



Indigenous Voice co-design process

KPMG Submission

March 2021

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Executive Summary

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to the debate that is shaping the Indigenous Voice and welcome the opportunity to provide a submission to the Indigenous Voice Discussion Paper.

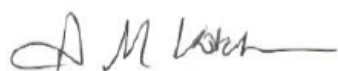
KPMG formally supported the Response to the Uluru Statement¹ along with 13 other organisations in Australia in 2019. At the time we acknowledged the proposal for constitutional change to include Indigenous Australians in our founding document was a critical step for our Nation's identity².

We commend the Australian Government on the release of the Indigenous Voice Discussion Paper, however again urge the Australian Government to consider constitutional change with renewed urgency and commitment. KPMG recognises that, to ensure any referendum is successful and to avoid further political fatigue within Indigenous communities, the referendum should only be held once the model for the Voice is finalised in a manner acceptable to Indigenous stakeholders, and sufficient public education has occurred to ensure a 'yes' vote.

Constitutional recognition of Indigenous Australians is not just a symbolic act of reconciliation, it's a practical action resulting in a path where we can walk together, make decisions together and deliver solutions together.

KPMG again pledges our ongoing advocacy through this submission and the 13 feedback principles enclosed within, adding KPMG's voice to those calling for constitutional change and for the enshrinement of the National Voice in the constitution. We are incredibly proud to play a small role in this historic moment in our collective journey towards reconciliation.

Yours sincerely,



Alison Kitchen
Chairman,
KPMG Australia & KPMG RAP Taskforce

¹ KPMG Newsroom, "Australian organisations unite to support Uluru Statement from the Heart", <https://newsroom.kpmg.com.au/australian-organisations-unite-support-uluru-statement-heart/#:~:text=OUR%20RESPONSE%20TO%20THE%20ULURU%20STATEMENT&text=Collectively%20we%20educate%2C%20employ%20and,people%20for%20a%20better%20future.>

² <https://newsroom.kpmg.com.au/alison-kitchen-australian-chairman-responds-ken-wyatts-pledge-indigenous-recognition/>

Background

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world.

Our commitment to people, planet and prosperity

KPMG Australia harnesses the passion and capabilities of our people to empower positive change with our clients and in our communities. At the core of KPMG's vibrant culture are a set of values that bring out the best in our people. Our values are at the heart of our Global Code of Conduct. The code defines the standards of conduct we require of our people in KPMG member firms worldwide.

These values guide everything we do. Doing what is right and doing what matters is core to how we operate. Our values-driven approach has guided the leadership of KPMG in expertly navigating the various challenges of 2020. They have been our guide through the pandemic, ensuring we live our purpose as an organisation and lead with empathy at all times.

Our people continue to express deep, personal concern about the continuing racial injustice in the world. To listen and learn from one another, we held Courageous Conversations with our people last year. Over 72 hours, more than 17,000 of our colleagues participated in a virtual discussion, contributing their ideas, insights and personal stories on the racial injustice they see or experience. A collective action plan was created from the learnings garnered through this dialogue, to demonstrate how we will make a real and lasting difference towards our collective goal of improved racial equity within and outside of KPMG globally.

Our Corporate Citizenship approach focuses our efforts on driving change for Indigenous Australia, Mental Health, Climate Action and Lifelong Learning, and the founding principle to leave no-one behind. We believe that our nation can never reach its full potential until everyone has equal access to opportunity.

Section 1: KPMG feedback principles

National Voice:

- 1 Constitutional recognition:** In keeping with the Uluru Statement from the Heart, the Australian Government should honour its election commitment to hold a referendum to enshrine an Indigenous Voice to Parliament. Constitutional recognition will ensure the Indigenous Voice cannot be diluted or removed by a future parliament.
- 2 Successful referendum:** In an effort to ensure any referendum is successful and avoid further political fatigue within Indigenous communities, KPMG recognises that the referendum should only be held once the model for the Voice is finalised in a manner acceptable to Indigenous stakeholders, and sufficient public education has occurred to ensure a 'yes' vote.
- 3 Consultation with the Voice:** Consideration be given to an enhanced Regulatory Impact Statement (RIS) process, with oversight from the Office of Best Practice Regulation (OBPR), to ensure a high level of scrutiny over any new legislation that will impact on Indigenous peoples. This could act as an interim solution and would provide an opportunity for the Indigenous Voice to contribute to the OBPR RIS policy, until such time as the Voice has been entrenched in the Constitution.
- 4 Transparency:** Transparency mechanisms need to allow for members of the National Voice to address the Senate or the House of Representatives' chambers, so that advice and recommendations won't be misconstrued or misinterpreted.
- 5 Performance measurement:** There should be a clear proposal for how performance of the Indigenous Voice will be measured or a future review date to ensure it is working as intended.
- 6 Financial resourcing:** Consideration needs to be given to how the National Voice will be properly financially resourced, which has not been detailed in the Interim report. KPMG suggests that initial resourcing be considered in the upcoming budget process.

