



National Congress of Australia's First Peoples

**Submission to the Joint Select Committee on
Constitutional Recognition relating to
Aboriginal and Torres Strait Islander peoples**

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About the National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples is the peak representative body for Aboriginal and Torres Strait Islander peoples. Established in 2010, National Congress has grown steadily and now comprises over 180 organisations and over 9,000 individual members, who elect a board of directors. National Congress has an active media presence with over 13,000 Twitter followers.

National Congress advocates self-determination and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. National Congress believes that Aboriginal and Torres Strait Islander people must be central in decisions about our lives and communities, and in all areas including our lands, health, education, law, governance and economic empowerment. It promotes respect for our cultures and recognition as the core of the national heritage.

In pursuit of self-determination and rights for Aboriginal and Torres Strait Islander peoples, National Congress' main foci to date have been health, education, land and sea rights, justice and sovereignty. In addition, National Congress has been involved in a range of other issues, including cultural maintenance and development; government relations, including treaty discussions; employment and economic empowerment; housing; family violence; children and youth; disabilities; and governance and leadership.

Since being established, National Congress has actively sought to ensure that the voices of Aboriginal and Torres Strait Islander peoples are heard both domestically and internationally. We have been represented at the meetings of several international bodies, including the UN Permanent Forum on the Rights of Indigenous Peoples, the UN Human Rights Council and the Commonwealth Peoples Forum. Domestically, we have led the creation of the Redfern Statement, which calls upon the Australian Government to work alongside Aboriginal and Torres Strait Islander peoples in order to develop lasting policy solutions. We have also been involved in Closing the Gap Roundtable Consultations, the Closing the Gap Campaign and in providing advice and critique to governments regarding key policy decisions relating to Aboriginal and Torres Strait Islander affairs.

Executive Summary

The National Congress of Australia's First Peoples ("National Congress") welcomes the opportunity to contribute a submission to this important Joint Select Committee.

Aboriginal and Torres Strait Islander peoples represent one of the oldest surviving cultures on Earth. For over 60,000 years, we have served as the custodians of the land of the Australian continent and its adjacent islands, possessing it under our laws and customs. To quote from the Statement from the Heart, our sovereignty over our lands and waters is "*a spiritual notion: the ancestral tie between the land, or 'mother nature', and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty.*"

Yet today, as the result of centuries of colonisation, dispossession and paternalistic government policies, Aboriginal and Torres Strait Islander peoples have been robbed of our right to self-determination. We remain one of the most incarcerated peoples on Earth, making up 27% of Australia's adult prison population. Our children are being taken from our families at an alarming rate. Year after year, the *Closing the Gap Report* reveals that little progress has been made towards addressing the chasm between Aboriginal and Torres Strait Islander and non-Indigenous mortality rates, life expectancy and educational outcomes.

It is in the context of these structural challenges that National Congress urges the Australian Government to pursue substantial policy changes which go beyond symbolic constitutional recognition. Certainly, acknowledging the centrality of Aboriginal and Torres Strait Islander peoples, histories and cultures to Australia's heritage may serve as an important reconciliatory gesture. However, National Congress stresses that mere gestures will do nothing to empower our peoples to overcome the disadvantages which we face.

National Congress therefore calls for the implementation of the recommendations made by both the Statement from the Heart and the Final Report of the Referendum Council. We call for:

- the establishment of an Aboriginal and Torres Strait Islander voice to Parliament to provide guidance and critique on legislation which affects the lives of our peoples.
- the establishment of a Makarrata¹ Truth and Justice Commission to facilitate honest and frank disclosure of the impacts of colonisation and government paternalism upon the lives of Aboriginal and Torres Strait Islander peoples, and to allow our peoples to finally attain a sense of justice and to reconcile with our history.
- the negotiation of treaties between Aboriginal and Torres Strait Islander peoples and local, state, territory and federal governments so that our right to self-determination is recognised and enshrined in law.

National Congress urges the Australian Government to work with our peoples, leaders and organisations, to secure a brighter future for all Aboriginal and Torres Strait Islander peoples, and through this process, a brighter future for Australia as a whole.

¹ "Makarrata" is a Yolgnu word meaning "coming together after a struggle," and was used in the Statement from the Heart. However, as the Truth and Justice Commission would be inclusive and cover all Aboriginal and Torres Strait Islander nations, it is more appropriate for it to have a neutral title. Further, we have received feedback from traditional owners, who have told us that it is not culturally appropriate to use this word for a national Commission. Hence from this point on, rather than use the word, "Makarrata", we will use the term "Truth and Justice Commission".

National Congress is best placed to drive achievement of these goals. National Congress is well established, effective, and has a higher ratio of members relative to Australia's Aboriginal and Torres Strait Islander population than do the major political parties combined, relative to the general population.

An Aboriginal and Torres Strait Islander Voice to Parliament

The National Congress of Australia's First Peoples strongly supports the Statement of the Heart recommendation for a constitutionally enshrined voice to parliament. Ahead of a referendum on this issue, National Congress proposes that it be appropriately resourced and legislated to realise this function – a role it has already been fulfilling within the limits of its means. Once the public sees effective operation of a Voice for Aboriginal and Torres Strait Islander peoples, we believe that opposition to a referendum will melt away.

The function of the Voice to Parliament

The implementation of an Aboriginal and Torres Strait Islander Voice to Parliament does not involve, as some have suggested, the creation of a “third House of Parliament.” Rather, the Voice would function as an independent body responsible for reviewing government legislation which affects the lives of Aboriginal and Torres Strait Islander peoples and providing guidance on, and critique of, legislation. In addition, the Voice should be charged with developing policy proposals relating to Aboriginal and Torres Strait Islander affairs which could be directly put before the government for consideration. If adequately resourced, the Voice could collect and analyse evidence of the impact of legislation on Aboriginal and Torres Strait Islander peoples.

The creation of a Voice to Parliament would have a number of ancillary benefits for both Aboriginal and Torres Strait Islander and non-Indigenous Australians. These include promoting awareness of Aboriginal and Torres Strait Islander issues, the development of more effective and consultative policies, ensuring Australia's compliance with the *UN Declaration on the Rights of Indigenous Peoples*, and laying the foundations for a treaty to establish a framework for relations between Aboriginal and Torres Strait Islander peoples and state, territory and federal governments.

It is important to note that the concept of a Voice to Parliament is not new, and has in fact been put forward to previous Parliamentary Joint Select Committees. Furthermore, the implementation of a Voice has widespread support, particularly amongst Aboriginal and Torres Strait Islander communities: the regional consultations undertaken by the Referendum Council showed unanimous support for a Voice (Referendum Council, 15). Undoubtedly, this approval stems from the desire of Aboriginal and Torres Strait Islander peoples to have an active, democratic say in the creation of policies which affect us.

Indeed, the proposal for a dedicated Aboriginal and Torres Strait Islander Voice to Parliament has the support of a majority of Australians. A survey conducted online by Omnipoll, found at least 61 per cent of Australians would vote “yes” in a referendum on adding an Indigenous voice to Parliament. The survey of 1,526 adults was done in August 2017 and led by researchers from the University of New South Wales, the Australian National University, the University of Sydney and Griffith University (Zillman, 2017).

Review of use of the race power and territories power

The primary function of the Voice to Parliament would be to provide a source of independent review and critique of legislation supported by the “race power” and/or the “territories power” contained in s 51(xxvi) and s 122 of the *Constitution* respectively. The race power empowers the Australian Government to enact legislation to the benefit or detriment for people of any

race, including Aboriginal and Torres Strait Islander peoples. Although the territories power does not explicitly mention Aboriginal and Torres Strait Islander peoples, it allows the Australian Government to enact laws which solely affect the Northern Territory, such as the Northern Territory Emergency Response, which disproportionately affect our peoples and communities.

Ensuring that Aboriginal and Torres Strait Islander peoples have a direct and democratic input into policy decisions which affect our lives is central to empowering us to overcome the challenges which we face. Government departments and bureaucrats frequently lack the knowledge and expertise required to devise solutions to the challenges we face, and genuine consultation with Aboriginal and Torres Strait Islander communities and organisations is often sacrificed in the name of political expediency. In contrast, an Aboriginal and Torres Strait Islander Voice to Parliament could ensure that the voices of our peoples are heard; that government policy aligns with the interests and aspirations of our communities and organisations; and that new and innovative solutions are being continually developed.

Review of legislation in a general sense

Aboriginal and Torres Strait Islander peoples are affected by a broad range of policies: decisions made about education, health, taxation, infrastructure, employment, investment in small business, welfare, and many other policy areas all have a significant impact upon our peoples, communities and organisations. Problematically, without a Voice to Parliament, Aboriginal and Torres Strait Islander peoples are easily marginalised: we make up only 3% of the Australian population, and are frequently treated as merely one of many stakeholders to government policy decisions.

The creation of a Voice to Parliament would ensure that the impacts of all government policies upon Aboriginal and Torres Strait Islander peoples are always properly accounted for. This is particularly important, given that Aboriginal and Torres Strait Islander people are disproportionately affected by changes that may impact the entirety of the Australian population. Our economic disempowerment leads to greater reliance on government health and education services, and heightened vulnerability to changes in economic and fiscal policy.

Developing new approaches to combatting disadvantage

There are many factors which prevent governments from effectively developing new and innovative solutions to Aboriginal and Torres Strait Islander disadvantage. Firstly, governments tend to approach our challenges in a “conventional” fashion, focusing on reducing costs and short timeframes instead of developing long term and intergenerational solutions. Furthermore, governments frequently lack the capacity and knowledge required to account for the diverse needs and circumstances of different communities, preferring instead to adopt a “one-size-fits-all approach,” evidenced by policies such as the Indigenous Advancement Strategy. Finally, some political parties lack a strong political incentive to devote time and effort to developing policy relating to Aboriginal and Torres Strait Islander affairs, as First Peoples make up only a small proportion of the voting population.

The creation of an independent, constitutionally entrenched Voice to Parliament will go a long way towards addressing many of these barriers. Aboriginal and Torres Strait Islander peoples have the knowledge required to develop long-term solutions which allow our communities to build local capacity and independence from government assistance. The representative nature of the Voice to Parliament will also ensure that the voices of Aboriginal and Torres Strait Islander peoples across Australia are heard, allowing for the development

of policies tailored to the individual needs of different communities. The Voice to Parliament should function independently of government, ensuring that policies continue to be developed and that our voices are not drowned out simply in the name of political expediency.

Compliance with the UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples stipulates that Indigenous peoples “have the right to self-determination,” and therefore the right to “freely determine [our] political status and freely pursue [our] economic, social and cultural development” (*UNDRIP*, Art 3). Enshrining the right of First Peoples to guide and critique government decision making relating to Aboriginal and Torres Strait Islander affairs ensures that our peoples, communities and organisations are consulted, and that our aspirations and desires are adequately taken into account.

For a fuller discussion on this point, see the section on Compliance with international human rights obligations on p.14 below.

Implementation

The Voice to Parliament could initially be legislatively established via amendments to either the *Aboriginal and Torres Strait Islander Act 2005* (Cth), in the manner described below with respect to the implementation of a Truth and Justice Commission.

Alternately, new legislation could be enacted. The Australian Government would be empowered to legislate to create a Voice to Parliament by either the “race power” contained in s 51(xxvi) of the *Constitution*, or indeed the “external affairs” power contained in s 51(xxix) of the *Constitution*, given that this is a reasonably appropriate and adapted means of implementing Australia’s international obligation under the *UNDRIP* to promote Aboriginal and Torres Strait Islander self-determination.

National Congress stresses, however, that even if a legislative approach is initially taken, the Voice should be constitutionally enshrined via a referendum. To a considerable degree, this constitutional protection is sought due to the history of previous Aboriginal and Torres Strait Islander national representative bodies being de-funded and dis-established when governments change.

A constitutionally mandated body will ensure that the Voice is able to operate independently, without fear of political interference or funding cuts, and will guarantee that Aboriginal and Torres Strait Islander peoples will continue to have a say in the implementation of government policy in the future. We note that this form of constitutional recognition, which actually socially and politically empowers Aboriginal and Torres Strait Islander peoples, is preferable to mere symbolic acknowledgment.

National Congress’ position

If properly funded and supported, National Congress could function as the Voice to Parliament. As noted above, National Congress now counts over 9,000 individuals and 180 organisations and members. As the national peak representative body for Aboriginal and Torres Strait Islander peoples, much of the work which we do already substantially aligns

with the role to be filled by the Voice: we provide input into and critique of government policies relating to Aboriginal and Torres Strait Islander affairs, facilitate consultations with communities and organisations and engage in policy development.

National Congress' organisational structure reflects many of the lessons learnt from past Aboriginal and Torres Strait Islander representative bodies. An independent Ethics Council is responsible for overseeing all of National Congress' actions. Furthermore, equal representation of men and women is guaranteed with respect to both delegates and office holders, ensuring diversity in representation. Therefore, National Congress is uniquely suited to function as the Voice, not only because of its representative nature, but also because of the accountability mechanisms which effectively regulate its activities and ensure that it is acting in its members' best interests.

An extensive consultation process in 2008/9 led to the creation of the National Congress of Australia's First Peoples (see Appendix F). Stage 1 involved approximately 2,000 Aboriginal and Torres Strait Islander people who put forward their views on a National Indigenous Representative Body. Consultation activities included around 80 regional and local consultation meetings across every State and the Northern Territory; meetings with peak organisations; a written submission process that attracted 106 public submissions; and circulation of the community guide to the network of Indigenous Coordination Centres (ICCs) and registered Aboriginal and Torres Strait Islander organisations.

Stage 2 was led by an independent Steering Committee of Aboriginal and Torres Strait Islander people, chaired by the then Aboriginal and Torres Strait Islander Social Justice Commissioner, Dr Tom Calma AO. Members included Dr Mark Bin Bakar; Ms Tanya Hosch; Mr Geoff Scott; Dr Jackie Huggins AM; Mr Tim Goodwin; Ms Nala Mansell-McKenna; Ms Yananymul Mununggurr; Mr Jason Glanville; and Mr John Toshi Kris. Professor Mick Dodson provided expert advice to the committee.

This stage included a national workshop of 50 male and 50 female Aboriginal and Torres Strait Islander people selected on merit and geographic distribution to provide following a public nomination process. Delegates identified key elements of a new national representative body (see appendix 2 of the attached report) which formed the basis of a second community guide, 50,000 copies of which were circulated to registered Indigenous organisations, peak bodies, ICCs and to Aboriginal and Torres Strait Islander peoples on request. Stage 2 consultation activities included: a second written submission process; a national online survey open to Aboriginal and Torres Strait Islander people; focus group meetings conducted by the Steering Committee; discussions with Indigenous and non-Indigenous peak groups and organisations; obtaining information from State and Territory Governments; a toolkit to help communities run their own meetings to discuss the National Representative Body; and a national competition to name the representative body.

It should be noted that national representative bodies of Indigenous peoples have been established in a number of other countries, including the National Congress of American Indians, founded in 1944; the Norwegian Sami Parliament (1989, preceded by the Sami Council, 1964); the Finnish Sami Parliament (1973), the Sami Parliament in Sweden (1993); the Assembly of First Nations (Canada, 1982) and Maori electorates in New Zealand (1867).

Compared to these examples, the National Congress of Australia's First Peoples is in its infancy, being established in 2010. As mentioned in the introduction to this submission, National Congress has a substantial membership base, with a higher ratio of members relative to Australia's Aboriginal and Torres Strait Islander population than do the major political parties combined, relative to the general population.

National Congress has an active media presence including almost 13,500 Twitter followers and almost 9,000 Facebook followers. National Congress executives are regularly called upon by media for comment. Although its funding was restricted in 2013, National Congress manages to produce a steady stream of submissions to government inquiries and represents Aboriginal and Torres Strait Islander peoples in international forums such as the United Nations and Commonwealth of Nations events. National Congress plays an important representative, coordinating and unifying role for Aboriginal and Torres Strait Islander Australians.

National Congress functions as a peak body which represents the interests of Aboriginal and Torres Strait Islander peoples. This representative role is continued through the election of our delegates, board and co-Chairs by its members. If National Congress were empowered to function as the Voice, a similar electoral model could be adopted to ensure that those responsible for overseeing policy review and development represent the genuine aspirations of Aboriginal and Torres Strait Islander peoples.

If appropriately resourced, National Congress will be able achieve the vision of those who advised and assisted in its establishment. As a nation, we should not waste more years of consultation and initiation of a new organisation. Such investments would be much better used to build on the firm foundation already proven by National Congress.

Truth and Justice Commission

The National Congress of Australia's First Peoples supports the creation of a Truth and Justice Commission

The Statement from the Heart calls for a Truth and Justice Commission "to supervise a process of agreement-making between governments and First Nations and truth-telling about Aboriginal and Torres Strait Islander history."

A Truth and Justice Commission is the key to achieving lasting social change, closing the gap, and genuine reconciliation. The Commission would do this in two critical ways. First, the Commission would address intergenerational trauma, which remains an enormous barrier for Aboriginal and Torres Strait Islander Peoples. Secondly, the Commission would facilitate a greater connection to culture for Aboriginal and Torres Strait Islander Peoples. It has been proven that a strong connection to culture results in positive health and social justice outcomes (Ganesharajah, 2009).

Further, a Truth and Justice Commission would result in a better understanding of Australia's history and Aboriginal and Torres Strait Islander peoples, creating an important opportunity for all Australians to learn about their national heritage and take pride in being host to the oldest continuous civilisation in the world. This is not to be taken lightly nor to be rushed, as, alongside reconciliation, this process would enhance the fabric of Australia.

Additionally, the Commission would lay the foundations for an Aboriginal and Torres Strait Islander Peoples – Commonwealth of Australia treaty, and foster compliance with international law. These benefits are explored below.

Over a decade after the 2008 apology, Aboriginal and Torres Strait Islander Peoples are still battling overwhelming social disadvantage and struggling for recognition. A Truth and Justice Commission is the most effective way to foster healing, without which social change will remain elusive.

Purpose of the Commission and its Goals

The Commission's purpose is not to attribute blame or guilt, but rather to foster healing to improve outcomes for Aboriginal and Torres Strait Islander Peoples. Healing can only be achieved by creating a public, political space in which we can collectively work through our trauma, and share our histories, experiences and culture.

Additionally, the Commission would have a number of important ancillary benefits. These include enhanced cultural understanding and cultural exchange; improved knowledge of our nation's history and heritage; compliance with the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP, or *the Declaration*); and laying the foundations for a treaty.

Addressing intergenerational trauma

A Truth and Justice Commission is urgently needed to address intergenerational trauma. Addressing this trauma would directly lead to better social and economic outcomes for Aboriginal and Torres Strait Islander Peoples.

Understanding the link between the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC) and the intergenerational trauma inflicted on Australia's Aboriginal and Torres Strait Islander Peoples by colonisation is crucial to effective responses. National Congress notes that there is evidence suggesting that the 'effects of intergenerational trauma in a number of key indicators of well-being in contemporary Aboriginal and Torres Strait Islander life... are strongly linked to the experience of unresolved intergenerational trauma, such as the high and rising rates of the contemporary removal of children from their families, the incarceration of young people, and family violence' (Anderson and Tilton, 2017, p.22).

Intergenerational trauma is defined by Atkinson as 'the subjective experiencing and remembering of events in the mind of an individual or the life of a community, passed from adults to children in cyclic processes as cumulative emotional and psychological wounding' (Atkinson, 2013, p.5). Trauma can be transferred from the first generation of survivors that have experienced (or witnessed) it directly in the past to second and further generations of descendants of the survivors.

Trauma occurs when a person experiences a "major catastrophic event", the effects of which are so overwhelming that the person is left unable to cope (Australians Together, 2018). It is understood as 'an encounter with an event or series of events so shocking that our understanding of how the world works is severely disrupted' (Hutchinson and Bleiker, 2008, p.387).

Aboriginal and Torres Strait Islander Peoples have experienced trauma for over 200 years as a result of colonisation, dispossession, destruction of culture, stolen wages, the Stolen Generations and paternalistic policies which have denied our autonomy and self-determination.

To contextualise this trauma, a brief outline of Australia's colonial history follows.

Aboriginal and Torres Strait Islander Australians are the oldest living culture in the world (AIATSIS 2018). Last year, archaeological artefacts from Kakadu national park were dated between 65,000 and 80,000 years old (ABC 2018).

In 1788, the First Fleet arrived at Port Jackson in Sydney; Australia was declared 'terra nullius' despite an estimated 750,000 Aboriginal and Torres Strait Islander peoples inhabiting the land (The Australian Museum, 2018).

European colonisation was devastating for our peoples and cultures. Aboriginal and Torres Strait Islander Peoples were driven off the land we had inhabited for centuries and herded together onto reserves, with devastating physical, emotional and spiritual consequences. European diseases ravaged communities and led to overwhelming loss of life (Aboriginal Heritage Office, 2018).

'Frontier Wars' went on from the earliest days of colonisation to as late as 1934 (NITV, 2018). Historian Henry Reynolds estimates that approximately 30,000 Aboriginal and Torres Strait Islander Peoples and 5,000 Europeans died in these wars, including in numerous massacres (Forgotten War). In 2017, Newcastle University researchers published an online digital map of over 150 massacres from the Frontier Wars; however, Professor Lyndall Ryan believes this number will likely be 'more than 200 across an 80-year period from settlement' as the map is developed on the basis of new evidence (2017).

Shockingly, by 1900, the population of Aboriginal and Torres Strait Islander Australians was estimated to be 93,000, a decline of over 650,000 from 1788 estimates (Australian Bureau of Statistics, 2002) largely due to introduced diseases, the effects of dislocation, and Frontier Wars.

Discriminatory government policies further added to the trauma. In 1837, the first of a suite of 'protectionist' measures began with 'The Report on Aboriginal Tribes' which recommended religious education to Christianise Aboriginal and Torres Strait Islander Peoples, among other paternalistic measures (AIATSIS, 2018). These policies culminated in The Stolen Generations, where Aboriginal and Torres Strait Islander children were forcibly removed from their families and placed into institutions or white families between the 1890s and 1970s. This policy was motivated by a state desire to destroy culture and 'breed out' Aboriginal and Torres Strait Islander People (AIATSIS, 2018). The legacy is still felt by Aboriginal and Torres Strait Islander Peoples today, some of whom were firsthand victims themselves (Creative Spirits, 2018).

