

30 April 2021

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Dear Professor Langton and Professor Calma

Indigenous Voice Co-design Process

I am grateful for your invitation to contribute to the Indigenous Voice Co-design Process as part of the national consultation on proposals contained in the *Indigenous Voice Co-design Process Interim Report* (Interim Report).

The focus of this short submission is on the importance of supporting and empowering Aboriginal and Torres Strait Islander children and young people to effectively participate in the co-design process and final model(s) for the Indigenous Voice.

In making this submission, I acknowledge and pay my respects to the palawa people of lutruwita as the original and ongoing custodians of the land on which I carry out my work and for the more than 40,000 years they have cared for their country and children.

Role of the Commissioner for Children and Young People

Tasmania's Commissioner for Children and Young People is an independent statutory office established under the *Commissioner for Children and Young People Act 2016* (Tas) (CCYP Act). The Commissioner's functions are set out in section 8(1) of the CCYP Act and include:

- advocating for all children and young people in the State generally
- researching, investigating and influencing policy development into matters relating to children and young people generally
- promoting, monitoring and reviewing the wellbeing of children and young people generally



- promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives
- assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.

In performing these and other functions, the Commissioner is required to do so according to the principle that the wellbeing and best interests of children and young people are paramount and must observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC).

The Commissioner's work must also be performed according to the principles that the contributions made by children to the community should be recognised for their value and merit and that the views of children on all matters affecting them should be given serious consideration and taken into account.

Tasmania has not established an independent statutory officer specifically responsible for promoting, monitoring and reviewing the rights and wellbeing of Tasmanian Aboriginal children and young people. The establishment of such a role would honour the ongoing commitment of the Tasmanian Government to reset its relationship with Aboriginal communities and enable self-determination. A dedicated Aboriginal Children's Commissioner for Tasmania would be uniquely positioned to engage in a culturally safe and respectful manner with Tasmanian Aboriginal children and young people, and their families and communities, and to advocate for their rights and wellbeing.

Comment

Around half of Australia's Aboriginal and Torres Strait Islander population is under the age of 25, and around 10 per cent of Tasmanians aged 0 – 19 years identify as Aboriginal or Torres Strait Islander. However, the voices of children and young people are often overlooked in the development of policies and the legislative processes that affect them.

Article 12 of the CRC provides that children and young people aged less than 18 years have a right to participate in decision-making processes that affect their lives:

1. State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

In its *General Comment No. 12 (2009): The right of the child to be heard*, the Committee on the Rights of the Child interprets this participatory right broadly to relate not only to individual children but also groups of children, including indigenous children. Furthermore, article 19 of the UN *Declaration on the Rights of Indigenous Peoples* outlines the importance of consulting and cooperating with Indigenous peoples to obtain their consent before adopting laws and policies that may affect them.



Accordingly, Aboriginal children and young people have the right to be actively engaged and their views sought and considered when developing legislative or policy measures that are likely to affect their lives.

Listening to children and young people about the matters that affect their lives and genuinely considering what they have to say will lead to better and more appropriately informed decision-making. The right of children to participate in decision-making processes that affect them is a relevant consideration not only in the current co-design process but also for any final model(s) adopted for an Indigenous Voice.

There is no doubt that Aboriginal and Torres Strait Islander children and young people have unique insights and opinions to offer the co-design process. For example, in 2019, following the *Uluru Statement from the Heart*, 65 Indigenous and non-Indigenous school students came together at the Garma Festival to prepare and present *The Imagination Declaration* in which they eloquently called on the Prime Minister and Education Ministers to recognise children and young people as ‘part of the solution’ and to involve them in policy-making that affects their lives now and in the future.

The Interim Report acknowledges the importance of ensuring structural representation of youth (under 25 years of age) in the proposed National Voice. It proposes that specific representation of youth be structurally guaranteed through the establishment of a permanent Aboriginal and Torres Strait Islander Youth Advisory Group. It is unclear whether children under the age of 18 years could participate in this Advisory Group or whether the specific needs and vulnerabilities of children will be considered in this context. For the Local and Regional Voice model, a more flexible approach is proposed, with principles to guide local and regional voice arrangements including Inclusive Participation, Empowerment and Community-led design. However, the Interim Report does not explicitly explore options for child-inclusive participation at the local or regional level.

Seeking and considering the views and experiences of Aboriginal and Torres Strait Islander children should be a primary consideration in the co-design process and in the final model(s) for the Indigenous Voice. The model should include culturally appropriate mechanisms to support and empower Aboriginal and Torres Strait Islander children and young people to have a say in and to influence decisions that affect them at the local and regional level as well as at the national level.

Appropriately equipping Aboriginal and Torres Strait Islander children and young people of all ages with the knowledge and understanding necessary to effectively participate in these important discussions will not only uphold their right to participate in decision-making processes that affect them, but will be critical to ensuring an empowered, enduring, and representative Indigenous Voice into the future. This will require a strong commitment to a universal approach to educating Aboriginal and Torres Strait Islander children and young people and their non-Indigenous peers from a very young age about civics and citizenship, their human rights and about Aboriginal culture and history. In this way we are taking steps to ensure that all children and young people understand the importance of actively engaging in consultative processes and can genuinely influence decisions that affect them at all levels.



Finally, I note the terms of reference for the Co-design Senior Advisory Group exclude the Group from making recommendations on constitutional recognition through this co-design process. However, in its Final Report, the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples recommended that, “following the process of co-design, the Australian Government consider, in a deliberate and timely manner, legislative, executive and constitutional options to establish The Voice” (recommendation 2). I note there remains very strong support for constitutional reform and I look forward to the announcement of the next stage of the process to embed the Voice once a model has been agreed by Aboriginal and Torres Strait Islander people.

I would welcome the opportunity to meet with you or other Co-design Group members to discuss my comments in more detail.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People