Membership considerations for the National, Local and Regional Voices:

- 7 Cross border considerations:** Where the boundaries for traditional lands cross state/territory borders, governments need to fully consider flexibility and collaboration to ensure effectiveness of representation.

- 8 **Cultural representation:** Elders should be given appropriate representation, to align with traditional cultural protocols and the principle of 'cultural leadership'.
- 9 **Fair representation of the unheard:** Previously unheard voices and emerging leaders should be given the same chance of being selected/elected as those people who are well established – meaning, selection should not just be based on who has the biggest public profile.
- 10 **Ministerial appointment:** Regarding ministerial appointments, we recommend that there be no ministerial appointments to the National Voice.
- 11 **Citizenship requirement:** The membership eligibility criteria of Australian Citizenship should be revised to allow for Aboriginal and Torres Strait Islander peoples who do not consider themselves to be Australian Citizens or who do not have appropriate records to validate citizenship.
- 12 **Consideration of conduct:** Further clarify on what 'Conduct issues' will be considered in membership criteria, considering the overrepresentation of Indigenous people in the justice system.
- 13 **Principles for consideration:** We recommend the following principles be prioritised at a minimum: Empowerment, Cultural Leadership, Community-led design and Transparency and Accountability.

Section 2: Response to Consultation Questions

In this section of the submission we provide our comments and insights to the questions in the discussion paper. We recognise that KPMG is not the intended audience for these questions, as they are framed more towards Indigenous community stakeholders, however we have provided here our commentary to contribute to the discussion.

Ensuring empowerment

A key component of empowerment of the Voice will be ensuring that it be consulted on matters that impact Aboriginal and Torres Strait peoples in a way that is meaningful and impacts policy development. Currently, the obligation and expectation to consult and transparency mechanisms would be 'non-justiciable', meaning a failure to follow through would not be able to be challenged in court and would not affect the validity of the law or policy. To ensure the National Voice enables empowerment, there needs to be a mechanism to ensure the government holds itself accountable in its commitment to consult.

In principle, consultation should be in the early stages of developing the policy or law before introducing legislation while also allowing for members of the National Voice themselves to address the Senate or the House of Representatives' chambers. There should also be a function to audit or evaluate government performance and service delivery, as this is a central point raised in the co-design process.

KPMG considers that one possibility is for an enhanced policy underpinning the current Regulatory Impact Statement (RIS) process, such that the Office of Best Practice Regulation has a higher level of scrutiny over any new legislation (or reforms to existing legislation) that will impact on Indigenous peoples and offer a further point of connection with the Indigenous Voice.

The RIS process currently includes an overarching requirement for robust consultation with parties that may be affected by the proposed legislation, and OBPR's role as a 'gatekeeper' for the RIS process could provide positive opportunities for the Indigenous Voice. These could be affected with little more than a strengthening of policy, providing a comparable rapid response to the issue while waiting on any constitutional structural change that is contingent on the referendum process noting the time investment this process presents.

Considerations for membership

Observing and respecting traditional cultural governance systems will likely play an important part in the effective functioning of the National and Local & Regional Voice. Western and cultural systems of governance do not always align, and meaningful

structural, systemic and institutional change needs to occur for empowerment to be achieved.

One example of this is the proposed number of regions being divided by state and territory borders; however, some Indigenous nations cross these borders. This means that there are already two sets of state or territory laws which govern one Indigenous nation. Following this approach is perhaps not best designed to meet the needs of the community, but may potentially require significant change to address.

Another example is that a Western society tends to view high profile voices as more legitimate and representative of the consensus of a region than those voices which may not have as much of a platform. Traditional cultural leadership tends to centre around deep listening and respect³. Taking a more cultural approach to membership selection will help to elevate previously unheard voices and the voices of emerging leaders.

Regarding membership eligibility, we challenge the requirement that to be eligible to participate, members must be Australian Citizens. The reason being is that not all Aboriginal and/or Torres Strait Islander people consider themselves Australian Citizens or have the paperwork to meet this criterion. The *Bringing them Home Report*⁴ discusses these challenges at length.