For those who have not experienced trauma, it can be difficult to understand the extent of its impact. Some have questioned how events which took place in decades ago can continue to impact Aboriginal and Torres Strait Islander Peoples. However, in the words of trauma researchers Hutchinson and Bleiker:

Trauma scholars commonly note that feelings of disbelief and terror ensue, disorientating survivors and witnesses to such an extent that they are unable to reconcile their experiences with the practices and memories that they are accustomed to... the prevailing reaction of people to trauma is that the sense of loss and grief is so great that it cannot be expressed through language (2008, p.389).

The trauma of Australia's violent colonial history has been passed down from the original survivors to Aboriginal and Torres Strait Islander peoples living today, resulting in 'intergenerational trauma' (Australians Together, 2018).

While there have been important victories for Aboriginal and Torres Strait Islander people such as the Mabo case, developments in land rights, and the 2008 apology, the devastating colonial legacy remains overwhelmingly unaddressed.

The concept of 'transgenerational trauma' arose when clinicians in Canada observed that the children of Holocaust survivors were disproportionately seeking treatment for mental health in clinics (Fossian et al. 2003). Since then, intergenerational trauma has been recognised in a number of contexts, and impacts Indigenous peoples across the globe.

Unaddressed colonial trauma directly contributes to social disadvantage. Numerous scholars from different fields, including psychology, sociology and conflict studies, have demonstrated that intergenerational trauma leads to 'psychological and socio-cultural harms' (Hutchinson and Bleiker, 2008, p.392). As Australians Together put it:

The high rates of poor physical health, mental health problems, addiction, incarceration, domestic violence, self-harm and suicide in Indigenous communities are directly linked to experiences of trauma. These issues are both results of historical trauma and causes of new instances of trauma which together can lead to a vicious cycle in Indigenous communities. (2018)

Dealing appropriately with trauma is critical to healing, and to moving from a state of conflict to reconciliation (Hutchinson and Bleiker 2008). Left unaddressed, trauma will remain an insurmountable barrier to flourishing for Aboriginal and Torres Strait Islander Peoples. In the words of Richard Weston, CEO of the Healing Foundation, 'lasting change for our peoples is impossible before our intergenerational trauma is addressed' (2017).

A Truth and Justice Commission is the most effective way to address our trauma. Reconciliation in post trauma societies 'requires opening up political spaces through which feelings of injustice can be worked through collaboratively,' achieved through Truth and Justice commissions (Hutchinson and Bleiker, 2008, p.386).

Working through this intergenerational trauma would lead to improved health, social and economic outcomes. In her End of Mission Statement, the UN Special Rapporteur on Indigenous Peoples, Victoria Tauli-Corpuz, stated that '[u]nderstanding the impacts of intergenerational trauma and racism are essential factors in order to effectively address the health situation of indigenous peoples' (2017). Policies aimed at improving outcomes for Aboriginal and Torres Strait Islander Peoples will continue to fail unless and until a Truth and Justice Commission is implemented.

A Truth and Justice Commission would not only foster healing for Aboriginal and Torres Strait Islander Peoples: it would also be a way for Australian society to address the wrongs done by our nation's ancestors. While no-one alive today is to blame for what happened in the colonial era, Australian society continues to benefit from Aboriginal and Torres Strait Islander dispossession. Many Australians today feel a sense of sadness for the loss which has made modern Australia possible. Publicly acknowledging past wrongs and holding public space for Aboriginal and Torres Strait Islander People's histories is a way for contemporary Australia to reconcile with its violent past, knowing that today's society is doing what it can do redress historical wrongs and move forward towards a more positive future.

Keeping culture alive, encouraging connection to culture and facilitating cultural exchange

In addition to addressing trauma, the Commission would also encourage connection to culture, which has been demonstrated to lead to improved health, social, and economic outcomes for Aboriginal and Torres Strait Islander Peoples (Ganesharajah 2009).

A 2007 Australian Government study by Garnett and Sithole found that the amount of time engaged in traditional practices on country – ‘caring for country’ – was positively correlated with better health outcomes, including improved well-being, lower rates of mortality and morbidity and better social justice outcomes (Ganesharajah 2009).

At the World Congress on Public Health in Melbourne in 2017, experts on Aboriginal and Torres Strait Islander peoples from across the world emphasised that focussing on culture “may be the key” to reducing alarmingly high suicide rates of Indigenous peoples internationally (ABC News, 2018).

Part of the Truth and Justice Commission’s mandate would be to unearth the cultural histories and traditions of various Aboriginal and Torres Strait Islander nations. 230 years of colonisation has led to significant loss of culture for Aboriginal and Torres Strait Islander Peoples. While some of this can never be retrieved, much remains to be revived and rediscovered by the Truth and Justice Commission.

Finally, many Aboriginal and Torres Strait Islander people have lost a connection to their culture, including some members of the Stolen Generations and their descendants. There is a moral imperative to provide a means for these people to explore their culture and identity as Aboriginal and Torres Strait Islander Peoples as a form of reparation, healing and reconciliation. The knowledge gained from the Commission, as well as the process of investigation, will be hugely important in strengthening cultural identity.

Better understanding of the nation’s history

The Truth and Justice Commission would also greatly improve our understanding of Australia’s history. Many refer to 1788, the date of the First Fleet’s arrival at Botany Bay, as the inception of Australian history. However, we are home to the oldest living culture in the world, forming a hugely significant part of our nation’s heritage, and indeed, world heritage. Investigating and telling these stories would strengthen our national identity and enhance understanding of our current society.

Engaging with our history provides an opportunity for national reflection about the kind of nation we want to be. Learning from the mistakes of our past in order to prevent repeating them in the future is a critical part of moving forward as a nation and consciously shaping the type of society we want to become.

Further, shining a light on the suffering endured by Aboriginal and Torres Strait Islander Peoples will foster greater understanding of the challenges faced by peoples and communities today, and in turn challenge prejudice and racism. In the words of Patrick Dodson:

When people have some knowledge of Aboriginal and Torres Strait Islander culture and the history of our contact with non-Indigenous Australians since 1788, they have a much better feel for our achievements and our persistent problems. (Share our Pride, 2018).

Racism is an ongoing problem for Aboriginal and Torres Strait Islander Australians (Cunningham and Paradies, 2013, p.1). Reconciliation Australia’s 2014 Reconciliation ‘Barometer’ stated that ‘Aboriginal and Torres Strait Islander Australians are more likely to have experienced and witnessed racial prejudice’ compared to the general population, with 31% experiencing verbal abuse and 42% witnessing verbal abuse in the six months prior to its publication.

There is a large body of evidence demonstrating that racism has “a wide range of detrimental outcomes for individuals, communities and societies” (Cunningham and Paradies, 2013, p.1). Moreover, racism has a “significantly negative” impact on psychological well-being, including “self-esteem, depression, anxiety, psychological distress [and] life satisfaction” (Schmidt et al. 2014, p.921).

The most effective way to challenge racism is through education and knowledge (Forrest, Lean and Dunn, 2015). Knowledge from the Truth and Justice Commission would be used in the development of educational curricula at primary, secondary and tertiary levels, in addition to generally raising the spectre of public knowledge.

Finally, the Truth and Justice Commission is likely to yield economic benefits in the long term. By addressing intergenerational trauma, the Truth and Justice Commission would reduce expenditure on social programs, incarceration and healthcare. Further, it would encourage tourism to places of cultural and historical significance. Keeping Places (outlined below) would also encourage tourism.

Laying the foundations for a treaty

The Australian government is one of the only Commonwealth states in the world not to have signed a treaty with its Indigenous peoples (Victorian Government, 2018). A truth telling process is a necessary pre-condition to negotiating a treaty. The knowledge obtained would provide a framework for any future treaties, informing why it is needed and shaping its content. Knowledge of the details of what has been experienced by our peoples would assist all parties in discussion and negotiations for a reconciled future Australia.

Treaty negotiations have begun in South Australia and Victoria (see Appendix B).

Historically, Australia was involved in the creation of the Waitangi Treaty, when a British naval captain sought advice from the Governor of NSW, George Gipps, on the drafting of the treaty. It is a source of national shame that we do not have a treaty with Aboriginal and Torres Strait Islander Peoples on our own soil.

Compliance with international human rights obligations

The Truth and Justice Commission fulfils numerous rights arising from the *United Nations Declaration on Rights of Indigenous Peoples* (the Declaration). After over 20 years of preparation, the Declaration was adopted by the UN General Assembly in September 2007, and endorsed by the Australian government in 2009 (NITV, 2017). The UNDRIP is a comprehensive statement of Indigenous rights, with a focus on self-determination and cultural autonomy and rights.

Failures in upholding Aboriginal and Torres Strait Islander People’s human rights has attracted international and domestic criticism. Following a visit to Australia last year, the UN Special Rapporteur on the Rights of Indigenous People detailed a plethora of human rights failings in her End of Mission Statement, including shockingly high rates of incarceration and child removal, poor health outcomes and insufficient legislation tackling racial discrimination (2017). She described the progress on the Closing the Gap targets as ‘woefully inadequate’ (ABC News, 2017).

In the Human Rights Council’s 2015 Universal Periodic Review of Australia, Aboriginal and Torres Strait Islander rights were raised in over half the recommendations put forth by other countries (Australian Human Rights Commission, 2015). In 2017, the UN Human Rights

Committee strongly critiqued Australia's failure to protect the rights of Aboriginal and Torres Strait Islander Peoples in its report following its five-year review into Australia's compliance with human rights under the ICCPR (Australian Human Rights Commission, 2017).

Domestically, human rights abuses suffered by our peoples have been well documented by numerous NGOs including the Australian Human Rights Commission, Amnesty International Australia and Human Rights Watch.

In its pledge as a candidate to the Human Rights Council last year, the Australian government committed to taking measures to implement the Declaration. Now elected for 2018-2020, the government has built its membership on five pillars, one of which is 'the rights of indigenous peoples' (DFAT, 2018). The voluntary pledges and commitments lodged with the UN General Assembly state that the government 'supports the [UNDRIP] in both word and deed' (DFAT, 2018).

Unfortunately, many Aboriginal and Torres Strait Islander peoples are sceptical about governmental promises and find official rhetoric to be hollow. It is time to turn this around. A Truth and Justice Commission is a significant way in which the government can make good on its commitment to uphold the Declaration.

As a mechanism developed and requested by Aboriginal and Torres Strait Islander Peoples, a Truth and Justice Commission accords with the principles of self-determination, collaboration and consultation which are fundamental to the Declaration.

The government is under an international legal obligation to 'take the appropriate measures, including legislative measures, to achieve the ends of the [UNDRIP]', pursuant to Article 38.

Article 8(2) of the UNDRIP is:

States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

A Truth and Justice Commission is one mechanism through which the state can redress past wrongs in accordance with Articles 8(2) and 11(2).

Further, by encouraging connection and reconnection to culture, the Truth and Justice Commission would aid in fulfilling our "right to practise and revitalize their cultural traditions and customs", which "includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature" pursuant to Article 11(1).

Additionally, it would aid in fulfilling the “right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons” pursuant to Article 13.

Project Outline

The Commission’s Tasks

The Commission’s tasks would include:

- Investigating the histories of various Aboriginal and Torres Strait Islander nations using primary and secondary sources;
- Holding Tribunals and following up with local communities after the Tribunal process;
- Recording findings in official reports for each nation; and
- Setting up Keeping Places for each nation

The Commission must also engage in widespread and culturally appropriate marketing to spread awareness about its processes among Aboriginal and Torres Strait Islander Peoples.

Each of these will be considered in more detail below.

A history of Truth and Justice Commissions and their functions is contained in Appendix C.

Investigation

The Commission would use a number of primary and secondary sources to unearth histories. A key primary resource would be local communities and peoples who would provide oral evidence of culture and history. Details on culturally sensitive ways of obtaining testimony is contained in Appendix D. Additionally, places of significance would be investigated, as well as traditional art (where culturally appropriate, and subject to Aboriginal and Torres Strait Islander property laws).

Secondary sources to be consulted include local historical societies, burial records, church records and archives.

Historians and Research Associates (see Commission Structure below) would lead the fact-finding process, particularly focussing on secondary sources. Community Engagement Officers would collect primary material from Aboriginal and Torres Strait Islander Peoples, with the Counsellor and Liaison Officers supporting them through the process to make sure it is safe and to address trauma.

To facilitate investigation, a clause precluding criminal or civil liability for historical crimes, similar to the clauses included in South Africa’s Truth and Reconciliation Commission, must be included. This is in line with the Commission’s purpose, which is not to condemn or place blame on anyone, but to bring about truth-telling on the path to reconciliation. However, this clause should not exclude current wrongs.

Tribunals

Tribunals would be held in each of the 62 regions, and would take testimony from Aboriginal and Torres Strait Islander peoples regarding their knowledge, experiences and culture. Additionally, testimony would be taken from community leaders, relevant organisations, and

other interested parties. Further, research associates and historians would present evidence to the Tribunals. State and District Commissioners would preside over the regional Tribunals (see 'Organisational Structure' below for job descriptions).

Following the Tribunal process, counsellors and community engagement officers would work with local communities to address trauma, encourage cultural (re)connection, strengthen the community and develop initiatives to improve social outcomes for Aboriginal and Torres Strait Islander Peoples in light of the findings from the Truth and Justice Commission. This process could inform future treaty negotiations. Further, communities must be consulted regarding the establishment of Keeping Places and what they should entail.

A National Tribunal must also be held to gather evidence from peak bodies, Aboriginal and Torres Strait Islander leaders, and other key people in Aboriginal and Torres Strait Islander history, including government officials and policymakers. The National Commissioner would preside over the National Tribunal.

Final reports

The final report for each region would contain a comprehensive history of the nation, and include:

- The culture, historical and enduring, of each region. Culture is understood holistically, including, *inter alia*, traditional laws, relationships, societal structures, art, symbols, language, spirituality, ceremonies, lore, beliefs, local areas of spiritual and cultural significance, and traditional knowledge.
- The history of colonisation and its ongoing social impact, including massacres and the Stolen Generations.
- Recommendations for repatriation of sacred objects and land.
- Recommendations for reparations.
- Recommendations for treaty provisions between the nation and government.

Keeping places

A key outcome of the Truth and Justice Commission would be the creation of a "Keeping Place" for each nation where cultural information, artefacts, knowledge and testimony collected from the Commission would be kept. Keeping Places would be powerful educational tools about culture for Aboriginal and Torres Strait Islander and non-Indigenous Australians alike. These are similar to memorials created to honour the soldiers after World War I.

For example, Keeping Places could tell interactive traditional stories from the local nation, or include examples of local art with explanations of its significance (where culturally appropriate). Local primary and high schools could go on excursions to Keeping Places to educate students about the history of their land, as well as the culture of its traditional owners.

Further, Keeping Places are a way for Aboriginal and Torres Strait Islander Peoples who have lost connection to their culture due to colonisation to reconnect and learn more about their heritage.

Details of the proposed Truth and Justice Commission organisational structure and time line for achieving its goals are contained in Appendix E. National Congress is currently

preparing a budget proposal for the Truth and Justice Commission, as well as developing a proposal for issues to be discussed in the negotiation of treaties at the local, state, territory and Commonwealth levels of government.

The National Congress of Australia's First Peoples will provide an ideal national office for the Commission. National Congress already has the necessary infrastructure in place, and there was widespread consultation with Aboriginal and Torres Strait Islanders peoples about how this should be established, which took a significant amount of time to put into place (Australian Human Rights Commission, 2009). National Congress has a representative function for Aboriginal and Torres Strait Islander peoples. National Congress has 180-member organisations and over 9,000 individual members making it the peak representative body for Aboriginal and Torres Strait Islander Peoples. National Congress has significant experience with community engagement and in representing Aboriginal and Torres Strait Islander peoples at a national level.

Legislation

The Truth and Justice Commission could be legislatively established via amendments to the *Aboriginal and Torres Strait Islander Act* 2005 (Cth). A Truth and Justice Commission clearly accords with the objects of the Act as outlined in section 3, particularly (a)-(c) which are:

The objects of this Act are, in recognition of the past dispossession and dispersal of the Aboriginal and Torres Strait Islander peoples and their present disadvantaged position in Australian society:

- (a) to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of government policies that affect them;
- (b) to promote the development of self-management and self-sufficiency among Aboriginal persons and Torres Strait Islanders;
- (c) to further the economic, social and cultural development of Aboriginal persons and Torres Strait Islanders.

'Part 4B – Truth and Justice Commission' could be added to the Act.

Alternately, the *Australian Human Rights Commission Act* 1986 (Cth) could be amended to include the Truth and Justice Commission. A Truth and Justice Commissioner could be added to s 8(1) 'Constitution of Commission', in addition to other Commissioners. The Truth and Justice Commission fulfils the following functions of the AHRC under s11(1)

- (g) it 'promotes an understanding and acceptance, and the public discussion, of human rights in Australia' in raising awareness about Aboriginal and Torres Strait Islander rights
- (h) it is a form of 'research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights'
- (p) it is 'incidental or conducive to the performance' of these functions as a means to promote the human rights of Aboriginal and Torres Strait Islander Peoples, educate the public, develop educational materials, and lay down the foundations for a treaty.

If legislated for in this manner, the Commission would operate under the Australian Human Rights Commission framework but would remain an independent entity with its own offices as part of National Congress.

Alternately, fresh legislation could be enacted by the Commonwealth. The Commonwealth is empowered to make laws with respect to “the people of any race... for whom it is deemed necessary to make special laws” pursuant to s 51(xxvi) of the Australian Constitution. This head of power is controversial (Pritchard 2011), with numerous voices calling for it to be removed via referendum. For the moment however, it remains the head of power under which laws relating to Aboriginal and Torres Strait Islander peoples are made. The Truth and Justice Commission could be established by a new piece of legislation in reliance on s 51(xxvi).

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Appendix A: Regions

The regions which would be investigated by the Truth and Justice Commission are:

New South Wales/ACT

1. Bogong – Goulburn, NSW
2. Canberra – ACT
3. Deniliquin – Deniliquin, NSW
4. Gamilaroi – Moree, NSW
5. Gattang – Taree, NSW
6. Murrumbidgee/Lachlan – Temora, NSW
7. Northern Rivers – Casino, NSW
8. NSW Far West – Wilcannia, NSW
9. Quirindi – Quirindi, NSW
10. Sydney – Sydney, NSW
11. Tingha – Tingha, NSW
12. Umbara – Nowra, NSW
13. Wirawongam – Dubbo, NSW

Northern Territory

14. Alice Springs – Alice Springs, NT
15. Arltarlpilta – Harts Range, NT
16. Daly River – Daly River, NT
17. Impiyara – Yulara, NT
18. Mayali – Jabiru, NT
19. Miwatj – Yirrkala, NT
20. Mulgun – Mataranka, NT
21. Papunya – Papunya, NT
22. Tiwi Islands – Milikapiti, NT
23. Victoria River – Kalkaringi, NT
24. Yapakurlangu – Tennant Creek, NT
25. Yilli Rreung – Darwin, NT

Western Australia

26. Jayida Buru – Mt Barnett, WA
27. Kaatanyiny – Narrogin, WA
28. Karlkarniny – Perth, WA
29. Kutjungka – Balgo, WA
30. Ngarda-Ngarli-Yarndu – Marble Bar, WA
31. Wangki Nyininy – Wyalkatchem, WA
32. Western Desert – Jigalong, WA
33. Wongi Wunan – Kalgoorlie, WA
34. Yamatji – Geraldton, WA
35. Yarleyel – Halls Creek, WA

Victoria

36. Bandaral Ngadu – Fitzroy Crossing, VIC
37. Tumbukka – Halls Gap, VIC
38. Wangkumara – Wangkumara, VIC
39. Warburton – Warburton, VIC
40. Yangenanook – Bairnsdale, VIC
41. Yuroke – Melbourne, VIC

Queensland

- 42. Cairns & District – Cairns & District, Qld
- 43. Central Queensland – Rockhampton, Qld
- 44. Gulburri – Charleville, QLD
- 45. Gulf – Doomadgee, QLD
- 46. Mt Isa – Mt Isa, QLD
- 47. Peninsula – Aurukun, QLD
- 48. South East Queensland Indigenous – Brisbane, QLD
- 49. Torres Strait – Thursday Island, QLD
- 50. Townsville – Townsville, QLD
- 51. Wakka Wakka/ Wadja Wadja – Woorabinda/ Cherbourg, QLD
- 52. Yarrabah/Palm Island – Yarrabah/Palm Island, QLD

South Australia

- 53. Adelaide – Adelaide, SA
- 54. Kakarrara Wilurrara – Deakin, SA
- 55. Kurna – Adelaide, SA
- 56. Kullarri – La Grange, SA
- 57. Murrundi – Murray Bridge, SA
- 58. Ngintaka – Indulkana, SA
- 59. Nulla Wanga Tjuta – Leigh Creek, SA
- 60. Wangka Pulka – Tarcoola, SA

Tasmania

- 61. Hobart – Hobart, TAS
- 62. Tasmanian Regional Aboriginal Council – Launceston, TAS

Appendix B: Treaty Processes in Australia

While there has been little action at a Commonwealth level, treaty negotiations have begun at a state level in Victoria and South Australia.

Victoria

In February 2016, Aboriginal and Torres Strait Islander Peoples in Victoria called upon the Government of Victoria to commence treaty negotiations (Aboriginal Treaty Interim Working Group 2017). However, as there was no state-wide representative body with whom the government could negotiate, the Aboriginal Treaty Interim Working Group along with Aboriginal Victoria and EY began consultations with Aboriginal Victorians on how they want to be represented (Victorian Government, 2018).

The Aboriginal Treaty Working Group was then established by the Government of Victoria in July 2016 to lead the process, with the mandate of consulting with Aboriginal peoples and communities to ‘develop options for a representative body and to provide advice to community and government on the next steps in a treaty making process’ (Victorian Government, 2018).

The 2017 Summary Report outlined the consultation process thus far. It reported that up to 7,500 people were involved in the consultation process. The Phase 1 report outlined six ‘model elements’ for the foundation of the representative body which were discussed during consultations:

- **Purpose:** The Representative Body’s purpose ‘would be to facilitate the voice of Aboriginal people in Victoria in culturally safe Treaty/Treaties negotiations’, clarified in Phase 2 consultations to mean ‘designing and authorising a Treaty Negotiation Framework’ and ‘supporting and enabling Treaty negotiations.’
- **Entity Structure:** It was decided that a Company Limited by Guarantee was the entity structure that best fit with the Design Principles.
- **Representation:** It was decided that all Aboriginal people who live in Victoria will be eligible to vote; Victorian Aboriginal traditional owners will be able to stand for election; candidates will have to be nominated by a recognised Traditional Owner corporation; candidates will take a three-year, renewable term; and the voting structure was decided upon as a region-based system.
- **Governance:** The consultations highlighted the “importance of culturally appropriate governance.”
- **Funding:** As funding is beyond the purview of the Victorian Aboriginal community, this was not discussed in the consultations. Funding is to be sourced from the Government of Victoria.
- **Roles and Function:** It was settled that the role of the Representative Body was “...to represent, advocate, educate, develop a State-wide Treaty negotiation framework and engage with community and government about Treaty/Treaties.” The functions still need to be designed and costed.

