanced the interests or status of Aboriginal and Torres Strait Islander peoples.

The Partnership and National Agreements on Closing the Gap commit all governments to a new benchmark in how they work with Aboriginal and Torres Strait Islander peoples based on shared decision making.

Priority Reform One of the National Agreement sets out key elements for shared decision making between governments and Aboriginal and Torres Strait Islander representatives. A Voice to government should be consistent with these elements and where it is set out and agreed how decisions will be made together and on what, and the accountabilities and responsibilities of government, not only for the Aboriginal and Torres Strait Islander representatives. The interface with government also needs to be clearly articulated. Funding to support Aboriginal and Torres Strait Islander representatives to access their own support and advice independent of government also needs to be included. For a Voice to Parliament and or government, long term funding to support the Voice should be set out and protected in legislation.

The NSWALC provides the following initial recommendations to address some threshold issues associated with the Commonwealth's Voice proposals. The NSWALC would welcome the opportunity to discuss these further.

a) Consistent with the Uluru Statement from the Heart:

- The national Voice's central function should be on providing advice to the Commonwealth Parliament on laws that have a significant impact on Aboriginal and Torres Strait Islander peoples.
- The Voice to Parliament should be enshrined in the Constitution before it is implemented and supporting legislation is enacted.

b) For a national Voice to the Commonwealth Parliament:

- The obligations on the Parliament to respond to the national Voice and its advice should be clearly articulated and included in underpinning legislation, ensuring the views of Aboriginal and Torres Strait Islander peoples are taken account of before legislation is passed and how and why the Parliament has responded in a particular way is made public.
- The roles and functions of regional / local Voices should be clearly linked to the roles and functions of the national Voice to the Commonwealth Parliament so as not to confuse, undermine or weaken the roles and functions of community-controlled organisations across the country.
- Support for the operation of the Voice structures should be independent of government and funding for its functions, including its own secretariat and policy support, is protected in Commonwealth legislation.

c) Should the government proceed with the establishment of a Voice to government, instead of, or as well as, a Voice to the Commonwealth Parliament:

- Instead of an advisory Voice, the relationship between the Voice structures and government should be based on formal shared decision-making arrangement and agreement, consistent with the Partnership and National Agreements on Closing the Gap.
- The Voice structures are determined by representatives of Aboriginal and Torres Strait Islander people, are independent of government and long-term funding is provided for the



Voice structures for their roles and functions, including for their own independent secretariat and policy support accountable to the Voice structures, not to government, consistent with the Partnership and National Agreements on Closing the Gap.

- The roles, responsibilities and accountabilities of government are clearly articulated, and dispute resolution mechanisms are agreed between the Voice structures and government, consistent with the Partnership and National Agreements on Closing the Gap.
- Clear obligations on the national Voice must be in place to consult with, engage and fully represent the views of Aboriginal and Torres Strait Islander communities, organisations and peoples in any position it takes and in its advice to government.
- The mandate of the Voice(s) fills an identified and agreed need and the interface between the government and the Voice is clearly articulated and defined including whether and how the Voice engages with various portfolios, departments, and Ministers.
- The roles and functions of the land rights network in NSW (and across the country) and our existing representative functions and responsibilities embedded in the *Aboriginal Land Rights Act 1983* are not displaced or undermined by a national and regional / local Voice structures to the Commonwealth government or NSW government.
- The roles and functions of Aboriginal and Torres Strait Islander community-controlled organisations and representative arrangements across the country are not displaced or undermined by a national and regional / local Voice structures to the Commonwealth government and how the various structures co-exist and the empowerment, recognition, self-determination of the community-controlled organisations and representative arrangements and the responsibilities and obligations of the governments is clearly articulated and agreed between all parties.
- The roles and functions of the NSWCAPO and the Coalition of Peaks on Closing the Gap and the Partnership Agreement on Closing the Gap between the Coalition of Peaks and Australian governments are not displaced or undermined by a national Voice to the Commonwealth government and how the structures co-exist are clearly defined and agreed with the Coalition of Peaks and NSWCAPO.
- Any regional or local Voice structures must be established in a transparent manner and have a clear mandate from the relevant community – regional structures must be led by Aboriginal and Torres Strait Islander peoples and not driven, created, or established by government – and take account of and be agreed with relevant community-controlled organisations operating within the same area so not to diminish or undermine their roles and representative responsibilities.

d) Should the Voice structures also have a relationship with state and territory governments, the matters above also apply.

### 3. Next steps

Building on the concerns identified with the current consultation process, the legitimacy and credibility of the Voice models for and by Aboriginal and Torres Strait Islander peoples is not only about how members are selected in any final design but is also about how the Voice model itself is put together.



Consistent with the commitments in the Partnership and National Agreements on Closing the Gap, the final model should be agreed through a negotiated process between the Commonwealth Government (and with the involvement of the Commonwealth Parliament and other governments if required) and Aboriginal and Torres Strait Islander representatives chosen by our peoples for this purpose.

A negotiated agreement on the final model of the Voice and the steps to achieve it between the Commonwealth Government and our representatives will provide the best foundation for an enduring and successful model that is owned by and advances the interests of Aboriginal and Torres Strait Islander peoples whilst fostering responsibility and accountability of the Commonwealth government to the Voice(s). The NSWALC believes this is the only legitimate way to settle the final design of the Voice.

At a minimum and as a first step, the NSWALC would be very concerned if the Commonwealth Government were to decide on the final model of the Voice structures without a further engagement process. Noting it is not clear whether the proposed Voice structures will have a relationship to the Commonwealth Parliament and government or government alone, whether a Voice to government will be underpinned by legislation, and what the relationship will be with state and territory governments, a complete draft Voice structure should be developed and made public. This should be accompanied by an independent report on the issues identified through this current engagement process. Aboriginal and Torres Strait Islander people, organisations and communities should be able to see an independent analysis on the issues raised across the country in response to the current proposals to inform their own thinking on next steps and whether a model put forward by the Commonwealth government should be supported.

The NSWALC provides the following recommendations on next steps:

- a) A complete independent report be produced on the outcomes of the whole consultation process, identifying the issues that were raised so that Aboriginal and Torres Strait Islander organisations and communities can understand the full range of matters across Australia and consider the best way to respond.
- b) A complete proposed model for the national and regional / local Voice structures is put together and is tested through a further round of engagements with Aboriginal and Torres Strait Islander people, organisations, and communities, led by Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.
- c) The final design of the national and regional / local Voice structures should be determined through a negotiated and shared decision-making process between the Commonwealth Government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose.
- d) The Commonwealth Government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, should negotiate and agree the process steps for implementing the agreed Voice model(s), including its legislative basis and whether it should be protected through Constitutional enshrinement before it is implemented, and legislation enacted.
- e) Should the Voice structures also have a relationship with state and territory governments, the matters above also apply.