Additionally, what constitutes a 'conduct issue' would need to be better defined. The discriminate overrepresentation of Indigenous people in the justice system may exclude some appropriate candidates. To account for this, any conduct issues should be considered on a case by case basis.

The proposal to have two ministerial appointments may be contradicting the principle of self-determination as these members would not be appointed or elected by the Local and Regional Voice. Additionally, if they are not Aboriginal or Torres Strait Islander people then this will remove two Indigenous voices from the National Voice. Lastly, the reasoning provided for having ministerial appointment assumes that the National Voice members will have gaps in skills, knowledge and capability – an assumption which at this level is not likely to be the case. If there is a skills gap, a better approach would be to provide capability building so that the chosen representative is still able to fully participate.

Finally, the wording around gender diversity should further clarify that this is inclusive of people who identify as gender diverse. Much of the wording in materials and briefing sessions has specified a 50/50 gender split between female/male which may be exclusionary to those who identify as gender diverse.

Supporting our partners

KPMG has long recognised the importance of Indigenous community led reform. Through our support of Jawun, we have supported the Empowered Communities model⁵, particularly in the Shepparton Community, since its inception in 2013. Empowered Communities represents Indigenous leaders from eight regions around Australia who have joined forces to drive a common reform agenda for Indigenous empowerment. In 2015 this group of leaders submitted to government a Design Report⁶ which articulates the Empowered Communities vision and proposes a range of

³ https://www.banffcentre.ca/sites/default/files/Lougheed%20Leadership/Research/Indigenous/4_Chapter_3.pdf

⁴ https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

⁵ <https://jawun.org.au/region/empowered-communities/>

⁶ *Empowered Communities Design Report*: <https://empoweredcommunities.org.au/wp-content/uploads/2018/04/EC-Report.pdf>

transformational policy reforms aimed at empowering communities by empowering people to drive change through making local decisions about their priorities. The vision for Empowered Communities is that “We want for our children the same opportunities and choices other Australians expect for their children....”. This vision is something we feel strongly and deeply about.

We appreciate that the proposed Voice to Government process does not aim to replace these structures, but to build on work already done and provide an avenue for these existing regional development frameworks to request greater oversight and implementation support. It will also allow greater advocacy and support for our community partners, enabling them to better achieve their objectives, which in turn helps us to better allocate our support and resources where they can have the most impact.

In addition, KPMG has long taken a human rights centric approach to reconciliation. Under international human rights standards, ‘all peoples have the right to self-determination’ and ‘all peoples have the right to freely pursue their economic, social and cultural development’⁷. KPMG follows these guidelines for good practice in the work we do under our Reconciliation Action Plans (RAP).

In the 2017-2020 Elevate RAP⁸, one of the key focus areas was “Recognising and promoting the Rights of Indigenous Australians”. Part of this commitment is to demonstrate how business can take action to respect and promote Indigenous people’s rights, and to contribute our voice to national conversations on First People’s rights.

In the past we have fulfilled this commitment by becoming a global signatory to the UN Global Compact; supporting the Recognise Campaign, which advocated for constitutional recognition of Australia’s First Peoples; and by being the first corporate to sign an accord with the National Congress of Australia’s First Peoples. In 2014, the Australian Human Rights Commission recognised our contribution to the dialogue on business and human rights by awarding us joint winners of the 2014 Human Rights Business award.

We support these campaigns because these are the issues that our community partners and our people tell us are important to them. In the development of this submission, we have listened to our community partners’ calls for us to contribute, and have ensured the KPMG Indigenous Network has had ample opportunity to consult and provide feedback.

The enshrinement of an Indigenous Voice in the constitution would be the culmination of decades of work and a watershed moment in Australia’s history, initiating a seismic shift in the way Australia’s government works with and for Aboriginal and Torres Strait Islander peoples.

For KPMG, it will mean that we can redirect our efforts towards other issues where we can have an impact. By contributing our voice to these important discussions, KPMG is contributing in a small way to this historical moment in our collective journey towards reconciliation, and of that we are incredibly proud.

⁷ UN Department of Economic and Social Affairs: *Indigenous Peoples: FPIC, an Indigenous People’s right an good practice for local communities*, <https://www.un.org/development/desa/indigenouspeoples/publications/2016/10/free-prior-and-informed-consent-an-indigenous-peoples-right-and-a-good-practice-for-local-communities-fao/>

⁸ KPMG’s 2017-2020 Elevate RAP: <https://home.kpmg/au/en/home/about/citizenship/reconciliation-with-indigenous-australia/reconciliation-action-plan.html>



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