The process of consultations culminated in the Victorian Treaty Forum on 28 April 2017, where the Minister for Aboriginal Affairs announced the provision of \$28.5 million towards

the treaty process, including funding for further consultations and the creation of a representative body (Government of Victoria, 2017). However, further funding is necessary to ensure that the Representative Body can fulfil its mandate

The Victorian Treaty Advancement Commission commenced operations in January 2018 to build on the work of the Aboriginal Treaty Working Group (Victorian Government, 2018). The Commission's central task is 'to operationalise the outcomes of the Aboriginal Community Assembly and establish the Aboriginal Representative Body', including 'maintaining momentum of the treaty process', consulting Aboriginal and Torres Strait Islander Peoples, 'providing research and advice on the treaty progress', and 'communicating progress on treaty' to all Victorians (ibid). The Commission is headed by Jill Gallagher AO, who was appointed as the Victorian Treaty Advancement Commissioner (ibid).

Similarly, at a national level, the establishment of a representative body to engage in treaty negotiations on behalf of Aboriginal and Torres Strait Islander Peoples will be critical. If properly funded, Congress could be this body. Congress was set up as the national representative body for Aboriginal and Torres Strait Islander peoples, and developed significant resources to fulfil this mandate. Particularly, Congress's model of culturally appropriate annual consultations with Aboriginal and Torres Strait Islander Peoples, in addition to voting for representatives, could be utilised for this purpose.

South Australia

Treaty negotiations were begun in South Australia in 2016. All information below is extracted from the Talking Treaty report. The South Australian Minister for Aboriginal Affairs announced that the government would start the process of treaty negotiations with its Aboriginal and Torres Strait Islander Peoples on 14 December 2016. The Government committed \$4.4 million of funding towards the treaty process over a period of five years.

In early 2017, Kokatha and Mirning man Dr Roger Thomas was appointed as Treaty Commissioner for the state for a term of three years. Dr Thomas's mandate is to:

- "1. Undertake broad consultation on a suitable framework to further Treaty negotiations between the South Australian Government and Aboriginal people of South Australia;
2. Provide advice to the Minister for Aboriginal Affairs and Reconciliation on a framework to Treaty negotiations, which could recognise the unique cultural identity of all Aboriginal people of South Australia; and
3. Facilitate conversations for a possible Treaty framework process between the Government and Aboriginal people of South Australia."

Dr Thomas has since led the process of community consultations across the state, culminating in the report 'Talking Treaty.' The consultations were Aboriginal-led, culturally sensitive and independent.

Stage One, 'Initial Engagements' introduced the Treaty Commissioner's role and asked three preliminary questions to determine the next steps in formulating a treaty. It was found that Aboriginal people wanted a treaty, an "overwhelming preference" for negotiations on a local nation level rather than state level, that more information was needed before proceeding, and that "the process should not be rushed."

A number of common themes were raised in the consultations, which were:

- **Treaty process:** The treaty process is “welcome and meaningful”; should not be rushed; treaty should be legislated or put in the constitution; the process should be inclusive with access to information; and doubt as to the genuineness of the Government.
- **Historical and existing agreements and policies:** The importance of learning from international treaties; Letters Patent as a starting point; and a need to work with existing legislation and policies.
- **Truth and redress:** acknowledgement as first peoples, traditional owners the importance of spiritual, social, cultural and economic practices; the need to ‘provide a true account of past injustices and wounds of the past and their ongoing effect’; begin anew the relationship between as a partnership.
- **Social issues:** need for collaboration on social issues; focus on education; educate the population about spiritual, social and cultural customs; teach language and history in schools.
- **Economic empowerment:** more opportunities to profit from their land and water; protection of land; creating sustainable change; ending government dependency; focus on future generations.
- **Autonomy and decision-making:** self-determination as a starting point; acknowledging sovereignty; partnership, not paternalism; need for different groups to negotiate.
- **Representation and governance:** collaboration; genuine representation; negotiate with all groups; balance of gender and age in representation.

South Australia became the first Australian government to begin treaty negotiations with an Aboriginal nation on 22 September 2017, with the Ngarrindjeri Nation. Tauto Sansbury, the chairman of Narrungga nations on the Yorke Peninsula, has called for “an open, transparent process about everything that has affected Aboriginal people” (ABC News, 2016).

On 15 February 2018, the historic Buthera Agreement was signed by the South Australian government and Narungga Elders (SBS News 2018). The Agreement “lays the foundations for Treaty”, committing both to negotiate over the coming three years (Government of South Australia, 2017) Further, the Agreement includes governmental support to the Narungga nation to fuel positive economic and social change.

However, on 30 April 2018, the new South Australian premier, Steven Marshall, announced that he was halting the treaty talks due to “other priorities” (Wahlquist, 2018).

The Torres Strait Treaty

The Torres Strait Treaty was signed by Australia and Papua New Guinea in December 1978 and entered into force in February 1985 (Department of Foreign Affairs and Trading 2018). The treaty was primarily entered into to define the border between the two nations and outline the rules for the common border area (Department of Foreign Affairs and Trading 2018). However, the treaty also laid down the Torres Strait Protected Zone (TSPZ), and aids in safeguarding “the ways of life of traditional inhabitants” of this Zone (Department of Foreign Affairs and Trading 2018, Mulrennan and Scott 2001). The two contracting states

recognised that the TSPZ needed special measures in order to allow Torres Strait Islanders and coastal people of Papua New Guinea to maintain their culture and traditions (ibid).

Within the TSPZ, the Treaty allows “free movement for traditional activities” of “traditional inhabitants” between Australia and Papua New Guinea, as well as permitting “lawful traditional activities” (Department of Foreign Affairs and Trading 2018). Furthermore, the Treaty has provisions to “preserve and protect the land, sea and air of the Torres Strait, including the native plant and animal life” (ibid). This includes explicitly recognising “traditional” fishing, and regulating commercial fisheries such that traditional fishing is not negatively impacted (Department of Foreign Affairs and Trading 2018; Mulrennan and Scott 2001). The Treaty has been praised for taking on the complex task of mediating between a number of conflicting interests, and for its (partial) protection of traditional rights and culture (Mulrennan and Scott 2001).

Other aspects of the Treaty have been subject to criticism. While the Treaty provides for a number of consultative bodies, these are advisory only and as such commercial fishing interests often trump those of Torres Strait Islanders (Mulrennan and Scott 2001). Unfortunately, the economic benefits of the commercial fishing industry in the TSPZ have not flowed to Torres Strait Islanders, who do not receive compensation from commercial fisheries operating within their traditional waters (ibid). Moreover, cultural factors and structural barriers have meant that few Torres Strait Islander peoples work in the industry (ibid).

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Appendix C: History of Truth and Justice Commissions

Internationally, Truth and Justice Commissions, or Truth and Reconciliation Commissions (TRCs), have recognised the importance of truth telling and public acknowledgement of painful histories of oppression or violence in achieving reconciliation. Recognising the inadequacy of traditional legal mechanisms in addressing certain traumatic legacies, TRCs serve as alternative forums to address injustice and lay foundations for healing. First arising in Latin America in the 1980s, TRCs have grown into nationwide, multi-sectoral, multi-year efforts in countries such as South Africa and Canada.

Latin America

From 1982 to 1994, several Truth and Reconciliation Commissions were convened in Latin America. Bolivia established the National Commission of Inquiry Into Disappearances in 1982 following the end of military rule in order to investigate a series of state-sanctioned disappearances and acts of violence, but the commission never reported. The first effective commission was Argentina's 1983 National Commission on the Disappearance of Persons, which issued the *Nunca Mas* or 'Never Again' report, addressing human rights violations perpetrated by the Argentinian government. Completed in 1984, the report precipitated the Trial of the Juntas for war crimes. Chile's Truth and Reconciliation Commission was established in 1990, and El Salvador and Guatemala followed suit in 1992 and 1994, respectively.

Early commissions were much smaller in scale and impact than those seen in more recent years, but provided much of the initial frameworks that have been much more highly developed by TRCs held in South Africa and Canada, among others. Other regions have also seen high-profile commissions with mandates aspiring to truth and reconciliation have been convened, including TRCs in Uganda (1971 and 1986), Nepal (1990), the Solomon Islands (2009), and Sri Lanka (2010).

South Africa

The Truth and Reconciliation Commission of South Africa was created following the Promotion of National Unity and Reconciliation Act, No 34, of 1995 in response to Apartheid. The Commission is comprised of three distinct committees: the Human Rights Violations Committee, investigating the human rights abuses that occurred between 1960 and 1994; the Reparation and Rehabilitation Committee, charged with providing support to victims and promoting society-wide healing through policies and other means; and the Amnesty Committee, which considers applications for amnesty, which would provide the application with freedom from prosecution for the act in question (Department of Justice, 2018). The power to grant amnesty differentiates this commission from others, as well as powers of subpoena, the many public victim hearings, and institutional and special hearings to allow for contributions from 'non-victim' public actors. The Commission carried out its work in the national office in Cape Town and several regional offices (Truth and Reconciliation Commission of South Africa, 2018).

The Preamble to the interim Constitution of South Africa and the Promotion of National Unity and Reconciliation Act No 34 of 1995 ('the Act') provide the framework for the TRC's mandate. The Commission stresses that their work is one of many bridge-building processes designed to move the nation forward. The objectives and functions of the Commission were outlined in the Act: "The objectives of the Commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past" (Truth and Reconciliation Commission, 2018).

The Commission's four tasks were briefly outlined in their First Volume:

- a) analysing and describing the "causes, nature and extent" of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;
- b) making recommendations to the President on measures to prevent future violations of human rights;
- c) the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;
- d) granting amnesty to persons who made full disclosure of relevant facts relating to acts associated with a political objective.

The functions and objectives of the Commission were carried out by creating opportunities for the victims of Apartheid to share their experiences in public hearings across South Africa. Next, other institutional and individual perspectives were gathered in order to understand how the human rights violations under investigation came about. This information fed into a list of recommendations towards preventing future human rights violations (Truth and Reconciliation Commission, 2018).

The work of the Truth and Reconciliation Commission is summarised in its five-volume Final Report. The continued workings of the TRC and the Amnesty Council continue, however, to be reported upon through subsequent volumes. Volume Five contains the concluding findings and foregoing recommendations of the Truth and Reconciliation Commission. A Reparation and Rehabilitation Policy, comprised of urgent interim reparation, individual reparation grants, symbolic reparation, community rehabilitation and institutional reform, is proposed. The final recommendations towards the objectives of national unity and reconciliation include a request to the President to call a National Summit on Reconciliation, and refer to various topic areas such as the prevention of gross violations human rights, accountability, healing and rehabilitation, prisons, faith communities, the health sector, international human rights, and more (Truth and Reconciliation Commission, 2018).

The TRC resulted in the creation of the Institute for Justice and Reconciliation, an NGO and think tank building on the reconciliation work done by the TRC, in 2000 (Department of Justice and Correctional Services South Africa, 2018).

Canada

The Truth and Reconciliation Commission of Canada was established in 2008 under the terms of the Indian Residential Schools Settlement Agreement, an agreement arising from a class action lawsuit brought by close to 15,000 Indigenous individuals against the Government of Canada and several churches for the forced removal and attempted assimilation of Indigenous Canadians through residential schools (James, 2012, p.189). The TRC was mandated to:

reveal to Canadians the complex truth about the history and the ongoing legacy of the church-run residential schools, in a manner that fully documents the individual and collective harms perpetrated against Aboriginal peoples, and honours the resilience and courage of former students, their families, and communities; and guide and inspire a process of truth and healing, leading toward reconciliation within Aboriginal families, and between Aboriginal peoples and non-Aboriginal communities, churches, governments, and Canadians generally. The process was to work to renew relationships on a basis of inclusion, mutual understanding, and respect (Truth and Reconciliation Commission of Canada, 2015).

These overarching goals were carried out through practical requirements to:

hold seven National Events; to gather documents and statements about residential schools and their legacy; to fund truth and reconciliation events at the community level; to recommend commemoration initiatives to the federal government for funding; to set up a research centre that will permanently house the Commission's records and documents, which the parties were obligated to provide to the Commission, thereby establishing a living legacy of the Commission's work; and to issue a report with recommendations (Truth and Reconciliation Commission of Canada, 2015).

The TRC published its report and 94 recommendations for reconciliation, thus fulfilling its mandate, in 2015 (Truth and Reconciliation Commission of Canada, 2015). The TRC's National Events attracted as many as 155,000 visits, and held 238 days of local hearings in seventy-seven communities nation-wide. The TRC received over 6,750 statements from Survivors of residential schools, their family members, and other interested individuals. Statements were collected from Indigenous individuals in correctional institutions, among other places and other relevant individuals, as appropriate, to fully comprehend the residential school experience. These statements, documenting widespread physical and sexual abuse, among other harms, now form part of a permanent collection of documents relating to residential schools.

The TRC established the National Centre for Truth and Reconciliation at the University of Manitoba as a national research centre that holds the Commission's research. It is accessible to the participants in reconciliation processes as well as academics and the public. It opened in 2015.

The most high-profile result of the Truth and Reconciliation process were the Calls to Action, meant to acknowledge and address the complex legacy of residential schools, and work towards reconciliation. The Commission defined reconciliation as "an ongoing process of establishing and maintaining respectful relationships" (Truth and Reconciliation Commission of Canada, 2015). A broader reconciliation framework is one in which "Canada's political and legal systems, educational and religious institutions, the corporate sector and civic society function in ways that are consistent with the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples, which Canada has endorsed." 94 Calls to Action were drafted by the Truth and Reconciliation Commission of Canada in order to achieve a reconciliation framework. To date, ten Calls to Action are complete and an additional thirty-five are underway (Canadian Broadcasting Corporation, 2018).

Mauritius

The Truth and Justice Commission (TJC) of Mauritius was constituted in March 2009 as a result of the enactment of the Truth and Justice Act, No. 28 of 2008. The Commission's mandate is outlined in Volume 1 of the Report of the Truth and Justice Commission:

- (a) Make an assessment of the consequences of slavery and indentured labour during the colonial period up to the present;
- (b) Conduct inquiries into slavery and indentured labour in Mauritius during the colonial period and, for that purpose, gather information and receive evidence from any person
- (c) Determine appropriate reparative measures to be extended to descendants of slaves and indentured labourers;

- (d) Enquire into complaints, other than frivolous and vexatious complaints, made by any person aggrieved by a dispossession or prescription of any land in which he/she claimed to have an interest; and
- (e) Prepare a comprehensive report of its activities, research and findings, based on factual and objective information and evidence received by it and submit the report to the President (Truth and Justice Commission, 2011)

The Commission faced criticism for the minimal amounts of direct engagement with the descendants of slaves and indentured labourers, resulting in little direct testimony; the Commission preferring to collect evidence from organisations, political parties, and oral history projects. Other critiques of the Commission's methodology include conducting outreach in print with a largely illiterate population, and collecting testimonies in a demeaning manner. Some suggest that the coolly-welcomed Commission practices are attributable to, 1) limited Creole and Mauritian representation on the Commission, 2) the restrictive Commission timeline set by the government, and 3) the relatively small budget. (Croucher, Houssart and Michel, 2017, p.332-9).

The Commission initially engaged with three broad areas of research: a revision of history regarding slavery and indentured servitude from 1723 of 2009; the consequences of slavery and indentured servitude on society, and measures of achieving 'Social Justice'. Teams were established to consider these foci from a variety of perspectives such as health, economics, culture, and memory and identity, among others. A variety of sources, including families, individuals, and organisations were consulted. The TJC's final report presented twenty-three recommendations, subsuming one-hundred and fifty-eight concrete sub-recommendations in 2011 (Truth and Justice Commission, 2011).

New Zealand

The Waitangi Tribunal hearings in New Zealand Aotearoa are not Truth and Reconciliation Commissions, but are noteworthy as they engage with the principles of truth and reconciliation and collect information similarly to TRCs. The Waitangi Tribunal was established in 1975 to investigate claims from Māori people against the state arising from the 1840 *Treaty of Waitangi* (*Treaty of Waitangi Act* [1975] [New Zealand] s6). Though it has largely focused on claims of land dispossession, the findings are of a much broader historical scope than those of Australia's Native Title Tribunal (Boast, 1993, p.224). Though technically a "commission of inquiry" it often operates more similarly to an "adversarial court" – allowing cross-examination of witnesses and challenging of evidence (Waitangi Tribunal 2012).

The Waitangi Tribunal has been praised for its cultural sensitivity. Hearings are conducted in traditional Māori kainga (villages) and are initiated by Māori ceremonies of local communities. Chief Judge J V Williams said that communities "look at the Tribunal and see themselves, they look at the practices of the Tribunal and see their own practices, they look at the work of the Tribunal and see their own lives" (Williams, 2001). However, others have argued that this is superficial, given the Tribunal's status as a legal decision-making body where the Crown challenges Māori claimants.

Waitangi Tribunals produce reports based on each of its inquiries into Māori claims, including negotiated apologies and reparations for breaches of the Waitangi Principles.

Conclusions

The Truth and Justice Commission should look to the strengths and weaknesses of other TRCs in its design and implementation. The most successful commissions have prioritised

truth-telling as a foundation for reconciliation, been led by the members of the impacted communities, collected information in a culturally-appropriate and accessible manner, received sufficient funding and time from the relevant governments, and have occurred in a broader reconciliation framework that engages multiple portions of civil society.

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Appendix D: Collecting Evidence

The engagement of as many Aboriginal and Torres Strait Islander Peoples as participants in the Commission is central to its legitimacy and ability to create an honest history of colonisation. As such, it is important that the Commission takes the appropriate measures to ensure that the opportunity to engage with the process is available to all.

Public Hearings

- Public hearings are popular forms of statement gathering for Truth and Justice Commissions both due to their efficiency and their opportunity they provide to participants to express their experiences in public.
- Public hearings can range from incredibly legalistic and adversarial – such as those of the South African Truth and Justice Commission and Waitangi Tribunal Hearings – to more informal – such as those of the Truth and Justice of Canada. The latter is preferable given the purpose of the Commission would be to allow participants to give their testimony in a comfortable and culturally appropriate space.
- Public hearings also allow the Australian community more broadly to keep track of the Commission's work.

Private Collection of Testimony

- Many potential participants may feel uncomfortable speaking about what are often quite personally traumatic experiences publicly. As such, Truth and Justice Commissions often allow private submissions of testimony.
- This may involve, like in the case of the Truth and Justice Commission of Mauritius, individual commissioners interviewing participants. It may also involve an online method of submitting testimony to the commission, as occurred in the Truth and Justice Commission of Canada. This allows participants to continue to contribute testimony where they were unable to attend public hearings or wish to submit testimony after the Commission has ended.

Location

As was the case in the Truth and Justice Commission of Canada, testimony should also be taken from participants in correctional institutions – recognising that disproportionate numbers of Aboriginal and Torres Strait Islander Peoples are incarcerated and that the experiences of incarcerated peoples also are important in telling the story of contemporary inequality.

Consent and Cultural Sensitivity

The collection of the testimony of Aboriginal and Torres Strait Islander Peoples has a fraught history within Australia, with anthropologists and ethnographers often exploiting and demeaning the communities they study. As such, informed consent is necessary to ensure that participants are willing to both share testimony and have that testimony stored and potentially accessed by others in future. Ensuring that participants and their communities are aware of their rights in giving testimony is important for the commission's legitimacy. Even more critically, the process of giving testimony is fundamental to the healing process which lies at the heart of the Commission's mandate.

The patronising and often traumatic practices of coercive testimony seen in other Truth Commissions must be avoided through means such as mandatory consent declaration forms, such as those used by the Truth and Justice Commission of Canada.

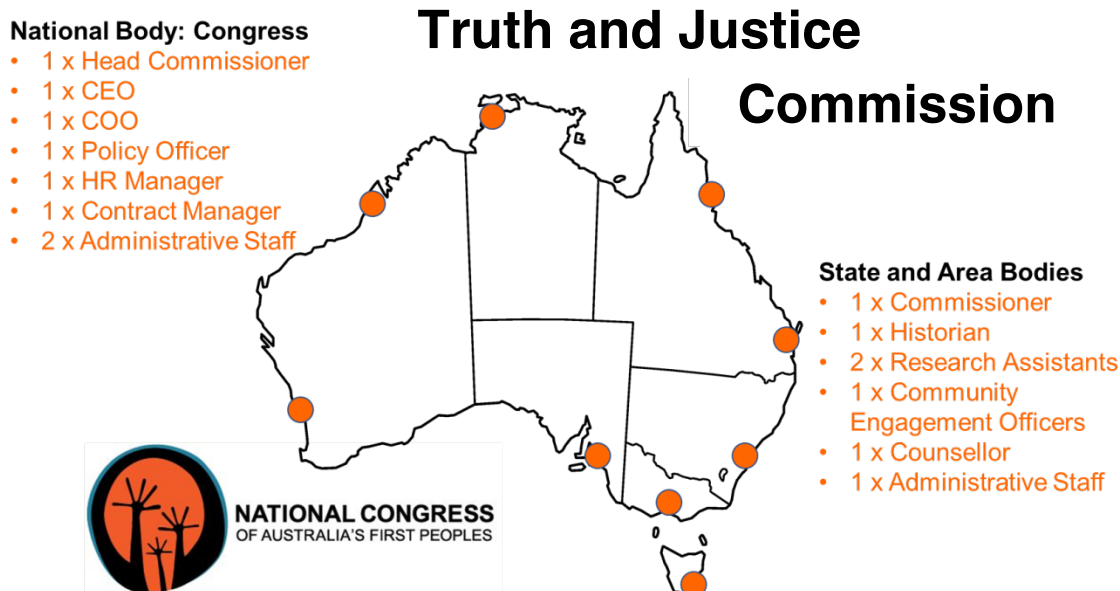
Different disclosure options should be allowed to allow participants to give testimony in a way that is comfortable and culturally appropriate for them. Such options may include: the option to give testimony anonymously, to give testimony that is not made available publicly, and to remove names of deceased people mentioned in testimony from records.

