

Committee Secretary
Joint Select Committee on the Aboriginal and
Torres Strait Islander Voice Referendum
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Re: New South Wales Aboriginal Land Council Submission – Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023

The New South Wales Aboriginal Land Council (**NSWALC**) welcomes the opportunity to make this submission. NSWALC and the network of 121 Local Aboriginal Land Councils (**LALCs**) represent over 28,000 Aboriginal people in NSW. We are the democratically elected voice of Aboriginal peoples in NSW.

We note the Committee seeks to inquire into and report on the provisions of the Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 (**The Bill**) being:

1. The introduction of a new 'Chapter IX' named 'Recognition of Aboriginal and Torres Strait Islander Peoples', including a new s 129 titled 'Aboriginal and Torres Strait Islander Voice', as the only section in Chapter IX of the Constitution.
2. The inclusion of Chapter IX and s 129 in the Constitution would recognise Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia in the Constitution through an Aboriginal and Torres Strait Islander Voice (Voice).

The NSWALC supports the Uluru Statement from the Heart, including Voice, Treaty and Truth. The NSWALC welcomes Constitutional recognition for First Nations Australians. There must be assurances that the intent, functions and spirit of a Voice to Parliament are safeguarded for future generations.

The NSWALC's key principles on any Voice proposals are that they must ensure self-determination, inclusiveness, and shared-decision making.

Introduction

The NSWALC is the peak Aboriginal representative body in NSW. 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 NSW (ALRA)*, 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 121 Local Aboriginal Land Councils, with a combined membership of over 28,000 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 is also a member of the NSW Coalition of Peaks (**NSW CAPO**) made up of peak Aboriginal community-controlled organisations in NSW that came together to represent the interests of Aboriginal and Torres Strait Islander peoples in NSW. The NSW CAPO 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 80 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, as a member of NSW CAPO and the Coalition of Peaks, has 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

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

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 has 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 Indigenous Voice Co-Design process interim report 2020.

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.

NSWALC's Recommendations:

1. Constitutional recognition, through an Aboriginal and Torres Strait Islander Voice must remain consistent with the intent and principles of the *Uluru Statement from the Heart*.
2. The Aboriginal and Torres Strait Islander Voice must embody NSWALC's key principles relating to a Voice to Parliament.
3. The Bill must be amended to include an obligation of the Parliament or the Executive Government to consult the Voice prior to enacting, amending or repealing any law, making a decision, or taking any other action on Aboriginal and Torres Strait Islander issues.
4. In accordance with the principles of shared decision-making, genuine partnership, self-determination, and free, prior, informed consent, the Commonwealth Government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, must negotiate and agree the steps for implementing the Voice before it is implemented.
5. In accordance with the principles noted in recommendation 4, if there are to be Voice structures that have relationships with state and territory governments, these governments and peak representative Aboriginal and Torres Strait Islander organisations must negotiate and agree the steps for implementing the agreed Voice models prior to implementation. In NSW, negotiations should be with the NSWALC and NSW CAPO.
6. Provisions must be made regarding long-term funding to support the functions of a Voice.
7. Support for the operation of the Voice structures should be independent of government.

NSW Aboriginal Land Council and Constitutional Recognition

Aboriginal and Torres Strait Islander peoples are the First Peoples of Australia. We have a unique place in Australia as well as continuing legal rights from before the colonisation of Australia.

In 2017 the Uluru Statement from the Heart called for '*Constitutional reforms to empower our people and take a rightful place in our own country...We call for the establishment of a First Nations Voice enshrined in the Constitution.*'

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.

The NSWALC supports Constitutional recognition for First Nations Peoples of Australia and the Uluru Statement from the Heart inclusive of Voice, Treaty and Truth.

Recommendation 1: Constitutional recognition, through an Aboriginal and Torres Strait Islander Voice, must remain consistent with the intent and principles of the *Uluru Statement from the Heart*.