Whilst most Truth Commissions focus on the experiences of individual survivors of atrocities, testimony given to the Australian commission may often involve evidence that pertains to the experiences of whole Aboriginal or Torres Strait Islander nations, communities or families. This means that it may not be appropriate to leave the choice to whether testimony is given or how it is given to individual participants. As such, engagement with the communities is a central role for the commission.

Language

Accommodations for different languages are important to allow all relevant parties to give evidence in proceedings, in ways they feel most comfortable. Where commission members do not speak the language(s) of those giving evidence, accommodations would likely need to be made for translations. Translators would be paid for by the Commission.

Appendix E: Proposed Truth and Justice Commission organisational structure and time line



The Truth and Justice Commission would consist of:

- A national office;
- An office in the capital of each state and the Northern Territory;
- An office in Broome;
- An office in Cairns.

It is important to have a presence in each state for Aboriginal and Torres Strait Islander Peoples to have a localised process. Aboriginal and Torres Strait Islander Australia is a rich tapestry of hundreds of nations and language groups. Nations each have their own unique culture, including distinctive languages, ways of life, traditions and customs, spirituality, song lines and history. Moreover, colonisation has had a distinctive impact on each nation. These histories cannot be universalised or collected on a national level.

Moreover, healing needs to occur on a nation level. The collective nature of Aboriginal and Torres Strait Islander cultures and the importance of community to our peoples means that only collective healing processes will be effective. Therefore, local communities need to be engaged by the Commission, not just individuals.

Accordingly, the Commission would conduct a process of truth telling and fact gathering for 62 regions, which mirror the regions initially established by ATSIC. These regions reflect Aboriginal and Torres Strait Islander nations in contemporary Australia. As such, an office in each state is needed to coordinate the process, and to oversee the engagement with local communities in that state. A list of regions is contained in Appendix A.

As Aboriginal and Torres Strait Islander Peoples are not dispersed evenly across Australia, with greater numbers in the north, the Commission would have additional offices in Broome and Cairns.

Job Roles

NATIONAL LEVEL

CEO

The CEO would be responsible for the management of the organisation. S/he would be responsible for managing relationships with other organisations, including the Healing Foundation, the Australian Human Rights Commission, Reconciliation Australia, federal, state and local governments, and Aboriginal and Torres Strait Islander organisations. S/he would provide overall strategic guidance and work towards the next steps in the reconciliation process arising out of the Truth and Justice Commission. The National Commissioner, COO, Human Resources Manager, Policy Officer would report to the CEO.

National Commissioner

The National Commissioner would oversee the truth-telling process of the Commission, leading fact-finding at a national level, hearing evidence at the national Tribunal, and have final responsibility for the national report. All State and District Commissioners would report to the National Commissioner.

COO

The COO would be responsible for managing the day to day operations of the organisation at the national level. They would additionally be responsible for management of the budget.

Human Resources Manager

The HR manager would be responsible for the recruitment, retention and development and application of HR policies for employees.

Office Manager

The Office Manager would be responsible for all administrative work for the national office.

Administrative Assistant

The administrative assistant would assist the Office Manager with administrative work.

Policy Officer

The Policy Officer would assist the CEO with the strategic direction of the Truth and Justice Commission and the reconciliation process.

Operating Officer

The Operating Officer would be responsible for the management of all contracts, including rental, licensing and insurance. They would assist the COO with the operations of the organisation.

STATE AND DISTRICT LEVEL

State and District Commissioners

The State and District Commissioners oversee the truth-telling process of the Commission, leading fact-finding, hearing evidence at the regional Tribunals, and have final responsibility for the reports for the regions within the state. All State and District Commissioners report to the National Commissioner. Historians, Research Associates and Community Engagement Officers would report to the State and District Commissioners.

Historians

Testimony is only one way in which information would be collected by the Commission. Historians would investigate the histories of Aboriginal and Torres Strait Islander nations via a range of primary and secondary historical sources. Some of this already exists on the historical record, however, as ongoing projects such as the University of Newcastle's Colonial Massacres Map show, much is still to be discovered. Research Associates report to the Historians.

Research Associates

Research Associates conduct research into Aboriginal and Torres Strait Islander histories and cultures from a range of primary and secondary sources.

Community Engagement Officers

The Community Engagement Officers facilitate participation by Aboriginal and Torres Strait Islander peoples and communities in the Commission's processes, critical to ensure that Aboriginal and Torres Strait Islander Peoples stories are told in the Commission. This job includes raising awareness about the Commission's existence in communities and encouraging peoples to share their knowledge and experiences.

It is essential that Community Engagement Officers are of Aboriginal and Torres Strait Islander descent to ensure effective communication with communities. These Officers perform the important task of facilitating cross cultural engagement between Aboriginal and Torres Strait Islander Peoples and non-Indigenous people.

Counsellor and Liaison Officer

As the process of giving testimony would be difficult and deal with trauma, it is essential to have a counsellor to support Aboriginal and Torres Strait Islander Peoples before, during and after they give testimony. The Counsellor should be certified by the Healing Foundation.

Office Manager

The Office Manager is responsible for all administration in the state and district offices.

Timeline

Given the importance of the Truth and Justice Commission to addressing intergenerational trauma, the significance of the history it would investigate, and the obstacles to Aboriginal and Torres Strait Islander Peoples' engagement in the process, it is desirable to do this work thoroughly so that findings are not compromised or contested.

The Commission would investigate a substantial 230-year period. By way of comparison, the Canadian TRC took 5 years to investigate a time period of approximately 60 years, while the South African TRC took 7 years to investigate a 40-year period. The Truth and Justice Commission of Mauritius was heavily criticised for attempting to investigate 370 years of history in 3 years (Boswell, 2014). Many of Mauritius' Creole population saw the Commission as pointless and did not participate, while others were not aware of its' existence (Boswell, 2014, pp.336-338). Accordingly, we propose a ten-year time frame.

This time frame is necessary to adequately account for the diversity of the experiences of Aboriginal and Torres Strait Islander Peoples. Each of the 64 regions need to be properly investigated to obtain a complete history (see above).

The timeline is as follows:

- 2019-2020 In the first year, the Commission will be set up:
- Legislation would be passed setting up the Commission;
 - A marketing campaign would be instigated to raise awareness;
 - Offices would be set up;
 - All staff would be hired;
 - Protocols would be developed;
 - The Commission would advertise itself.
- 2020-2027 For the next eight years, the local histories of each nation will be obtained. As there would be 9 state and area offices, each office will be responsible for seven regions with one office responsible for 8 regions, working firstly through the regions in their state or area jurisdiction before moving to regions from other jurisdictions, collaborating with the local body.
- Each state and area office will investigate the histories of two regions simultaneously. The process for each region would take two years:
- **Year 1:** The first 12 months will consist of research preparations for the Tribunals. Primary and secondary sources would be investigated. Community engagement officers would work with local communities.
 - **Year 2:** The first six months will be comprised of Tribunal hearings, preparations and follow-up activities including counselling and working with communities to encourage connection to culture. These hearings should be made public and recorded. The nine months will be spent writing the reports.
- Thus, between 2020 and 2025, each local body will complete the process for 6 regions. For the final 2 years from 2026-2028, each office would complete the process for the final region under their jurisdiction (with the exception of the office responsible for eight regions, who would complete two). This would allow offices to tie up loose ends from previous regions, as well as focus on strategy and potential treaty negotiations.
- 2028-2029 The final two years will be spent finalising the Commission's processes. In this time:
- The National Tribunal will be held;
 - The consolidated national report will be written;
 - All regional reports would be finalised and published;
 - Keeping places would be set up; and
 - The findings of the Commission would be published and advertised;
 - Treaty negotiations would be pursued.

Appendix F: Our Future in Our Hands: Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

2009

**Our future in
our hands**

Creating a sustainable National
Representative Body for Aboriginal
and Torres Strait Islander peoples

THE BARUNGA STATEMENT

We the indigenous owners and occupiers of Australia call on the Australian Government and people to recognise our rights:

- to self determination and self management including the freedom to pursue our own economic, social, religious and cultural development;
- to permanent control and enjoyment of our ancestral lands;
- to compensation for the loss of use of lands, there having been no extinction of original title;
- to protection and control of access to our sacred sites, sacred objects, artifacts, designs, knowledge and works of art;
- to the return of the remains of our ancestors for burial in accordance with our traditions;
- to respect for and promotion of our Aboriginal identity, including the cultural, linguistic, religious and historical aspects, including the right to be educated in our own languages, and in our own culture and history;
- in accordance with the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, including rights to life, liberty, security of person, food, clothing, housing, medical care, education and employment opportunities, necessary social services and other basic human rights.

We call on the Commonwealth Parliament to pass laws providing:

- a national elected Aboriginal and Islander organisation to oversee Aboriginal and Islander affairs;
- a national system of land rights;
- a police and justice system which recognises our customary laws and frees us from discrimination and any activity which may threaten our identity or security, interfere with our freedom of expression of association, or otherwise prevent our full enjoyment and exercise of universally recognised human rights and fundamental freedoms.

We call on the Australian Government to support Aborigines in the development of an International Declaration of Principles for Indigenous Rights, leading to an International Covenant.

And we call on the Commonwealth Parliament to negotiate with us a Treaty or Compact recognising our prior ownership, continued occupation and sovereignty and affirming our human rights and freedoms.

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Steering Committee for the National Representative Body consultations

Chair: Mr Tom Calma; *Members:* Dr Mark Bin Bakar; Ms Tanya Hosch; Mr Geoff Scott; Dr Jackie Huggins AM; Mr Tim Goodwin; Ms Nala Mansell-McKenna (to July 2009); Ms Yananymul Mununggurr; Mr Jason Glanville; and Mr John Toshi Kris. Professor Mick Dodson was invited to participate on the committee as an expert advisor.

Cover Artwork

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Our future in our hands –
Creating a sustainable
National Representative
Body for Aboriginal and
Torres Strait Islander peoples

.....

Report of the Steering Committee for the creation of a
new National Representative Body



**Australian
Human Rights
Commission**

everyone, everywhere, everyday

“The discussion about a new National Representative Body is about our place at the table in making the decisions that impact on our communities, on our men, our women and our children.

It is about creating a genuine partnership with government and across society:

- ***With shared ambition***, so we are all working towards the same goals and not at cross purposes.
- ***With mutual respect***, so we are part of the solutions to the needs of our communities instead of being treated solely as the problem.
- ***With joint responsibility***, so that we can proceed with an honesty and an integrity where both governments and Indigenous people accept that we each have a role to play, and where we each accept our responsibilities to achieve the change needed to ensure that our children have an equal life chance to those of other Australians.
- ***With respect for human rights***, that affirms our basic dignity as human beings and provides objective, transparent standards against which to measure our joint efforts.

Let the new Representative Body set the vision for our people’s future, provide the guidance to achieving this and advocate for understanding for the consequences that flow from our status as the First Peoples of this nation.

My hope is that a new National Representative Body will operate in such a way as to inspire and support our people, while also holding governments accountable for their efforts, so we may ultimately enjoy equal life chances to all other Australians.

The first step on this road is mutual respect and a partnership. A National Representative Body is an essential component of achieving the long overdue commitments to closing the gap.”

Tom Calma

Introduction – *Building a sustainable National Indigenous Representative Body*
– Issues for consideration, Issues Paper released July 2008 by the
Aboriginal and Torres Strait Islander Social Justice Commissioner

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Introduction

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In December 2008, the Australian Government requested that, in my capacity as the Aboriginal and Torres Strait Islander Social Justice Commissioner, I convene an independent Steering Committee of Aboriginal and Torres Strait Islander people to develop a preferred model for a National Representative Body for Aboriginal and Torres Strait Islander peoples.

The Steering Committee's task was to:

- develop a preferred model for a new national Indigenous representative body for presentation to the Australian Government in July 2009;
- make recommendations in regards to the establishment of an interim body from July 2009 which would operate until the finalised body takes effect; and
- ensure strong community support for such a representative model.

This work was to build on the consultations and submissions process conducted by the Government in 2008.

In undertaking our task, we have used a mix of the usual and the not so usual techniques. Most notably, we convened a workshop of 100 Aboriginal and Torres Strait Islander peoples in Adelaide in March 2009, where every participant was selected through a merit based process. Since that time we have convened focus groups, conducted a national survey and national naming competition, as well as participated in workshops and meetings, and received written submissions.

This is the final report of the Steering Committee.

It recommends a model for a new National Representative Body for Aboriginal and Torres Strait Islander peoples.

It sets out a vision of the substantial contribution that we hope the new National Representative Body will play over the next generation in order to ensure that our cultures and our human rights are respected and protected, and so that our children can truly enjoy equal life chances to all other Australians.

We have taken as our guiding principle Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. It states:

Indigenous peoples have the right to participate in decision-making in matters that affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

The Steering Committee has been encouraged by the consistent messages that we have heard through the course of the consultation process. Aboriginal and Torres Strait Islander peoples understand the critical need for a new National Representative Body but they do not want a return to old ways.

We have constantly heard the message that our people want a robust national body that has integrity and displays the highest degree of professionalism in all of its operations. And they want the body to be sustainable – here for the long haul and ‘government proof’.

Something that we have continually heard in the consultation process has been the need for the National Representative Body to exhibit the highest standards of ethical and corporate behaviour. We have been encouraged by the positive response to the use of the Nolan Committee Principles on public life being built into the organisation's structure.

There has also been broad agreement on the need for merit based selection processes to underpin selection processes. This is to overcome the problems of the past, where unqualified democratic processes have not served us well as peoples. We address these issues in the model that we are proposing, with a strong emphasis on ethical behaviour built into the operating structure of the organisation.



Our future in our hands | Creating a sustainable National Representative Body

From the beginning of the consultation process there has been overwhelming support for a new National Representative Body to be independent of government. Independence from government will enable the body to fulfil its advocacy function in a bold and robust manner.

We have also been encouraged by recent actions of the Australian Government that set the scene for the new National Representative Body. Since the consultation process began, the Government has:

- *Made substantial commitments to ‘closing the gap’ on disadvantage and marginalisation experienced by Aboriginal and Torres Strait Islander peoples.* This has also been agreed by all state and territory governments through the Council of Australian Governments. It sets a framework for a new partnership and relationship, and provides a central reference point for which all Australian governments are to be held accountable.
- *Endorsed the United Nations Declaration on the Rights of Indigenous Peoples.* This step was described by Minister Macklin as an ‘important step in re-setting the relationship between Indigenous and non-Indigenous Australians and moving forward towards a new future’ and as providing us with ‘new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians.’

The groundwork has been laid for a new relationship – one based on respect and equality.

The National Representative Body is crucial in leading efforts to make these commitments and aspirations meaningful for Aboriginal and Torres Strait Islander peoples.

As we have consistently heard through the consultations, ‘closing the gap’ is fundamentally linked to the recognition of our human rights. The gap will not be closed without our rights being protected and without our involvement in the process. We have tried to capture this message in the statement of mission and objectives for the new National Representative Body.

Ultimately, we have proposed that the new National Representative Body start small and be streamlined. It should have an initial development phase that lasts until the end of 2010 that is focused on building a strong governance and accountability framework, and importantly, on building *buy in* and *acceptance* of the model by Aboriginal and Torres Strait Islander peoples.

Of critical importance in this initial phase will be ensuring that the new National Representative Body is adequately funded and has the financial structure to be sustainable into the longer term. Government has special responsibilities in this regard and it is expected that it will make the overwhelming contribution in the initial period. This would contribute to the sustainability of their current investment in closing the gap.

We have not proposed that the new National Representative Body have state or regional level structures. Instead, we propose that it operate in a way that provides for structured and transparent engagement at the regional and jurisdictional level, with regular opportunities for large groups to engage in policy setting and to hold the body accountable.

We also see the relationship between the new National Representative Body and existing Aboriginal and Torres Strait Islander representative bodies and peak bodies as critical to the long term success of the body. We have proposed that the body be structured in a way that can maximise the contribution of these bodies in order to create greater leverage and coordinated effort.

We anticipate that one of the key benefits of the new National Representative Body will be to provide a space where the existing sectoral or regionally specific expertise and knowledge of existing organisations can be harnessed for the greater good of Aboriginal and Torres Strait Islander peoples at the national level. The role of the National Representative Body is to ‘value add’ not to replace this expertise. It should aim to draw sectoral interests into a lucid and overarching national strategy.

We also anticipate that the body will grow and evolve over its initial years. Processes for engagement and representation associated with the new National Representative Body will take time to build. This in part is due to the diverse cultures, languages and aspirations of Aboriginal and Torres Strait Islander peoples – different structures and forms of engagement will need to be developed for different regions and situations.

Representative and advisory structures that currently exist will also need to change so that they are truly representative if they are to play a substantial role in the new National Representative Body.

For example, the Steering Committee sees most existing state and territory level advisory committees as they are constituted as lacking the necessary independence and representative status. We see a

Introduction

role for the new National Representative Body in encouraging the creation of more robust state and territory mechanisms into the future.

The task of creating a new National Representative Body is an enormously complex and challenging one. We have taken the first difficult step. There will be many more to come over the next few years.

I personally want to thank the members of the Steering Committee for their dedication and substantial contributions to this process. You have each had to show leadership and bravery in putting forward a bold vision for the future of our people.

Thank you also to the Committee's Secretariat for your tireless efforts. The Secretariat was based at the Australian Human Rights Commission and benefited from the contributions of many staff of the Commission over the course of the project. My thanks to the President of the Commission, the Hon Catherine Branson, for her support as we have progressed with advancing one of the most significant processes to protect the rights of Aboriginal and Torres Strait Islander peoples into the future.

Thank you also to our advisors and consultants, many who offered their support on a pro-bono basis and at extremely short notice. And thank you to the staff of the National Indigenous Representative Body Unit at the Department of Families, Housing, Community Services and Indigenous Affairs for the substantial contribution that you have each made in order for us to reach this point.

All contributors to this process are acknowledged in **Attachment 9** to this report.

Can I also thank Minister Macklin and the Australian Government for entrusting the Steering Committee with this important responsibility.

I also acknowledge the role that Aboriginal and Torres Strait Islander media outlets have played in spreading the word and ensuring that our peoples are informed about the consultation process.

An important acknowledgement also goes to Darren Dick and Josephine Bourne for drafting this comprehensive report in such a readable form.

And finally, I thank every Aboriginal and Torres Strait Islander person who has contributed to the process. I hope that we have given true expression to your aspirations and desires for the future.

This is a rare opportunity for Aboriginal and Torres Strait Islander peoples to work together with governments, industry and the Australian community to secure the economic and cultural independence of our peoples, and to enable us to truly experience self-determination, for the first time in this country.

I encourage all Aboriginal and Torres Strait Islander peoples to get behind the new National Representative Body and to make it yours. As the title of this report states, let's put 'our future in our hands'.

TOM CALMA

**Chair – Steering Committee for the creation of a new National Representative Body
Aboriginal and Torres Strait Islander Social Justice Commissioner**

Section 1:

The importance of a National Representative Body

.....

The Steering Committee has chosen to commence its report by identifying why the National Representative Body is important.

Aboriginal and Torres Strait Islander peoples hold a unique place in our history and as first nations people have a fundamental contribution to make to ongoing national development and identity. A national body is a prerequisite to enabling this contribution through partnerships with government, the private sector and the Australian community.

Aboriginal and Torres Strait Islander peoples also have profound understanding of the consequences of racism and marginalisation and have essential insights and knowledge required to address the disadvantage which has resulted. The nation needs a body able to marshal this knowledge and contribute it to national policy and strategy.

Why is a National Representative Body important for Aboriginal and Torres Strait Islander peoples?

Throughout the consultation process it has been clear that Aboriginal and Torres Strait Islander peoples want a new National Representative Body.

A new National Representative Body is critical to provide Aboriginal and Torres Strait Islander peoples with a national voice. Our people have been without such a voice for five years. We have suffered as a result.

A new National Representative Body will enable the goals, aspirations, interests and values of Aboriginal and Torres Strait Islander peoples to be heard in national debate, as well as enabling the diversity of perspectives of Australia's first peoples to be recognised.

The National Representative Body will have an essential role in advocating for the recognition and protection of the human rights of Aboriginal and Torres Strait Islander peoples. It will provide a mechanism to give meaning to and pursue the exercise of our rights, including those recognised in the UN Declaration on the Rights of Indigenous Peoples. This includes recognising our right to determine our political status and pursue our economic, social and cultural development.

A National Representative Body can empower and inspire Aboriginal and Torres Strait Islander peoples by enabling individuals and groups to participate in decision-making processes that affect us. The National Representative Body will enable us to inform and feel part of policies that affect our lives and those of our families and communities.

The National Representative Body can inspire change within our communities that is informed and driven by Aboriginal and Torres Strait Islander peoples. We want to work with government and other agencies in designing and applying solutions to the social problems faced by us on a day to day and generational basis. We want to work together to overcome the poverty, inequality and injustice faced by our communities.

We also see the National Representative Body as an important mechanism to assist government in shaping its approach and in holding them accountable for service delivery to individuals and communities. We have a role in partnering with government to ensure that services are delivered in a manner that is meaningful for our communities, and that appropriately recognises our social and cultural issues.

This includes by ensuring that there are adequate monitoring and evaluation processes in place to ensure that our communities are benefiting from services that are designed to assist us.



Our future in our hands | Creating a sustainable National Representative Body

We face challenges that will take at least one and in some cases, two generations to solve, with many of the problems today having been generations in the making. We need to keep governments and the federal parliament focused over the longer term if we are to see real change in our communities. We aspire to achieve bi-partisan support for addressing the challenges faced by our communities over the longer term. We also note that sustainable progress will only occur when we own our own problems, solutions and control our own future.

While governments and many non-government organisations have endeavored to address the many problems of our people, it must be us that drive the solutions and anything short of this renders us passengers in our own development. This in turn leads to more dependency.

The National Representative Body also has a critical role to play in supporting inter-generational dialogue among Aboriginal and Torres Strait Islander peoples. This can build a shared journey and vision between our generations to ensure that we plan for the future and nurture our future Aboriginal and Torres Strait Islander leadership. Today's leaders should aim to leave a lasting legacy for future generations of Aboriginal and Torres Strait Islander people by ensuring that their rights to self-determination and their status as Australia's First Peoples' are recognised and protected.

For the National Representative Body to contribute in these ways it must always remember that it is accountable to Aboriginal and Torres Strait Islander peoples. The Body will need to ensure that it operates openly and transparently, maintains high standards of ethical conduct and good governance, and is inclusive for Aboriginal and Torres Strait Islander peoples.

It will need to be proactive and focused on setting forth a positive vision to improve the well being of Aboriginal and Torres Strait Islander peoples. It must earn respect among Aboriginal and Torres Strait Islander peoples rather than demand it.

Text Box: What do Aboriginal and Torres Strait Islander people see as important for the National Representative Body?

"...the National Representative Body should primarily act as an advocacy and negotiation body, arguing independently from a considered and well researched base, for the domestic implementation of the *Declaration on the Rights of Indigenous Peoples* and other relevant and binding human rights provisions..."(Public Submission 2)

"In order to make progress in the arena of Social Welfare Reforms we need to start taking several steps backward in order to gain momentum to move forwards. Formation of an Indigenous Peak Body on a national level will provide Indigenous people Australia wide with a vehicle allowing them to express positive and negative community needs and concerns which in turn empowers each individual and community as whole in regard to "Community Restoration." (Public Submission 7)

"The outcomes must be our own and we cannot feel like our funding will be cut if we stand up and speak out against a government policy or program." (Public Submission 8)

"The representative body should be held accountable for their time, actions and any decisions they make on behalf of the Aboriginal people of our land. For the representative body to be a true voice for Indigenous Australians they need to be able to hear what it is the Aboriginal people want and or need..." (Public Submission 44)

"Any national body should collaborate effectively with the Indigenous Dialogue – the Dialogue should be the key vehicle to facilitate constitutional reform and that this process be carried out under the principles of the UN Declaration such as free, prior and informed consent" (Public Submission 77)

"We need a balance of young people as representatives on our peak body also. It's always easy to presume we know best for our kids, but don't take the time to ask. I would like to see a balance of 50/50 men and women represented." (Public Submission 16)

Why is a National Representative Body important for Australian Governments?

Australian governments continue to struggle with the intensely difficult task of addressing the marginalisation and disadvantage experienced by Aboriginal and Torres Strait Islander peoples. Too often, governments lack the cultural competency to engage appropriately with Aboriginal and Torres Strait Islander peoples, and laws and policies can add further to the harm experienced by communities.

The marginalisation and disadvantage experienced is entrenched and has affected Aboriginal and Torres Strait Islander peoples across generations. As successive reports have told us, most recently the 2009 edition of the *Overcoming Indigenous Disadvantage Report*¹, it is difficult to make sustained progress and there has been very little change in the position of Aboriginal and Torres Strait Islander peoples relative to the rest of the Australian community in recent years.² With a substantial and growing youth population among Aboriginal and Torres Strait Islander peoples, there will be significant demand on future Government services.

All governments in Australia want to see positive change that improves the lives of Aboriginal and Torres Strait Islander peoples. **Attachment 5** lists a series of commitments and statements made by Australian Governments that attests to this.

Most recently, the Council of Australian Governments (COAG) has made a series of commitments to closing the gap on key indicators of disadvantage experienced by Aboriginal and Torres Strait Islander peoples.

They have also commenced significant reforms to how financial relationships are managed between the Australian Government and state and territory governments. This includes through a series of new National Partnerships, Integrated Strategies and new approaches to Special Purpose Payments.³ The Overcoming Indigenous Disadvantage framework has also been reformed to include regular assessments of progress in relation to the six closing the gap targets adopted by COAG.

Attachment 6 to this report provides an overview of the closing the gap process and commitments as agreed by COAG.

While the task is urgent, it will take considerable time for the COAG commitments and reforms to deliver sustained improvements in the livelihoods of Aboriginal and Torres Strait Islander peoples.

It will require a sustained and consistent focus that governments have been unable to achieve to date. And it will require the translation of high level commitments into action at the community level that is meaningful and appropriately targeted to the needs of individuals, families and entire communities.

For this reason, governments will struggle in their efforts to make lasting progress in improving the conditions of our people and in our communities if there is not meaningful engagement with Aboriginal and Torres Strait Islander peoples.

A National Representative Body is fundamental to any future action if we are to achieve positive change and close the gap.

There are three main contributions that the National Representative Body can make to the closing the gap agenda and in the relationship with government more generally. These are by:

- *Providing the basis for a new relationship with governments* – in order to reset the relationship based on partnership and genuine engagement with Aboriginal and Torres Strait Islander peoples;
- *Ensuring that there is a ‘shared journey’ between Aboriginal and Torres Strait Islander peoples and governments* – with a shared ambition for the future that reflects the desires and aspirations of Aboriginal and Torres Strait Islander people, our families, communities and cultures; and
- *Holding governments to account for their performance* – in order to ensure governments remain focused over the longer term, with a clear understanding of their responsibilities and transparent accountability frameworks that remain relevant and targeted to the needs of Aboriginal and Torres Strait Islander peoples.

Providing the basis for a new relationship with governments

There is an acknowledged need for governments to reset the relationship with Aboriginal and Torres Strait Islander peoples based on partnership and genuine engagement.

The absence of an effective, credible National Representative Body in recent years has contributed to policy making at the national level being fragmented and uncoordinated, and developed without genuine engagement with Aboriginal and Torres Strait Islander peoples. As the Prime Minister stated in his *Closing the Gap* speech to Parliament in February 2009:

in recent years a sense of deepening despair had settled on much of Indigenous Australia. Many people felt they were not consulted; that decisions about their welfare were made without reference to them. That they had even become invisible to the nation.⁴

As the Social Justice Commissioner stated in the 2009 *Mabo oration*:

it doesn't matter how magnificent a policy proposal is, how well crafted or clever it is, or how much money is attached to it. It will all amount to a hill of beans if it does not meet the 'reality test' of the livelihoods of Aboriginal and Torres Strait Islander peoples. Nor will it be legitimate in our eyes.

We need to be the central players in our own development. Sustained prosperity and well being among our communities can only be achieved from building and supporting our capacity.

More than this, we have the right to determine the priorities for our communities and for our families.⁵

All Australian Governments, through COAG, have recognised the need to work in partnership with Aboriginal and Torres Strait Islander peoples if they are to realise their Closing the Gap commitments. As they state in the *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage*:

The Closing the gap targets are ambitious and work to achieve them will need to be undertaken over a considerable period of time... This will require... resetting of the relationship between Indigenous and non-Indigenous Australians. This reconciliation involves building mutually respectful relationships between Indigenous and other Australians that allows us to recognise our histories and our cultures.

Prime Minister Rudd has also emphasised the importance of a new partnership to closing the gap:

Fundamental to the Government's strategy is a new partnership with Indigenous Australians. This partnership must be respectful and collaborative, and involve open communication with Indigenous Australians. Indigenous Australians have the capacity to bring about lasting change in their lives and those of their communities. **Without a strong relationship with Indigenous Australians, based on mutual respect, mutual resolve and mutual responsibility, we cannot hope to close the gap.**⁶

The National Representative Body provides a vital mechanism for creating this new partnership. COAG recognises this in the *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage*:

COAG is committed to working in partnership with Aboriginal and Torres Strait Islander people to achieve the Closing the Gap reforms... Australia-wide consultations have been undertaken on the establishment of a national representative body to provide Aboriginal and Torres Strait Islander people with a voice in national affairs... It is anticipated that it will be the primary mechanism for engaging on national Indigenous policy issues.

The creation of a National Representative Body will provide governments with a national focal point to provide expert advice on a holistic, whole of government basis. As can be seen from the model proposed, it is anticipated that it will have the ability to access expert advice across a range of issues.

It will also provide the 'meeting space' where Aboriginal and Torres Strait Islander peoples and communities, peak bodies and interest groups will be able to focus on the bigger picture and set a longer term agenda for policy making and program delivery.

This will not absolve governments of the responsibility to engage and consult with communities on issues that affect them. It will, however, provide the starting point for discussions and set the broad directions for policy.

In resetting this relationship, we need to ensure that Aboriginal and Torres Strait Islander perspectives are front and centre of all relevant policy development processes. All government workers should have in the front of their mind the questions: does the policy I am working on impact (in a positive manner) on Aboriginal and Torres Strait Islander peoples? Have I engaged with Aboriginal and Torres Strait Islander peoples to reflect their perspectives on this issue and to identify the pathway forward?

Section 1 | The importance of a National Representative Body

For example, the *Native Title Report 2008* discusses in detail the challenges that climate change and water resources create for Aboriginal and Torres Strait Islander peoples. Our voices in these processes to date have been marginal at best. This is despite significant potential for strategies to mitigate the effects of climate change creating or supporting economies for our peoples or alternatively, for our traditional practices to be severely impacted upon by mitigation strategies.

The critical importance of ensuring our engagement in the climate change debate is but one example of what needs to occur if we are to reset the relationship in good faith.

Ensuring that there is a ‘shared journey’ between Aboriginal and Torres Strait Islander peoples and governments

Too often, policy and programs are developed and applied to Aboriginal and Torres Strait Islander peoples without our involvement. This can result in policy approaches that miss the mark, or which are simply misguided or sometimes irrelevant to our circumstances and needs.

As Aboriginal and Torres Strait Islander peoples, we have a legitimate stake in government activity that affects our lives. And we ultimately bear the responsibility to our families, our communities and to our ancestors.

The ‘Close the Gap’ approach initially emerged from the *Social Justice Report 2005* of the Aboriginal and Torres Strait Islander Social Justice Commissioner. It was championed and lobbied for by the Aboriginal and Torres Strait Islander health sector, working with mainstream organisations and human rights NGOs.

Despite this, the Closing the Gap agenda that has now been agreed through COAG has been developed with limited participation and engagement with Aboriginal and Torres Strait Islander people. There is a pressing need for the Closing the Gap agenda to become a shared agenda between governments and Aboriginal and Torres Strait Islander peoples.

COAG has acknowledged this as a concern. In the *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage* they state:

To date, engagement with Aboriginal and Torres Strait Islander people on the development of the Closing the Gap agenda has been at a very broad level. Implementation of the National Agreements and National Partnerships... agreed by COAG across the health, education, housing, employment and service delivery spheres will require developing and maintaining strengthened partnership arrangements.

There are two main reasons for this.

First, for the ‘Closing the Gap’ approach to succeed it must respect and promote Aboriginal and Torres Strait Islander cultures. The *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage* identifies the following dimensions to this. Efforts to close the gap should:

- ‘build on the strengths of Indigenous cultures and identities’;
- reduce social exclusion of Indigenous peoples by ‘promoting and supporting a strong and positive view of Aboriginal and Torres Strait Islander identity’; and
- ensure that programs ‘meet the cultural needs of Indigenous people’, are focused on eliminating overt and systemic discrimination, and ensure that governments have the cultural competency and cultural awareness to implement programs effectively.

Addressing these issues is essential if services are to be accessible and to achieve the intended outcomes, and for them to be relevant and meaningful for Aboriginal and Torres Strait Islander peoples.

Second, a ‘shared journey’ between Aboriginal and Torres Strait Islander peoples with governments and the broader community is essential for a reconciled nation. As the text box on the Australian Reconciliation Barometer (in the next section below) shows, there is a clear desire among the Australian community for ‘shared pride’ in the cultures and histories of Aboriginal and Torres Strait Islander peoples.

There is a lesson for all Australians in the *Apology* beyond its specific recognition and condemnation of forcible removal practices. It showed, for just one day, what a united Australia looks like when we squarely acknowledge our history and share our pain. It showed that ultimately, whether you are an Aboriginal or Torres Strait Islander person, or not, our futures are inextricably bound together by the common threads of dignity, respect and hope. A ‘shared journey’ is about nation building and a respectful future.

Holding governments to account for their performance

Australian governments, especially through COAG, have a history of making commitments to Aboriginal and Torres Strait Islander peoples that have not subsequently been met. Commitments have never been matched by the necessary action (in human, technical and financial terms) to address the level of need in the community.

As the extract below from the *Overcoming Indigenous Disadvantage Report 2009* shows, there remain significant problems in how governments are performing on issues relating to Aboriginal and Torres Strait Islander peoples. This includes through inadequate data collection, a lack of evaluation of projects and programs, and ‘inadequate policy development’ processes.

As successive *Social Justice Reports* have shown, existing policy processes relating to Aboriginal and Torres Strait Islander peoples do not meet the standard of evidence based policy.⁷ They also tend to not meet the key elements by the Department of Prime Minister and Cabinet and the Australian National Audit Office in their Better Practice Guide to Implementation of Programme and Policy Initiatives.⁸

Recent developments at the Council of Australian Governments have seen the introduction of stronger accountability frameworks. This includes through National Partnerships and Integrated Strategies that have been adopted.

Despite this, there is a clear need for governments to be held accountable for their performance on issues relating to Aboriginal and Torres Strait Islander peoples against agreed targets.

Governments do not have sole responsibility for the well-being of Aboriginal and Torres Strait Islander people. But they do have substantial responsibilities for the delivery of services.

Since the abolition of ATSIC, which only had a supplementary funding role, governments have been solely responsible for administering the delivery of services to Aboriginal and Torres Strait Islander peoples (including through the use of community controlled and Aboriginal and Torres Strait Islander organisations). This will continue with the new National Representative Body not taking on these responsibilities.

The National Representative Body will play a critical role in holding the federal government to account for its performance.

This does not necessarily mean that the Body will itself conduct the monitoring and evaluation activities. Its role is more likely to be to ensure the presence of, and contribute to, mechanisms to monitor and evaluate government performance to Aboriginal and Torres Strait Islander peoples.

Text Box: What do recent reviews tell us about the performance of the Australian Government on Aboriginal and Torres Strait Islander issues?

Overcoming Indigenous Disadvantage Report 2009

This report was commissioned by COAG and is produced every two years to report on indicators contained in the Overcoming Indigenous Disadvantage Framework. The current state of progress is described in the overview of the report as follows:

Across virtually all the indicators in this report, there are wide gaps in outcomes between Indigenous and non-Indigenous Australians. However, the report shows that the challenge is not impossible — in a few areas, the gaps are narrowing. However, many indicators show that outcomes are not improving, or are even deteriorating. There is still a considerable way to go to achieve COAG’s commitment to close the gap in Indigenous disadvantage.

Overall, Indigenous people have shared in Australia’s economic prosperity of the past decade or so, with improvements in employment, incomes and measures of wealth such as home ownership. However, in almost all cases, outcomes for non-Indigenous people have also improved, meaning the gaps in outcomes persist. The challenge for governments and Indigenous people will be to preserve these gains and close the gaps in a more difficult economic climate.⁹

The report considers that improving the ‘governance of government’ is key to achieving improved outcomes. It emphasises that engagement by governments with Indigenous communities is essential to achieve measurable improvements in economic, health, and social indicators.

Section 1 | The importance of a National Representative Body

Among the success factors identified in the report are:

- cooperative approaches between Indigenous people and government;
- community involvement in program design and decision-making;
- good governance — at organisation, community and government levels;
- ongoing government support — including human, financial and physical resources.

The report also notes that formal, public evaluation of Indigenous programs is:

hampered by inadequate data collections and poor performance information systems. For example, there is limited information on the use of mainstream services by Indigenous peoples and very little information on the barriers to access and use of services that Indigenous people face.

The Chairman of the Productivity Commission described the situation as follows:

While good governance has been lacking in many Indigenous communities, it has also been lacking within government itself. This is partly a legacy of divided jurisdictional responsibilities, and partly due to ‘silo-based’ approaches to service delivery and policy development within individual administrations. The result has been a staggering lack of coordination in service delivery, inadequate policy development and program evaluation, and a surfeit of redtape — all of which have contributed to poor outcomes and a lack of capacity to take corrective action when things go wrong.¹⁰

Report of the Northern Territory Emergency Response Review Board 2008

This review considered progress in implementing the Northern Territory Emergency Response (or NT intervention). It noted progress in some areas, accompanied by substantial problems. The Board noted that:

Support for the positive potential of NTER measures has been dampened and delayed by the manner in which they were imposed. The Intervention diminished its own effectiveness through its failure to engage constructively with the Aboriginal people it was intended to help.

The Review Board particularly emphasised the need to reset the relationship between Aboriginal peoples in the Northern Territory and government:

One thing is very clear to the Review Board: the way forward from the Intervention can not be based on a return to ‘business as usual’. Both Aboriginal people and the Australian Government want a new relationship.

The most fundamental quality defining that relationship must be trust. And for that to occur at the community level in the Northern Territory there must be an active re-engagement with the community by government.

Accumulated neglect by governments over 30 years has resulted in situations within some remote communities that could benefit from the same disciplined, professional approach that Australia brings to international programs of reconstruction and community development. If it is to work, community development must be led by the community and partnered by government. That is the basis for a new relationship.

It is a relationship governed by principles of informed consent, participation and partnership. It will require structural support enabling robust and sophisticated dialogue, where common aspirations can be explored and regional and local agreements can be negotiated.

The Review Board recommended that:

- The Australian and Northern Territory Governments endorse the need to reset the relationship with Aboriginal communities in the Northern Territory and move in partnership to develop and maintain a community development framework within which a genuine engagement with communities can develop and be maintained.
- Both governments commit to the reform of the machinery and culture of government to enable a more effective whole-of-government approach to be delivered on the ground and to support professional development for their key personnel located in Indigenous communities.

Why is a National Representative Body important for industry and for Australia?

A National Representative Body will not just be of benefit to government and Aboriginal and Torres Strait Islander peoples. It will provide a focal point for industry and also benefit the Australian community more broadly.

Increasingly, the corporate sector is seeking to connect their business activities to the communities in which they operate. Initiatives like Reconciliation Action Plans and the Employment Covenant show that the corporate sector, unions, sporting codes and non-government organisations want to play their part in closing the gap and in promoting reconciliation.

This is good for business, while also having the potential to promote social cohesion and provide reputational benefits to companies for their corporate social responsibility.

But many in the corporate sector struggle to identify what role they can play or do not have the necessary cultural competencies. This can result in failure to achieve outcomes, a lack of confidence and a reluctance to take action.

The National Representative Body has the capacity to play an authoritative role in advising industry and others, and to build partnerships that benefit Aboriginal and Torres Strait Islander people and communities. With ownership of 20% of the landmass, knowledge of country and environment and a growing labour force, Aboriginal and Torres Strait Islander peoples have a high stake in economic development. A National Representative Body can facilitate that development by assisting industry to understand how to do business with our people.

The Australian Government has explicitly identified the role of the business and philanthropy sectors as crucial to achieve the *Closing the Gap* agenda:

The challenge we now confront is to work together to close the gap in real life outcomes between Indigenous and non-Indigenous Australians. This is the objective to which the Australian Government is committed, but cannot achieve on its own. As a nation, we must come together around this vision and take substantive action – Indigenous and non-Indigenous people, Commonwealth, state and territory governments, business and the wider community.

The experience of previous efforts to close the gap demonstrates that achieving our targets in this area will require commitments from the broader corporate and community sectors. The forging of corporate and philanthropic partnerships with Indigenous communities will help to deliver real and sustainable results.¹¹

It is envisaged that over time, the corporate and philanthropy sector will also play a major role in assisting the National Representative Body in becoming financially sustainable. They may also purchase services from the National Representative Body, such as advice.

The text box below provides an overview of the main findings of the Australian Reconciliation Barometer, which seeks to measure the strength of the relationship between the broader Australian community and Aboriginal and Torres Strait Islander peoples.

It identifies a common willingness for there to be a relationship and a desire to develop a shared pride in the cultures, histories and traditions of Aboriginal and Torres Strait Islander peoples. But it also reveals a lack of trust and understanding between the two groups.

The National Representative Body has the potential to lead efforts to build trust and understanding, and to bind all Australians together in celebrating Aboriginal and Torres Strait Islander cultures.

Text Box: The Australian Reconciliation Barometer

In 2009, Reconciliation Australia published the first Australian Reconciliation Barometer.¹² The Barometer is a national research study that looks at the relationship between Indigenous and other Australians. Designed to be repeated every two years, the Barometer explores how we see and feel about each other, and how perceptions affect progress towards reconciliation and closing the gaps.

Some of the key findings that are of relevance to the National Representative Body are as follows.

Importance of relationship

Indigenous and other Australians agree that the relationship between us is important. Although we agree the relationship is important, we don't trust each other and this affects how we think, feel and act.

Indigenous and other Australians see many things about ourselves very similarly and in line with how we see the Australian identity. The research shows both Indigenous and non-Indigenous Australians agree it's important to learn about Indigenous history and culture. Aboriginal and Torres Strait Islander people are open to sharing their history and culture, and want all Australians to take pride in it. Other Australians want to know more but are afraid to ask. Once again, lack of trust discourages us from acting on our inclinations to share.

Australians want to have more contact with Indigenous people and to contribute to closing the gaps but they don't know how to go about it. Again, lack of knowledge and trust makes non-Indigenous people hesitant about reaching out. For many, so does their fear that it's all too hard.

Quality of the relationship

There is a remarkable level of agreement between Indigenous and other Australians about the quality of the relationship.

Only about half of either population group agree that either the *relationship between Indigenous and other Australians today is good* or that the *relationship between Indigenous and other Australians is improving*. This suggests that, despite a common belief that the relationship is important, there is a long way to go in improving the relationship.

The responses also point to a critical factor in any relationship – the level of trust. Only about 1 in 10 people feel there is a *high level of trust* in the relationship, with Indigenous people feeling this way about other Australians and other Australians about Indigenous people.

Shared pride

One of the cornerstone conclusions of this study is the scope for a greater sense of shared pride in key aspects of Indigenous life in Australia – the people, their history and cultures.

Only 44% of the overall population believe that *Indigenous people are open to sharing their culture with other Australians*. But 89% of Indigenous people say they are open to sharing their culture.

This indicates a significant gap in perceptions and suggests that one important way to close this gap is to support Indigenous Australians in finding ways to share their culture with non-Indigenous people, and to support non-Indigenous Australians in finding ways to learn about, experience and take pride in Indigenous culture.

Section 2:

What we heard in the national consultation process

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The Steering Committee has benefited from an extensive consultation process. This has significantly shaped the perspectives of the Committee and the ultimate model that it has proposed in this report.

This section provides a summary of the main issues raised during the final round of consultations undertaken by the Steering Committee from April 2009. It includes information from:

- Focus Groups convened nationally, May – June 2009;
- National Survey – conducted online, May – July 2009;
- Submissions; and
- Consultations, workshops and meetings convened or attended by the Steering Committee.

This constituted the third stage of consultations for the process. The previous stages were:

- The convening of a national workshop of 100 Aboriginal and Torres Strait Islander peoples on the establishment of a new National Representative Body in Adelaide in March 2009; and
- The conduct of a first round of consultations conducted by the Australian Government in 2008.

Each stage of the consultations has been more specific and detailed than the stage that preceded it.

Information about the previous two rounds of consultations is included in **Attachments 1 – 3** of the report. Information about these previous stages has been publicly available for some time, and has framed the discussions for the third and final stage of consultations.