The NSWALC has developed key principles for a Voice to Parliament. The NSWALC's position is that any Voice proposals must:

- Include Constitutional protections;
- Enshrine shared decision-making, genuine partnership, self-determination, and free, prior, informed consent;
- Are inclusive, accountable and responsive to the needs and aspirations of Aboriginal and Torres Strait Islander Peoples;
- Genuinely advance Aboriginal people's rights and interests and include clear safeguards that existing rights of Aboriginal peoples will be protected;
- Protect gains made by Aboriginal peoples including with regard to shared decision-making, for example in relation to Closing the Gap;
- Guarantee that the Voice will not undermine existing positive government commitments, including in relation to NSW Aboriginal Land Rights;
- Ensure our self-determining Aboriginal community-controlled structures and initiatives will be protected and strengthened, including Aboriginal Land Councils;
- Are agreed by Aboriginal and Torres Strait Islander peoples and our representative structures;
- Are independently financially secure.

Recommendation 2: The Aboriginal and Torres Strait Islander Voice must embody NSWALC's key principles relating to a Voice to Parliament.

Constitution Alteration (Aboriginal and Torres Strait Islander Voice) Bill 2023 Provisions

- there shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;**
- the Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;**

The NSWALC supports a Voice to the Commonwealth Parliament. 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, nor is there adequate recognition of First Nations peoples in the Constitution.

The proposed amendment to the Constitution includes words noting that the change is: 'In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia'. This is an act of recognition upholding our status as the First Peoples of Australia.

NSWALC notes that the primary function and power of the Voice is conferred directly by proposed s.129(ii). The Voice will be able to make representations to the Commonwealth Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.

The Bill ‘confers no power on the Voice to prevent, delay or veto decisions of the Parliament or the Executive Government’.

NSWALC is of the view that shared decision-making, genuine partnership, self-determination, and free, prior, informed consent must be enshrined in the Voice. This would include obligations and responsibilities on the Parliament to consult with and respond to the Voice before relevant legislation is passed.

It is important to note that after the proposed amendments to the Constitution, Parliament will not be able to legislate to alter or remove the Voice. If Parliament sought to exclude the Voice from making representations to Parliament or the Executive Government or prohibited the Voice from making representations on particular matters that fell within the scope of the functions and powers of the Voice, this would be invalid.

Recommendation 3: The Bill must be amended to include an obligation of the Parliament or the Executive Government to consult the Voice prior to enacting, amending or repealing any law, making a decision, or taking any other action on Aboriginal and Torres Strait Islander issues.

(iii) the Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures.

It is important to note that the proposed amendments to the Constitution focus on establishing the Constitutional parameters of the Voice. Key design features of the voice are not included in the proposed amendments. This would not be appropriate.

The Parliament will have the power to legislate to govern the operation of the Voice. The amendments will allow the Parliament to determine the composition of the Voice, its functions, powers and procedures.

While the NSWALC understands the requirement of the Parliament to “ have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers and procedures”, such matters should not be diluted to a point where a Voice to Parliament projects tokenism. The Parliament must remain consistent with the intent of the Uluru Statement from the Heart when legislating any key design features.

NSWALC draws the Committee’s attention to our key principles for a Voice and we advocate that these are adhered to by the Parliament in any subsequent legislation determining key design features of the Voice.

In particular we make the following comments on key design features, noting they do not form a part of the proposed amendments to the Constitution:

1. The Commonwealth Government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, must negotiate and agree the process steps for implementing the agreed Voice model before it is implemented, and legislation enacted. Should the Voice structures also have a relationship with state and territory governments, this also applies.
2. The roles and functions of any regional and 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 Aboriginal community-controlled organisations across the country.

3. 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, should be protected in Commonwealth legislation.

While noting these are not elements of the proposed amendments to the Constitution, NSWALC makes the following recommendation regarding key design features of the Voice:

Recommendation 4: In accordance with the principles of shared decision-making, genuine partnership, self-determination, and free, prior, informed consent, the Commonwealth Government and Aboriginal and Torres Strait Islander representatives, chosen by our own peoples for this purpose, must negotiate and agree the steps for implementing the Voice before it is implemented.

Recommendation 5: In accordance with the principles noted in recommendation 4, if there are to be Voice structures that have relationships with state and territory governments, these governments and peak representative Aboriginal and Torres Strait Islander organisations must negotiate and agree the steps for implementing the agreed Voice models prior to implementation. In NSW, negotiations should be with the NSWALC and NSW CAPO.

Recommendation 6: Provisions must be made regarding long-term funding to support the functions of a Voice.

Recommendation 7: Support for the operation of the Voice structures should be independent of government.

Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.

Regards,



Yuseph Deen
Chief Executive Officer
Date: 21 April 2023