There is a need for a new National Representative Body

Throughout the consultation process, there has been broad and consistent support for the establishment of a National Representative Body for Aboriginal and Torres Strait Islander peoples.

Terminology

There was very little support for retaining use of the phrase ‘Indigenous peoples’ as the main terminology at the national level. The majority view expressed was for the phrase ‘Aboriginal and Torres Strait Islander peoples’, with a significant number also preferring the terminology ‘first nations/first peoples’.

Role of the National Representative Body

There is a clear expectation that the National Representative Body will focus on the big strategic national issues and should not be involved in lesser issues or be excessively involved in service delivery related issues. There was near universal support for the body not being directly involved in service delivery or allocation of Government funds.

There was support for the National Representative Body to:

- Play a leading role in developing new partnerships between Indigenous peoples and governments;
- Contribute to and lead policy development on Indigenous issues;



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- Provide an Indigenous perspective on issues across government;
- Advocate for the recognition and protection of Indigenous peoples' rights;
- Ensure accountability mechanisms for government service delivery are adequate;
- Ensure that Close the Gap commitments are supported by long term national action plans;
- Support good governance among Indigenous communities and organisations; and
- Ensure equal participation of Indigenous women in governance and decision-making processes.

The following were identified as the most important roles for the National Representative Body:

1. Advocacy.
2. Provide policy and advice.
3. Monitor government service delivery.
4. Negotiate framework agreements with governments.

Structure of the body

The majority view was that the body needs to be streamlined and cohesive in order to be effective. This position was, for many, contingent upon there being:

- Structured and transparent engagement at the regional and jurisdictional level
- Regular opportunities for large groups to engage in policy setting and to hold the body accountable (such as through annual conferences).

There was a considerable majority who believed that the National Representative Body will need an active process for grounding its thinking in local/regional knowledge and views and would need broad forums to canvas policy views and to provide an accountability mechanism.

There were, however, differing views about how to achieve this. In particular, there were differing views on whether the National Representative Body would require structures at the regional and state/territory level or whether it should rely on processes for engagement at these levels.

Many believed that a formal membership structure is not essential at this stage and that the National Representative Body needs to utilise and engage with existing structures and processes rather than create new structures.

Many believed that the National Representative Body needs clear, robust and transparent relationships with regional and local groups but does not need to formalise this in order to be credible and effective.

Many people saw that regional involvement should be focused upon the importance of ongoing engagement to ensure informed positions are adopted and for accountability purposes.

Role of experts and peak bodies

There was a strong view that the National Representative Body should have access to expert knowledge. However, there was not widespread support for peak bodies to provide this directly through having a representational role.

There was, however, strong support for the National Representative Body to provide a 'meeting place' for peak bodies and for them to be involved in the working processes of the body.

Gender equality

There was strong support for equal representation of women in any structure for the new National Representative Body – however it is constituted. This should not displace appointment processes that are based on merit.

Representation of Torres Strait Islanders living on the Mainland

There was strong support throughout the consultation process for mainland Torres Strait Islanders to be treated equitably in the National Representative Body.

Section 2 | What we heard in the national consultation process

During consultations with both Torres Strait Islander representatives from the region and those living on the mainland, it was expressed that mainland Torres Strait Islanders' representation on the National Representative Body should come from a new body or association of mainland Torres Strait Islander people.

There was also common agreement from both groups that it should be recognized nationally that all Torres Strait Islander peoples are connected back to the Torres Strait Island region and have shared histories, customs and cultures.

The importance of integrity and merit

There was general agreement that the National Representative Body will need to act with integrity in order to build its legitimacy with the community, the political world or the non Indigenous community.

This means that the individuals involved need to bring personal integrity. There was also wide support for the 'Nolan Principles' as setting an ethical framework for the National Representative Body.

Appointment processes

There was very broad agreement that 'merit' (along with integrity) is vital to any appointment process for the new National Representative Body. This view was shared by those who thought that elections were an essential component of the process of appointment.

A minority believed that elections are essential to credibility. Where there is support for an election process, this was often accompanied by the view that elections should build in a review mechanism in order to appoint the most meritorious.

There was support for a delegate model¹³ from those who sought to ensure that particular groups would be represented (e.g. Torres Strait Islanders on the mainland). There was also support for an electoral college model¹⁴ to provide the legitimacy of elections but within a more controlled, less costly structure.

There was a broad consensus that key members of the body will need to be full time but divergence about whether all should be.

Relationship to government

The majority of people believed that the National Representative Body should have a strong relationship to the Australian Government as well as state and territory governments.

The majority of people saw that the body should ultimately exist separate from government and be focused on the interests of Aboriginal and Torres Strait Islander peoples.

Most people saw an autonomous body emerging over time rather than being a direct outcome of this process.

The overriding concern was to ensure that the National Representative Body has influence over government policy and in reviewing government performance. Most participants also want to develop approaches which have the National Representative Body represented in key decision making forums not just making proposals.

Many people saw a statutory link to Parliament, mechanisms for reporting to parliament and working with a lead government Minister as a way of advancing this.

Funding

Many participants believe that Government should be obligated to fund the National Representative Body, at least in its initial years.

There is also widespread recognition that substantial operational autonomy will only be achieved with non government funding sources. There is considerable optimism that independent funding sources may become available over time, although it was widely expressed that it would take considerable time to build an autonomous corpus and or cash flow.

The main funding options identified for the National Representative Body were:

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- Receiving untied government funding;
- Having a fund established to give the body a capital base (like the Indigenous Land Corporation);
- Being established with a future fund financed through a percentage of mining tax receipts; and
- Obtaining charitable status to receive tax-free donations and other concessions.

Interim Arrangements and first twelve months' priorities

Feedback throughout the consultations identified the most important task for the National Representative Body at the outset being to establish and foster key relationships, particularly across peak bodies, governments, regions and the private sector. People expressed that it is particularly important for the National Representative Body to work with national peak and community bodies, as well as focusing on dialogue with governments to establish a clear and productive relationship from the beginning.

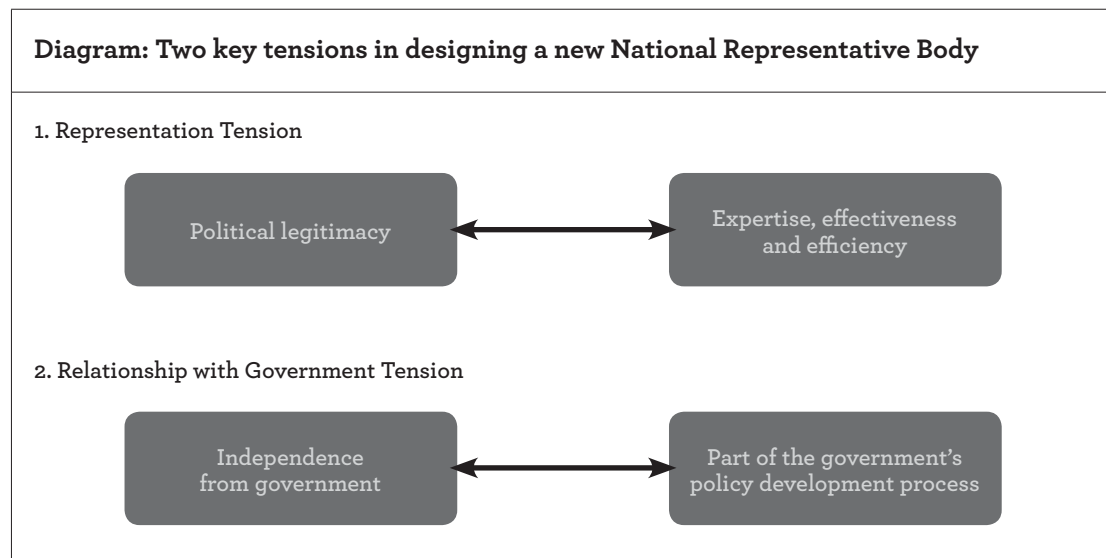
We also heard that in its interim phase the National Representative Body should continue the dialogue with Aboriginal and Torres Strait Islander people in order to develop a business model for the organisation. This should articulate the long-term vision into a series of clear statements of priority and strategy, with targets and benchmarks.

It was acknowledged that the National Representative Body should also take advice from a wide range of sources, extending beyond Aboriginal and Torres Strait Islander communities and organisations. This includes by actively engaging with the private sector.

It was also proposed that the National Representative Body review existing accountability mechanisms for governments and identify potential reforms.

Two key tensions in designing a new National Representative Body

Two key tensions have emerged through the consultation process. These are represented in the following diagram.



The first tension is a representational one – how does the National Representative Body obtain political legitimacy with Aboriginal and Torres Strait Islander peoples while also being streamlined, cohesive and expert in its operations?

There was a clear message through the consultations that appointment processes for the National Representative Body should emphasise merit based selection to ensure that the Body has the right set of skills to perform its key roles. For some people, there was acceptance that a directly elected process may not produce this result. This was because some people who could make a substantial contribution to the National Representative Body may not nominate for appointment/election or may not be popularly endorsed.

Section 2 | What we heard in the national consultation process

Related to this is the tension about whether the role of the National Representative Body is to represent a national perspective on Aboriginal and Torres Strait Islander issues *or* to represent Aboriginal and Torres Strait Islander peoples across the nation. These are qualitatively different things. Answering this question goes to the size of the body and its formal structures, as opposed to its processes for engagement.

The second tension concerns the relationship to government. A key issue throughout the consultations was the desire for the National Representative Body to be independent from government (in particular, free of the ability of government to control or abolish the body) while also being influential with government and playing a key role in the policy development process.

The model proposed by the Steering Committee seeks to address these tensions.

Section 3:

The proposed model: a new National Representative Body for Aboriginal and Torres Strait Islander peoples

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There is a clear need for a National Representative Body.

The Steering Committee is of the view that Aboriginal and Torres Strait Islander peoples are ready to begin the process of establishing the National Representative Body and for it to begin operating.

Further delay in establishing the Body will result in a continued lack of national voice and will damage the interests of Aboriginal and Torres Strait Islander peoples. We need to take action now to build momentum, while retaining the flexibility to adapt the Body's structure as it develops.

Accordingly, the Steering Committee is proposing that:

- A National Representative Body be established as a non-government entity;
- There be an initial establishment phase lasting until the end of 2010 for the National Representative Body; and
- The National Representative Body have the features as outlined below.

Section 6 of this report outlines what we see as the responsibilities of the Australian Government in relation to the establishment of the new National Representative Body and makes a series of recommendations to them.

A developmental approach

The National Representative Body should start small, with a focus on getting its corporate governance in place and in developing transparent decision making processes.

The Steering Committee has formed the view that this initial establishment phase will take approximately 15 months, and should run until the end of December 2010.

Section 4 of this report details the proposed activities of the National Representative Body in this development phase, including processes for appointment to the initial board and the transitional process to a more permanent structure.

As described further below, during this developmental phase the National Representative Body should utilise consultative mechanisms such as a national policy conference/Congress as the primary mechanism for participation and representation of Aboriginal and Torres Strait Islander peoples. It should focus on building relationships with existing mechanisms and peak bodies to utilise the considerable existing knowledge and skills within the Aboriginal and Torres Strait Islander sector.

This is instead of forming regional and state/territory level structures.

Once the National Representative Body has found its feet, it will be able to consider mechanisms for supporting the development of more localised representative structures if desired by Aboriginal and Torres Strait Islander peoples.

It is also proposed that the Australian Government will take a lead role in funding the initial stages of the National Representative Body. It is proposed that this funding be focused on three issues:

- Ensuring that the body has the necessary recurrent funding for its day to day operations;
- Building a corpus to ensure the sustainability of the body into the future; and



- Facilitating the fast tracking of approval for the Body to enjoy Charitable status.

This will enable the body to become financially secure and independent from government over time. This is discussed in more detail below.

Key features of the new National Representative Body

A company limited by guarantee

The new National Representative Body should be a private company limited by guarantee rather than a statutory authority.

As the title of the report suggests, this will place our futures in our hands.

The Steering Committee has consistently heard the aspiration of Aboriginal and Torres Strait Islander peoples that the National Representative Body become self-determining over time. This cannot happen if the body is a creation of Parliament whose existence is dependent on the goodwill of Parliament and the government of the day.

A company limited by guarantee will also have the following advantages over a statutory model:

- The structures of the Body will be able to be flexible, with the members able to alter the Constitution when necessary. If the Body was a statutory authority it would have to rely on Parliament to approve such changes and may also have unnecessary or politically motivated changes foisted upon it.
- A private company is more likely to attract corporate and philanthropic support for its operations. This will particularly be the case if the Body has tax deductibility status (as recommended below). It is unlikely that a statutory authority – namely a government entity – would attract significant corporate support. This would leave the body dependent on government funding into the long term.
- A private company structure can begin immediately. While it will take a substantial amount of effort and time to fully establish the company and its governance procedures, there will still be greater certainty for the Body than if it is left to the processes of Parliament for its creation.

Mission/Objectives

The National Representative Body's mission should be to provide national leadership in advocating for the recognition of the status of Aboriginal and Torres Strait Islander peoples as First Nations peoples, in protecting our rights and advancing the wellbeing of our communities.

The National Representative Body should do this by:

- Providing a representative voice and advocate for the best interests of Aboriginal and Torres Strait Islander peoples;
- Actively pursuing a principled and visionary agenda to secure the economic, social, cultural and environmental futures of Aboriginal and Torres Strait Islander peoples;
- Building a new relationship with government, industry and among Aboriginal and Torres Strait Islander peoples and communities, based on mutual respect and equality;
- Operating with the highest standards of professionalism and organisational integrity with processes that are transparent, participatory, informed and robust.

Guiding Principles

The following principles should guide the operations of the National Representative Body. It should:

- Enable and support Aboriginal and Torres Strait Islander peoples to be self-determining;
- Promote community building and sustainable development for Aboriginal and Torres Strait Islander communities;
- Operate independently and free from government influence/control;
- Demonstrate a commitment to the highest standards of ethical and moral conduct;
- Exhibit a strong performance-based culture, not risk-or conflict-averse, emphasising high levels of personal responsibility for exemplifying corporate values and behaviours among all staff;

- Be open, transparent and accountable to Aboriginal and Torres Strait Islander peoples;
- Ensure equal participation of men and women in leadership and decision making;
- Promote the meaningful and effective participation of young people in recognition of their status as a majority in our communities and to ensure long-term succession planning;
- Ensure the participation of particularly vulnerable and marginalised groups, such as children and young people, people with disabilities, members of the stolen generations, people living in remote communities and homelands, and mainland Torres Strait Islanders.
- Understand that the challenges faced require a long term, inter-generational vision.

Roles and functions

The National Representative Body should have the following roles and functions:

1. Formulating policy and advice – to ensure that Aboriginal and Torres Strait Islander peoples contribute to and lead policy development on issues that affect us and that an Aboriginal and Torres Strait Islander perspective is provided on issues across government
2. Advocacy and lobbying – to act as a conduit between Aboriginal and Torres Strait Islander peoples and the government, corporate and non-government sectors and ensure the acts of those sectors are in the best interests of Aboriginal and Torres Straits Islander peoples
3. Ensures the presence of, and contribute to, mechanisms to monitor and evaluate government performance to Aboriginal and Torres Strait Islander peoples.

Over time, the National Representative Body could also undertake roles in:

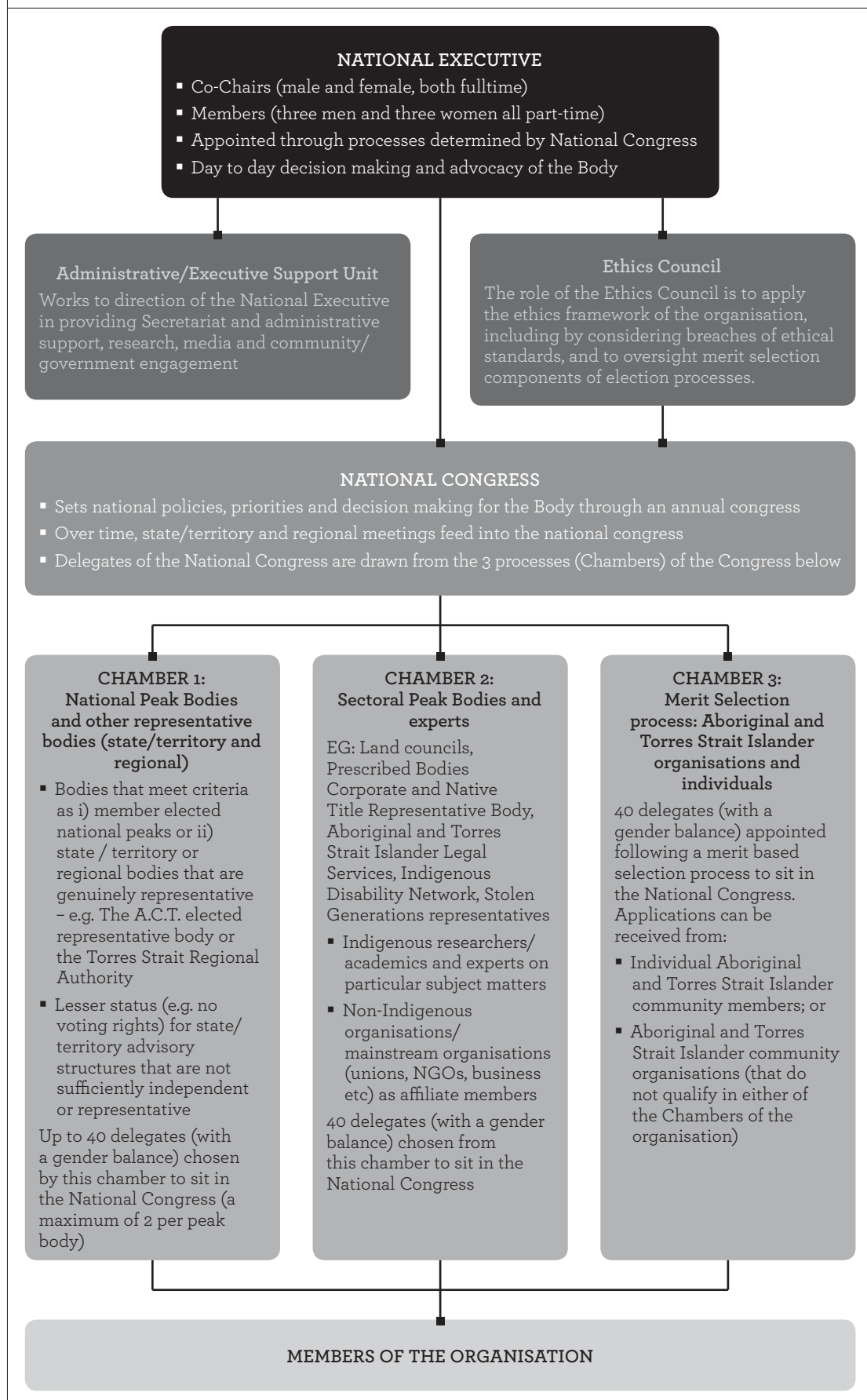
- Building coalitions that draw on the existing strengths and expertise of Aboriginal and Torres Strait Islander peoples and communities, and existing peak and representative bodies;
- Creating partnerships with government, industry and others – for example, through negotiating framework agreements;
- Conducting research and contributing to law reform processes;
- Representing Aboriginal and Torres Strait Islander peoples at the international level;
- Ensuring government commitments, such as ‘closing the gap’ on Aboriginal and Torres Strait Islander health, education and other areas of inequality, are supported by long term action plans;
- Acting as a ‘clearing house’ to promote the sharing of information between Aboriginal and Torres Strait Islander representative organisations and service delivery organisations;
- Conducting facilitation and mediation services for Aboriginal and Torres Strait Islander peoples.

Structure of the National Representative Body

Based upon the feedback from consultations the Steering Committee proposes an organisational model which strongly affirms a commitment to merit while also ensuring that the decisions of the National Representative Body are informed by and accountable to a carefully structured constituency. Further the body will have a strong, constitutionally recognised mechanism for managing ethics.

Diagram 1 below summarises the proposed structure of the National Representative Body.

Diagram 1 – Structure of the National Representative Body



It is proposed that the National Representative Body have four main components:

- A National Executive;
- A National Congress;
- An Ethics Council; and
- An Administrative or Executive Support Unit.

a) The National Executive

The National Executive will be the governance and operational arm of the organisation.

The executive will:

- Formulate, advocate and implement policies and priorities consistent with the decisions of the National Congress;
- Develop the strategic and business plans for the organisation;
- Organise and lead engagement strategies with Aboriginal and Torres Strait Islander people;
- Direct the work of the Administrative/Executive support team; and
- Communicate the views and policies of the organisation to stakeholders and the Australian public.

In order to carry out these functions the Executive will:

- Have a male and female Co-Chair, both of whom is full time; and
- Have six part time members, 3 men and 3 women.

It is proposed that all members of the National Executive be paid employees and have duty statements which detail the working requirements beyond the core governance functions fulfilled by attending meetings. It is the Steering Committee's view that the part time members' duties should include responsibilities to lead the chambers of the National Congress as follows:

- 2 members to chair the National Peak Bodies Chamber;
- 2 members to chair the Sectoral Peak Bodies/Expert Chamber; and
- 2 members to lead community consultation processes with Aboriginal and Torres Strait Islander peoples.

The next section proposes a selection model for the establishment/developmental phase of the National Representative Body up to December 2010. A proposed model for appointment is discussed further below.

It is proposed that the initial National Executive will clarify the process for appointment of the first permanent National Executive (to commence from January 2011).

The Steering Committee also recommends that all members of the Board should take on the following obligations:

- Commit to meet the ethical standards established for the organisation (including the Nolan Principles);
- Commit to undergo governance training within six months of commencing office (with failure to do so resulting in automatic suspension from the role)¹⁵; and
- Agree to formally mentor at least one young Aboriginal or Torres Strait Islander person (to be selected from the membership of the National Congress).

b) The National Congress

The National Congress will be the primary accountability mechanism for the National Representative Body. It will set the national policies and priorities for the National Representative Body through its annual congresses. It will also elect the National Executive. Each Congress would also include an Annual General meeting of the organisation, and allow for other decisions relating to the constitution, structure and membership.

It is anticipated that, over time, state/territory level and regional meetings will be conducted to feed into the national congress.

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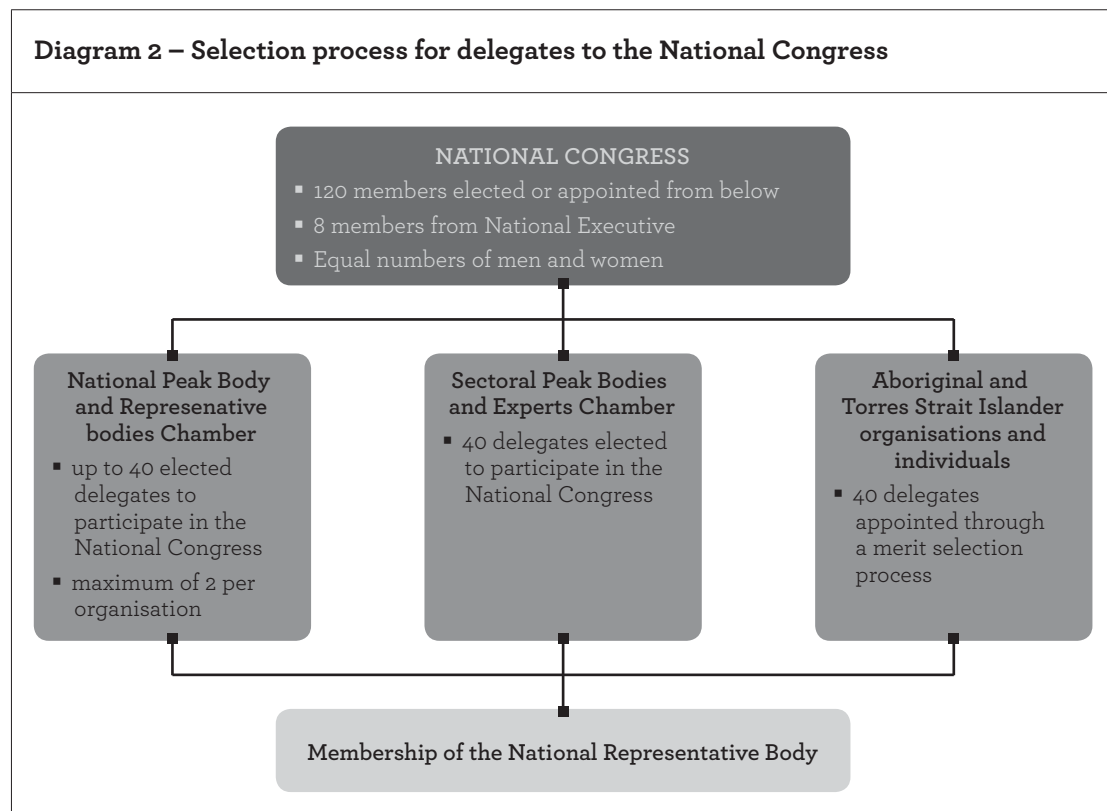
The National Congress is intended to provide a forum to engage in national policy setting and to hold the body accountable. Governments will be invited to participate in the Congress as observers.

To ensure that the National Congress is able to operate effectively in its decision making capacity, it should be strictly limited in size. Initially it should be comprised of a maximum of 128 delegates with voting rights. This may grow over time.

It is intended that delegates in the National Congress will participate as individuals. They are there to contribute to a national collective perspective rather than to simply represent the organisation or state/territory that has nominated them or employs them in other capacities.

Other organisations and people not selected as delegates of the National Congress could still attend the congress meetings, but only in an observer capacity.

The 128 delegates would be determined through selection processes conducted every two years so that the National Congress is constantly refreshed with new perspectives. **Diagram 2** below describes the selection process.



The 128 delegates of the National Congress would be determined as follows:

- **Members of the National Executive would be entitled to sit in the National Congress.** That is, the two full time Co-Chairs and six part-time members who are elected (in accordance with the process set out below). As per usual corporate practice, the two full-time Chairs will be chairing the National Congress and so would not be able to vote ordinarily – except in the case of a deadlock.
- **A chamber of national peak bodies and other state, territory and regional level representative organisations would be created.** A permanent Chamber would be set up to provide a regular forum for national peak bodies and state/territory or regional level representative bodies to interact.

The role of the chamber would be to a) nominate up to 40 delegates on the National Congress (with a maximum of 2 delegates from any one organisation, and with a gender balance of delegates)¹⁶; b) to prepare advice to the National Congress annually; and c) to provide advice on specific issues when requested by the National Executive or National Congress.

For this chamber, strict criteria will need to be developed to define who qualifies as a national peak body or as a representative organisation at the state, territory or regional level. All bodies will need to be assessed as meeting these criteria in order for it to be eligible to participate in the chamber.

It is anticipated that the size of the chamber may grow over time as more representative bodies come into existence or existing ones meet the criteria laid down for participation in the process. For example, during the consultations there was considerable debate among mainland Torres Strait Islanders about the need to create a national peak body representing their interests.

At present there exists a range of state level advisory mechanisms (as set out in **Attachment 7** of this report). Many are not representative in their composition and do not have the ability to set the agenda independently of the government. Such bodies could be deemed associate members of this chamber of the National Representative Body without full participation rights or voting rights. This status could be reviewed annually as those bodies working procedures are modified so that they become truly representative in their composition and focus.¹⁷

- **A chamber of sectoral Peak Bodies and experts would be created.** A permanent Chamber would be set up to provide a regular forum for Aboriginal and Torres Strait Islander organisations that do not qualify as national peak bodies or representative structures, but which still represent a sectoral interest. It should also include Aboriginal and Torres Strait Islander researchers and subject experts. Criteria would be applied with all applicants assessed as qualifying to participate in this chamber.

The role of the chamber would be to a) nominate up to 40 delegates on the National Congress (with a maximum of 2 representatives from any one organisation, and with a gender balance of delegates); b) to prepare advice to the National Congress annually; and c) to provide advice on specific issues when requested by the National Executive or National Congress.

- **A merit selection process for Aboriginal and Torres Strait Islander individuals and organisations would be conducted.** Applications would be sought every two years for Aboriginal and Torres Strait Islander organisations and individuals to apply to sit in the National Congress. 40 places would be set aside through this process – 20 men and 20 women. This would be a selection process conducted by the National Executive based on meeting criteria relating to the abilities and skills of the candidates. Only Aboriginal and Torres Strait Islander individuals, community groups and organisations that are not represented in the two chambers of the Congress could apply. This process would replicate the selection process used by the Steering Committee for its workshop in Adelaide in March 2009 (see **Attachment 2** for more details).

It is anticipated that the majority of delegates to the National Congress would pay their own costs for attendance at the Congress gathering. Some subsidised places should be set aside by the National Executive (with a process for selection).

c) The Ethics Council

The Ethics Council will be a small body that will have the following roles:

- To apply a merit based process in order to shortlist candidates for election as the members of the National Executive; and
- To develop and maintain the ethical standards of the organisation, including by investigating breaches of the ethical standards of the organisation by members of the National Congress and National Executive.

The Ethics Council will do a due diligence test of candidates for the National Congress and National Executive in order to ensure they are fit and proper persons in the first instance. Their role is then to review activities as and when required through referral.

The Steering Committee will nominate members for the initial, interim Ethics Council. Initially, it is proposed that the Ethics Council will include Aboriginal and Torres Strait Islander people who are widely recognised for their integrity. The Ethics Council should have the power to co-opt additional expert members as required.

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The initial Ethics Council would have a role in the selection of members of the interim National Executive, and will play a role in developing criteria for determining how the Ethics Council should be appointed into the future.

The Steering Committee also proposes that once the initial development phase has concluded, the National Executive will regularly appoint the Ethics Council following a recommendation from the Chief Executive Officer of the organisation.

The Steering Committee considers that the Ethics Council should reflect the diversity of the Aboriginal and Torres Strait Islander population, and should include:

- Gender balance; and
- Young Aboriginal and Torres Strait Islanders with suitable qualifications.

d) The role of the Administrative/Executive Support Unit

The Administrative/Executive Support Unit, through the Chief Executive Officer, will work to the direction of the National Executive. Its role will include:

- Providing Secretariat support to the National Executive;
- Meeting the financial and legal obligations of the company (through the Company Secretary);
- Organising the National Congress and associated processes;
- Providing a Secretariat role to each chamber of the National Congress (this includes providing a returning officer for elections, as well as developing the agenda, reporting mechanisms for each chamber and conducting preparation for meetings);
- Developing policy and advising the National Executive;
- Assisting the National Executive in lobbying, advocacy and media;
- Conducting research; and
- Fostering and managing relationships.

It is envisaged that staff would include:

- Chief Executive Officer;
- Company Secretary and financial staff;
- Research Staff;
- Media Staff; and
- Secretariat.

Employees of the organisation would not be engaged as Public Servants, but there should be employment and salary conditions that are as, if not more, attractive to entice quality staff to work for the organisation.

Selection processes for the National Representative Body

This structure will require two selection processes for the National Representative Body. The first is to sit in the National Congress – the proposed process for this is described above. The second is to become a member of the National Executive.

There should be no limits on the number of terms that can be served on the National Executive. The Steering Committee proposes the following process for election.

Election of Co-Chairs

- a) Any Aboriginal or Torres Strait Islander person can apply for the Co-Chair positions, through an open application process. Aboriginal and Torres Strait Islander individuals seeking appointment as Co-Chairs of the National Executive will be required to demonstrate that they have the necessary skills and attributes to effectively represent Aboriginal and Torres Strait Islander people nationally.
- b) The Ethics Council will be convened to produce a shortlist of candidates from those who have applied.
- c) The Co-Chairs of the Board (one male and female) will then be elected through the National Congress from the shortlisted candidates. It is envisaged that all shortlisted

candidates will present their claims for the Co-Chair position to the full Congress after which a secret ballot will be conducted.

Election of Part-time members

- d) A total of six part-time members (with an equal number of males and females) will be elected by the National Congress. Candidates must be nominated from the delegates from the National Peak Bodies Chamber, the Sectoral Experts Chamber and from the 40 delegates selected from the Merit Selection process for Aboriginal and Torres Strait Islander organisations and individuals. A shortlist of candidates will be developed by the Ethics Council, based on the nominations received.¹⁸ It is envisaged that all shortlisted candidates will present their claims for a part-time member position to the full Congress after which a secret ballot will be conducted.

Staggered election cycles

The Steering Committee believes that appointment processes should be designed to ensure continuity and stability within the National Executive while also enabling the ongoing renewal of the organisation. To achieve this, the Committee recommends that all members of the National Executive be elected for 4 year terms, but that there be a staggered election cycle as follows:

- **Co-Chairs:** Elected for a 4 year term;
- **Part-time members:** For the initial term, the 3 candidates with the highest vote would be appointed for 4 years and the next 3 candidates appointed for 2 years. All subsequent terms would be for 4 years. This would create a staggered election, with 3 part-time members being elected every 2 years.

Membership of the National Representative Body

All Aboriginal and Torres Strait Islander peoples over the age of 18 will be eligible to apply to become a member and will be able to participate in the National Representative Body by becoming a member.

Membership shall entitle a person to attend the Annual General Meeting of the representative body and to seek election or appointment to the National Congress or to participate in the relevant chamber of the body.

They will then be able to participate directly in the National Congress as either a voting member (if nominated by their relevant chamber) or as a non-voting observer.

The Steering Committee proposes that the Interim National Executive should consider establishing a fee structure for membership of the National Representative Body. The Steering Committee supports fees being charged as a tangible demonstration of a person's commitment to the National Representative Body and its purposes.

The Constitution of the organisation

The Steering Committee believes that the Constitution of the National Representative Body should contain protections to preserve some fundamental characteristics of the organisation from capricious change. In particular, there should be protections to ensure that over the longer term the principles regarding merit selection, equity, gender equality and the oversight role of the Ethics Council are preserved and cannot be removed without extraordinary procedures being invoked or without an overwhelming majority vote to change these features.

The Interim National Executive should seek legal advice on the best mechanisms to achieve this – for example, such as requiring 75% majority vote in the National Congress or by having different categories of membership (with only one group entitled to vote on changes to the Constitution).

Relationships to Government and other bodies

Government

While arguing that the National Representative Body must be independent of government in a legal sense, it will need to be interdependent with government operationally.

The representative role can only be carried out if there are ongoing, active and meaningful dialogues at the highest level between Government and the National Representative Body. Effective policy

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and implementation require partnership with a new and richer character than seen in the past. New accountability processes will also be required.

It is in the interests of Aboriginal and Torres Strait Islander peoples and governments that the relationships of the future involve:

- Systemic contact at Ministerial level and through the Council of Australian Governments
- Defined ‘rules of engagement’ managed by the National Representative Body and central agencies to ensure engagement across the full suite of policies of mutual interest

The Steering Committee is, however, fully aware of the need for the National Representative Body to earn its place in the structures and processes of policy making. The National Representative Body however deserves a formal place in which to build the evidence for effectiveness and its long term influence. Establishing the independent body but not respecting its particular place in the life of public policy will jeopardise the goodwill of Aboriginal and Torres Strait Islander peoples.

Peak bodies and representative organisations

The structure recommended by the Steering Committee seeks to build on the existing strengths of Aboriginal and Torres Strait Islander organisations, particularly peak bodies. The National Representative Body should respect the role of national peak bodies and engage them in national policy debates. The National Peak Body Chamber will be the main forum through which to achieve this objective.

The National Representative Body should seek assistance on various matters from national peak bodies from time to time and should support their work.

The National Representative Body should also seek to engage with Aboriginal and Torres Strait Islander bodies at the state and territory level on national policy issues. As outlined above, it should also encourage the development of robust and truly representative state/territory mechanisms and create incentives for such mechanisms to be developed (for example, through accreditation processes for participation in the National Peak Bodies Chamber of the National Congress).

Similarly, the National Representative should promote the development of regional engagement mechanisms and bodies. It should recognise robust and truly representative bodies in the first chamber of the National Congress.

For all these bodies, the National Representative Body should also promote the use of the Nolan Principles and encourage gender equality being built into the structures of organisations.

Affiliated organisations

As set out above, there should also be room for ensuring a role for affiliated non-Indigenous bodies within the National Representative Body.

Affiliates/associate membership could be determined where a non-Indigenous organisation or peak body can demonstrate its commitment to Aboriginal and Torres Strait Islander people and communities through defined organisational focus areas, goals, vision and values.

The National Representative Body for Aboriginal and Torres Strait Islander people should design criteria and an application process for such organisations to apply to become an affiliated member. Affiliates would be able to attend the National Congress, but would not be eligible to vote or to be elected. The National Executive could also seek their assistance on issues from time to time.

The National Representative Body for Aboriginal and Torres Strait Islander people should promote the Nolan Principles and other principles such as gender equality to its affiliates/associates.

Resourcing the National Representative Body

The most difficult issue facing the National Representative Body is how it will be funded. The Steering Committee believes that the Australian Government has the primary responsibility for funding the National Representative Body in its foundation years.

The Committee proposes a three pronged approach to funding for the National Representative Body as follows:

1. *The Australian Government provide a recurrent funding base for the National Representative Body for its initial five years of operations* – this is to provide maximum certainty to the Body and enable it to focus on developing its governance and representative role, rather than fundraising. The Steering Committee sees the National Representative Body being small in size (beginning with the 8 National Executive and the 12 support staff rising to approximately 24 support staff within three years). The necessary recurrent expenditure for such a body for the establishment phase and the first five years of operations (i.e. for the first 6 years) will be approximately **\$50 million**. It is anticipated that the National Representative Body will require recurrent funding support from government for its first ten years of operations, with government contributions declining from years 6 – 10 as the organisation is able to access independent funding streams on a consistent basis.
2. *The Australian Government make a substantial contribution to an Establishment Investment Fund for the National Representative Body* – At the same time as providing recurrent funding, an Establishment Fund should be established and invested for ten years in order to provide a capital base for the National Representative Body. There should be no drawdown capacity from this capital fund for at least five years. The Fund will need to reach approximately \$200million by the end of ten years to provide sufficient and sustainable recurrent expenditure for the organisation. It is recommended that the Australian Government contribute between \$100 – 200million over the initial ten years. This will form the key basis for the National Representative Body becoming self-sustaining over time.

The Steering Committee notes that one option for this investment fund would be to make a one off transfer of funding from the Indigenous Land Fund (ILF). This would require legislation. The ILF was established to benefit Aboriginal and Torres Strait Islander people who could not claim native title. While the Steering Committee believes that such a transfer could be justified on a one off basis, due to the beneficial purpose of the National Representative Body, it also notes that the ILF and the Native Title Act were due to be accompanied by a ‘Social Justice Package’ to address injustices of the past. It would also be appropriate for the capital fund to simply be provided from Government appropriation without dipping into the ILF in order to address this still unmet purpose. The Steering Committee notes that the existing National Platform of the Australian Labor Party commits to the development of such a social justice package.

3. *The Australian Government provide the National Representative Body with Deductible Gift Recipient (DGR) status* – This should be agreed upfront and enactment fast-tracked to enable the National Representative Body to minimise its salary and other costs, and to enable it to more easily attract donations to build the Establishment Investment Fund.

The Australian Government, and state and territory governments could then also negotiate with the National Representative Body to provide specific services on a one off or recurrent basis – such as undertaking research and consultations.

Section 4:

A developmental approach: the interim process for the new National Representative Body to December 2010

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The terms of reference for the Steering Committee include making recommendations in regards to the establishment of an interim body from July 2009 which would operate until the finalised body takes effect.

The task of establishing the National Representative Body will be a challenging and involved one.

There will need to be an initial establishment or developmental phase for the Body during which it:

- Promotes the structure and functions of the Body to constituents and stakeholders;
- Incorporates as a company¹⁹;
- Designs the governance arrangements for the company (such as the articles of association and Constitution)²⁰;
- Establishes the financial aspects of the organisation (including implementing tax deductibility arrangements and establishing the capital investment corpus);
- Establishes the Administrative/Executive Support Unit for the National Representative Body, including appointing a Chief Executive Officer and Company Secretary;
- Sets up the Office for the organisation;
- Begins to establish the National Congress and associated processes – this may require the convening of forums of Aboriginal and Torres Strait Islander peoples, organisations and peak bodies to input into the design of the National Congress and its chambers; and
- Convenes the first National Congress.

The Steering Committee has reached the view that this initial establishment phase should begin as soon as possible and should last until the end of 2010.

The Steering Committee is currently due to complete its role in August 2009. We are of the view that the Committee should be extended for approximately 2 months to enable it to be in place to negotiate with the government up until the Cabinet decision in mid-September and to lead the process for the appointment of the Interim National Executive and recruitment of the CEO of the organisation.

The Interim National Executive should then be in a position to appoint staff members who possess particular skills, experience and expertise. This is particularly in relation to governance issues and institution building, political engagement and policy making.

The consultations have clearly identified a strong opposition to the interim National Executive being appointed by government. This is an issue that will affect the legitimacy and credibility of the new National Representative Body among Aboriginal and Torres Strait Islander peoples.

Accordingly, the Steering Committee proposes to identify suitable candidates for the Interim National Executive and for these people to be tasked with running the National Representative Body during the establishment or developmental phase from late 2009 to the end of 2010.



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The Steering Committee is mindful of the need for the Interim National Executive to be in place and operating as soon as possible, while also ensuring that there is testing of potential members of the National Executive to ensure that they possess the right skills and meet the proposed ethical standards for the organisation.

Accordingly, the Steering Committee proposes that it appoint an Interim Ethics Council to vet proposed members of the Interim National Executive.

The following draft criteria have been developed by the Steering Committee as a starting point for the appointment process for the Interim National Executive:

- Co-Chairs are able to work in a full time capacity
- Ability to work in a gender equal environment
- Ability to comply with, foster, uphold and promote the Nolan Principles
- Experienced in Board and organisational governance
- Experience in establishing and building organisations
- Be recognised as being a person of good standing in community and professional life
- Ability to lead, motivate and build teams of people in complex political and social environments
- Ability and experience in leadership and/or membership within a partnership
- Capacity to communicate with diverse groups of people at all levels (community, governments, business)
- Capacity to perform well with all forms of media
- Knowledge of national priorities and policy of relevance to Aboriginal and Torres Strait Islander peoples
- Understanding of government and political machinery as it relates to outcomes for Aboriginal and Torres Strait Islander peoples
- Preparedness to undertake training and engage in continuous learning as required
- Experience in the international arena
- High level communication skills
- Sound financial management skills
- Experience in negotiation, advocacy and/or lobbying
- Demonstrated skills in high level decision making, community and stakeholder engagement and accountability
- Must be an Aboriginal and/or Torres Strait Islander person
- Willingness to formally mentor a youth delegate.

For the full time Co-Chairs they must also be able to work in a full time capacity, and for part-time members be able to commit up to 0.6 full time equivalent.

The Interim National Executive should comprise 8 members including two full time Co-Chairs (one male and one female) and six part time members (three male and three female).

The Administrative/Executive Support Unit for the National Representative Body should be established to assist the Interim National Executive. This Unit will need to expand in accordance with the overall expansion of the organisation during this initial establishment phase.

With an Interim National Executive in place, and staff to assist, the company should begin the process of incorporation. This will be an involved task and will take time.

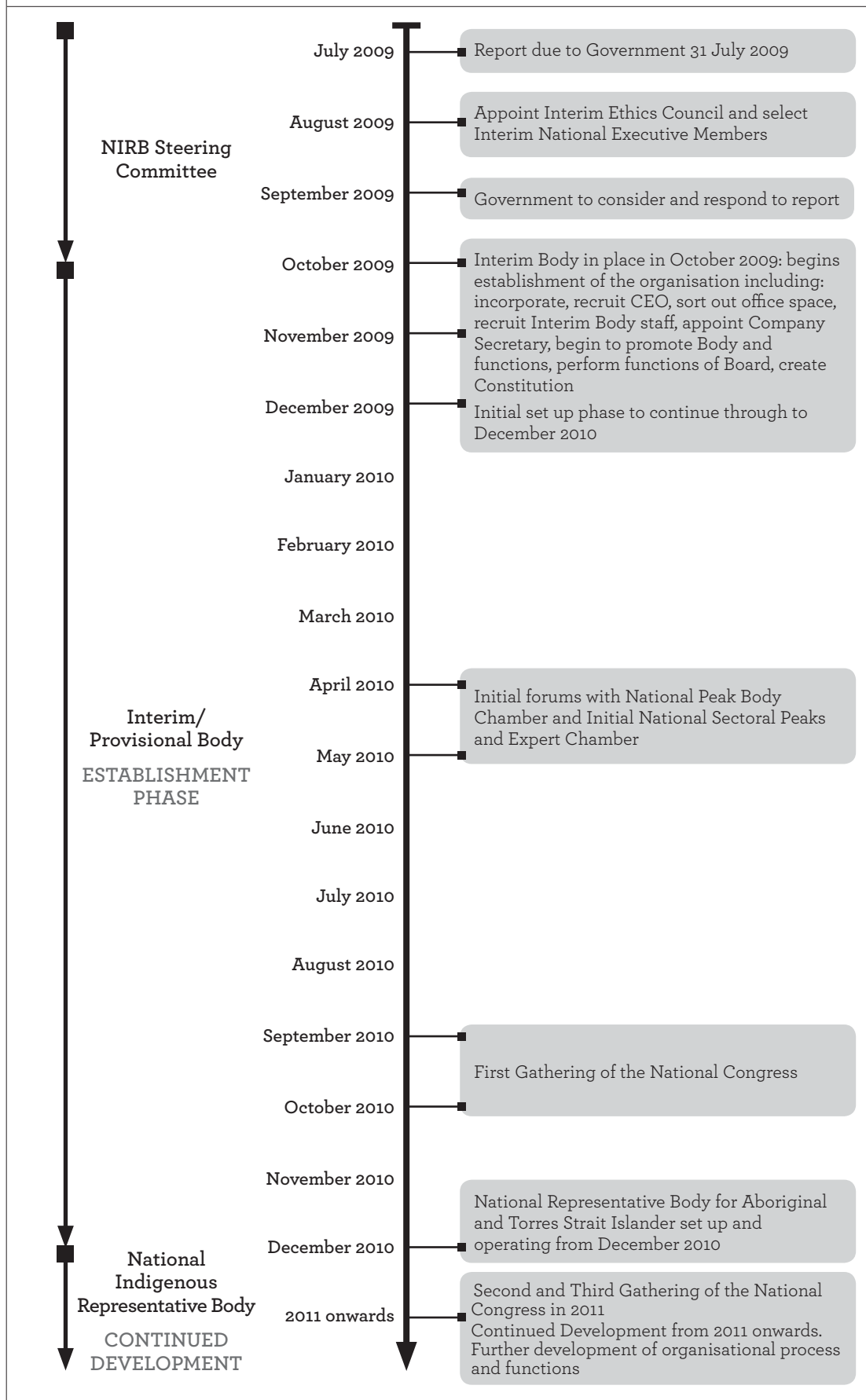
The Interim National Executive will also be responsible for developing the policy making processes of the organisation including the development of the organisation's constitution.

Due to the important role that National Peak Bodies play, the Interim National Executive should convene an initial meeting of the National Peak Bodies Chamber in early 2010. This should be followed in the first half of 2010 with the inaugural meeting of the National Sectoral Bodies/Expert Chamber.

The Interim National Executive should, through consultations with these chambers, establish processes for election through the National Congress. The inaugural annual National Congress and AGM should be convened in the latter part of 2010.

These steps are outlined in **Diagram 3** below.

Diagram 3 – Timeline of the interim arrangements for the National Representative Body



Section 5:

A generational view: The National Representative Body into the long term

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This section sets out a vision for how the National Representative Body will be operating over the short, medium and longer term.

The challenge is to create an organisation that will last. Our people face generational challenges to achieve equality across a range of social and economic indicators. We will need a strong national voice for the duration to contribute to this task, and to hold governments to account.

This vision is taken primarily from the Adelaide workshop convened by the Steering Committee in March 2009.

5 Years from Now

It is envisaged that in five years the National Representative Body will be an organisation that is functioning effectively and efficiently. The main indication of this will be its credibility and integrity with both Aboriginal and Torres Strait Islander and non-Indigenous communities and government. By this time the organisation will have a working relationship with National Peak Bodies and other representative structures for Aboriginal and Torres Strait Islander people.

The organisation will have developed robust and transparent decision making processes and be regarded by its constituency as an organisation that embodies the principles of self-determination and human rights at every level.

The National Representative Body will have a well developed human resources strategy that utilises and shares the diverse skill sets and expertise of Aboriginal and Torres Strait Islander peoples. It will be an organisation that provides pathways for education, employment and professional development of Aboriginal and Torres Strait Islander peoples.

After five years, the organisation will have begun to attract significant non-government sources of revenue for its recurrent operations and to build up its Establishment Investment Fund.

The organisation's leadership and governance structures will be truly representative of the diverse makeup of the Aboriginal and Torres Strait Islander population including rural, regional, remote, metropolitan, young people, people with disabilities and mainland Torres Strait Islanders.

The National Representative Body will create formal and informal mechanisms that provide a space for fierce debates capturing the diversity of views across the whole population of Aboriginal and Torres Strait Islander peoples. These fierce debates will inform solutions to existing and emerging problems, as well as informing Aboriginal and Torres Strait Islander people and the wider community.

Another indication of the organisation's achievements at this point will be how well it is regarded by its organisational peers. By its fifth year of operation it is hoped that the National Representative Body will be seen as the primary body for Aboriginal and Torres Strait Islander people at the national level. It will be sought out for advice and will influence government decision making.

It is anticipated that the National Representative Body will have a robust relationship with government. This strong working relationship will involve working together on the development of policy for service delivery by way of a structured role in government processes such as Ministerial/COAG bodies. And a key feature of this relationship will be the National Representative Body holding Government accountable for their obligations to Aboriginal and Torres Strait Islander peoples as citizens.



10 Years from Now

It is envisaged that in ten years the National Representative Body will be an organisation that is self-sufficient, self-determining, and truly independent of government.

It will not be dependent on government revenue for its recurrent operating costs, although governments may still be purchasing services from the organisation.

By this time, the organisation will have well established structures that ensure decisions are made by Aboriginal and Torres Strait Islander peoples *for* Aboriginal and Torres Strait Islander peoples.

The organisation will have an effective and mutually beneficial relationship with government and the private sector. As a result this strong union will produce effective and good policy, proper consultation processes and advocacy across the broad scope of issues central to Aboriginal and Torres Strait Islander wellbeing.

While working effectively with government the National Representative Body will be accessible to grassroots people so that they feel a sense of ownership. In addition to this the organisation will have well established mechanisms in place to make sure that local, regional and state issues are being represented and advocated for on the national level.

Additionally, the National Representative Body will have well established links and working partnerships with other organisations and agencies both nationally and internationally.

By the tenth year of operations the National Representative Body will have a world class research capacity – providing leading evidence based policy and advocacy.

20 Years from Now

It is envisaged that in twenty years there will be reciprocal respect between the National Representative Body and Tribal Nations.

By this time Australia as a country will own its history – good and bad, right and wrong. This will be expressed through mechanisms such as a national school curriculum that acknowledges the events of the past and the stories of non-Indigenous Australia's historical and contemporary relationship with its First Peoples. And the majority of Australians will demonstrate empathy and understanding with Aboriginal and Torres Strait Islander peoples as they did in the 1967 Referendum.

By this stage key targets will have been met across all measures of economic, social and cultural well-being and the gap will be closed.

By the 20th year of operation Aboriginal and Torres Strait Islander people will be recognised in the Constitution and a treaty or framework agreements will have been established between Australia's First Peoples and the Australian Government.

Aboriginal and Torres Strait Islander children, young people and elders of the day will feel empowered and in control of their lives and of their destiny – with decisions made by our people for our people.

Aboriginal and Torres Strait Islander people will be culturally strong and proud and everyday celebrating the survival of the oldest living culture in the world and feeling empowered to take on their ever-changing environment.

Aboriginal and Torres Strait Islander people will be economically independent and there will be a significantly increased participation of individuals and communities in the national and global economy.

The Aboriginal and Torres Strait Islander community will be united and not wracked by internal division.

It is envisaged that a critical mass of Aboriginal and Torres Strait Islander people will be elected members of parliament and be represented in governance structures throughout Australia.

As one participant stated at the Adelaide workshop in March 2009:

'In 20 years time, we don't want our grand kids having to undertake this same discussion.'

Section 6: Recommendations to the Australian Government

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As the title of this report states, it is time to put ‘our future in our hands’.

This report provides a suggested pathway for a new National Representative Body to begin the journey to true independence and self-determination for Aboriginal and Torres Strait Islander peoples. This starts with the proposition that the National Representative Body should be a non-government entity, incorporated as a company limited by guarantee.

Accordingly, the majority of proposed actions in this report are directed to the Interim National Executive of the new National Representative Body rather than to the Australian Government.

However, there are significant steps that can only be taken by the Australian Government that will facilitate the creation of the National Representative Body and enable it to have a chance at success.

Accordingly, we make the following recommendations to the Australian Government:

1. That the Australian Government agree to an ‘establishment package’ for the new National Representative Body comprising the following elements:
 - a. The full funding of the establishment phase of the National Representative Body (estimated to be completed in December 2010).
 - b. Granting of Deductible Gift Recipient (DGR) status to the National Representative Body and fast tracking its enactment.
 - c. The creation of an Establishment Investment Fund vested in the National Representative Body.
2. That the Australian Government agree to the Steering Committee for this consultation process being extended to enable it to appoint an Interim Ethics Council and to identify the members of the Interim National Executive of the new National Representative Body.
3. That the Australian Government commit to provide recurrent funding for the National Representative Body’s operations over the initial five years of operations from January 2011. It is anticipated that there would be a need for a further five years of funding by government, but at a reduced rate as the organisation begins to access consistent streams of independent funding.
4. That the Australian Government commit to a substantial contribution over ten years into the Establishment Investment Fund for the National Representative Body to ensure its sustainability and financial viability into the future. This Fund will require a total of \$200million from all sources over the ten years to ensure a sufficient recurrent expenditure base for the organisation after ten years.



Attachment 1: An overview of the consultation process

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There were two stages to the national consultation process. This commenced in July 2008 and concluded in July 2009.

The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr Tom Calma, released an issues paper – *Building a Sustainable National Indigenous Representative Body – Issues for Consideration* on 12 July 2008.

This paper and a community guide were used as a basis for discussion at consultation meetings during the first phase and are downloadable through the FaHCSIA and the Australian Human Rights Commission (AHRC) websites. Approximately 55,000 copies of the community guide were distributed during the first stage of consultations.

Stage one

An initial stage of consultations was undertaken by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) from July – December 2008.

During this period approximately 2,000 Aboriginal and Torres Strait Islander people put forward their views on a National Indigenous Representative Body.

Consultation activities during the first stage included:

- Approximately 80 regional and local consultation meetings across every State and the Northern Territory;
- Meetings with peak organisations;
- A written submission process that attracted 106 public submissions; and
- Circulation of the community guide to the network of Indigenous Coordination Centres (ICCs) and registered Aboriginal and Torres Strait Islander organisations.

Copies of written submissions from this period of consultation are available on the FaHCSIA website at: www.fahcsia.gov.au/sa/indigenous/progserv/engagement/NIRB/. A summary of outcomes from this stage is included as **Attachment 3** to this report.

Stage two

The second phase of consultation was led by the Aboriginal and Torres Strait Islander Social Justice Commissioner and an independent Steering Committee of Aboriginal and Torres Strait Islander people.

The second stage of consultations commenced in December 2008 and included a range of consultation activities with Aboriginal and Torres Strait Islander peoples and other key stakeholders.

In March 2009, the Steering Committee convened a national workshop of 100 Aboriginal and Torres Strait Islander people in Adelaide to identify the key elements of a new national representative body. 50 men and 50 women were selected based on merit following a public nomination process, with delegates selected to ensure a gender balance, as well as representation of urban, regional and remote locations.

A summary of the workshop report is included as **Attachment 2** to this report.

To generate discussion on issues that required further consideration, a second community guide was released. Approximately 50,000 copies were circulated to registered Indigenous organisations, peak bodies, ICCs and to Aboriginal and Torres Strait Islander peoples through insertions in the 2 national Indigenous newspapers. The guide is available on both the AHRC and FaHCSIA websites.



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The consultation activities conducted during this phase included:

- A second written submission process (copies of submissions are available for download from the FaHCSIA website);
- A national online survey open to Aboriginal and Torres Strait Islander people;
- Focus group meetings conducted by the Steering Committee in June;
- Discussions with Indigenous and non-Indigenous peak groups and organisations;
- Obtaining information from State and Territory Governments;
- A toolkit to help communities run their own meetings to discuss the National Representative Body; and
- A national competition to name the representative body.

Attachment 2:

Summary – Outcomes of national workshop on the establishment of a new National Representative Body for Aboriginal and Torres Strait Islander peoples, March 2009

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In January 2009, the Social Justice Commissioner invited Aboriginal and Torres Strait Islander men and women to nominate to attend a national workshop to guide the development of a new National Representative Body. The workshop was set for 11–13 March 2009 in Adelaide. The purpose of the workshop was to:

1. review submissions and the outcomes of consultations conducted by the Government to date on the establishment of a new representative body;
2. identify the key elements or features of a new National Representative Body which can then be distilled down to a series of preferred models for a new representative body; and
3. identify a process for further consultation with Indigenous communities leading to the establishment of an interim representative body from July/August 2009.

The workshop was NOT intended to:

- Endorse a final model for a national representative body or
- Decide membership of a national representative body.

Through the plenary sessions, smaller working groups and an electronic survey conducted at the workshop, it was possible to identify those issues on which there was an emerging consensus among participants and those issues where there remained divergent views or at least, a need for further consultation. These are identified further below.

Terminology

At the outset of the workshop, it was acknowledged that there is a growing debate about the appropriate terminology to be used when referring to Aboriginal and Torres Strait Islander peoples. While accepting the international context for the term ‘indigenous’, participants in the workshop expressed a strong preference for the phrase ‘Indigenous peoples’ **not** to be the primary descriptor used in the domestic Australian context. Preferences were voiced for the following terminology:

- Aboriginal and Torres Strait Islander peoples; and
- First nations or First peoples.

A majority of participants expressed their preference for the phrase ‘First nations’ or ‘First peoples’.

A 20 year vision for the national representative body

Workshop participants expressed the desire for a national representative body to contribute to generational change for Aboriginal and Torres Strait Islander peoples. Participants did not want, twenty years from now, for their children and grandchildren to be in the position where they needed to have the same discussions taking place at this workshop.

Participants identified that over the next 20 years, the national representative body would have a leading role to play in achieving constitutional recognition and a treaty, in closing the gap, and in Australia as a country owning and facing up to its history. The representative body would have contributed to a situation where our children are empowered, we are in control of our own destiny, are culturally strong and proud, economically independent and



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where the Aboriginal and Torres Strait Islander community/ies are united and not wracked by internal division.

Participants described their vision for the representative body as follows. In 20 years time, there is reciprocal respect between the representative body and tribal nations. The national representative body:

- Is functioning effectively and efficiently;
- Is self-sufficient and self-determining;
- Is independently funded and free from government control or interference;
- Is an organisation that embodies the principles of self-determination and human rights at every level;
- Has credibility and integrity in both Aboriginal and Torres Strait Islander and non-Indigenous communities and government;
- Is standing on its own feet;
- Is truly representative of the diverse makeup of Aboriginal and Torres Strait Islander populations – gender, rural/regional/remote, youth;
- Utilises and shares the diverse skill sets and expertise of our peoples;
- Has a role in development of policy for service delivery in a truly influential way;
- Is seen as a peak public body working at best standards for a public representative body;
- Provides pathways for education, employment and professional development of Aboriginal and Torres Strait Islander peoples;
- Is accessible to grassroots people; and
- Is holding Government accountable for their obligations to Aboriginal and Torres Strait Islander peoples as citizens.

Guiding principles for a new representative body

There was agreement among the workshop participants on the importance of the national representative body pursuing the following objectives:

- Playing a leading role in forging a new partnership between Governments and Indigenous peoples;
- Ensuring Indigenous peoples contribute to and lead policy development on Indigenous issues;
- Ensure that an Indigenous perspective is provided on issues across government;
- Advocate for the recognition and protection of Indigenous peoples' rights;
- Ensure adequate accountability mechanisms exist for government's performance in delivering services to Indigenous peoples and communities;
- Ensure that commitments to closing the gap are supported by long term action plans;
- Ensure and support good governance among Indigenous communities and organisations;
- Ensure the equal participation of Indigenous women in all of its decision making processes; and
- Ensure the equal participation of mainland Torres Strait Islanders.

There was also common agreement on the need for the national representative body to operate in accordance with the highest standards of ethical and moral conduct and to be open, transparent and accountable to Aboriginal and Torres Strait Islander peoples.

The adapted Nolan Principles on public life (see **Attachment 4** below) were seen as setting out behavioural expectations for members of the national representative body.

The following key guiding principles were also identified for the national representative body:

- **Accountability:** To Aboriginal and Torres Strait Islander peoples, and also of government to the national representative body. This involves **transparency** in operations and through effective communication/dissemination of information with Aboriginal and Torres Strait Islander peoples;

Attachment 2 | Summary of outcomes from a national workshop

- **Authority:** This will come from representativeness of the body, and also from development of a strong evidence base;
- **Legitimacy:** This will come from reflecting the diversity within Aboriginal and Torres Strait Islander communities – including issues relating to disability, mainland Torres Strait Islanders, geographic and cultural differences. It will also emerge from the body being representative and through advocating for the most vulnerable;
- **Partnership:** With both government and industry as well as with Aboriginal and Torres Strait Islander organisations, peak bodies and communities; and
- **Respect:** For culture and for the cultural diversity within Aboriginal and Torres Strait Islander communities.

The importance of recognising and protecting Aboriginal and Torres Strait Islander peoples' human rights was also emphasised. The *UN Declaration on the Rights of Indigenous Peoples* was identified as providing the framework for engagement with Aboriginal and Torres Strait Islander peoples. Groups commonly raised the need for gender equality in representation.

Social inclusion was also highlighted as a key principle with the representative body playing a vital role in the education of the broader Australian community and working for the benefit of all Australians towards Reconciliation.

Roles and functions of a national representative body

There was common agreement among the workshop participants on the importance of the national representative body having the following roles and functions:

- Advocacy;
- Formulating policy and advising government;
- Reviewing government programs;
- Negotiating framework agreements with governments;
- Monitoring service delivery by governments;
- Conducting research and contributing to law reform processes; and
- Representing Aboriginal and Torres Strait Islander peoples at the international level.

The majority of workshop participants also agreed that the national representative body should have the following roles and functions:

- A coordination or 'clearing house' role to promote the sharing of information between Indigenous representative organisations and service delivery organisations; and
- Conducting facilitation and mediation services for Indigenous peoples.

Participants rated the following roles as the most important for a national representative body to undertake:

- Advocacy;
- Monitoring government service delivery;
- Formulating policy and advice;
- Negotiating framework agreements with governments; and
- Reviewing government programs.

It was also noted that the representative body:

- Could work with the federal government in planning expenditure of state/territory funds for Indigenous affairs;
- Could be advised by peak bodies, and they could in turn be advised by the representative body;
- Should be able to commission new research, informed by Indigenous knowledge systems and research methods, and should set the vision based on the desires, needs, priorities and aspirations of Aboriginal and Torres Strait Islander peoples; and
- Should take a lead role in promoting a positive image of Aboriginal and Torres Strait Islander communities.

In relation to service delivery, it was commonly agreed that:

- The representative body should **not** deliver services or programs;
- It should set priorities for service delivery in consultation with Aboriginal and Torres Strait Islander peoples, communities and state/territory level representatives;
- It should have a mandate to set targets to hold governments accountable; and
- It could work with existing monitoring processes, as well as receive independent field reports from regional members or bodies.

Engaging with communities/representativeness

A majority of participants believed that the national representative body should have structures at the national, state/territory and regional levels to engage with Indigenous peoples.

A great majority of participants also agreed that it is essential for the national representative body to have a direct relationship with regions and a majority agreed that the organisation's national membership should be drawn from the regional level. While there was support for the organisation to have a state/territory structure it was notably less than the support for a regional structure. There was however strong support for the national representative body to bring regional representatives together at the state/territory level.

There was strongest support for the national representative body to engage directly at a regional level. The overwhelming majority of participants believed that:

- The national representative body should include regional representative structures; and
- Should convene regional forums on a regular basis.

A substantial majority of participants also believed that the national representative body should:

- Enter into partnerships with governments at the regional level;
- Conduct regional planning or negotiate regional framework agreements; and
- Draw its national membership from the regional level.

A substantial majority of participants also believed that the national representative body should:

- Bring regional representatives together at the state/territory level; and
- Convene state-wide planning forums.

The majority of participants also believed that the national representative body should:

- Have a state/territory level structure; and
- Negotiate state-wide framework agreements with government.

There was strong support for the representative body to form strategic alliances with peak bodies and Aboriginal and Torres Strait Islander agencies and businesses. There was also support for non-Indigenous organisations and NGOs to provide advice to the representative body on invitation.

Structure of the national representative body

There was strong support for the national representative body to be made up of an equal number of men and women, and for members to have integrity, vision and credibility, and to be required to adhere to a code of conduct.

There was also a strong view that members of the national representative body should **not** be appointed by government.

There was, however, not a clearly preferred mechanism for members of the representative body to be selected. There was mixed support for a direct election model and alternatively for a delegate model. The majority of participants, however, did not support peak bodies being able to directly nominate representatives onto the national body.

The direct election model posed a dilemma as many participants felt that a democratic process should be used, but that it did not always result in the most qualified or suitable applicants being selected. Many participants preferred a system that combined election with a merit selection process, so that applicants were assessed as possessing the necessary skills prior to the election being conducted. If an election model is used, participants generally preferred that each state and

Attachment 2 | Summary of outcomes from a national workshop

territory should be given the opportunity to work out a system that will work for them (and their regions) as a one size fits all approach may not work.

There was mixed support for the idea of eminent Indigenous leaders selecting representatives. Such a process would require an open, competitive and transparent process.

Relationship to government and funding mechanisms

There was also support for the representative body to be established under legislation and to report directly to Parliament – such as through a statutory authority model. Similarly, there was support for the body to be a non-government organisation such as through being a company limited by guarantee. Participants were concerned to ensure that the body be sustainable and have longevity beyond the political cycle.

Participants strongly expressed a view that while government funding would be required for the establishment period of the national representative body it needs to be able to operate independent from government. The idea of an establishment fund to provide a capital base for the organisation received strong support. Additionally there was a preference for the national Indigenous representative body to identify funds nationally and internationally from the philanthropic and corporate sector and that government funding should be used for a defined establishment period.

A substantial majority of participants rated the following funding options as important:

- Have a fund established to give the body a capital base (like the Indigenous Land Corporation);
- Receive (untied) government funding;
- be established through a future fund financed through a percentage of mining tax receipts; and
- Gain charitable status to receive tax free donations.

Participants also identified the potential for the representative body to charge membership fees or charge for delivery of goods and services. However, the majority of participants did not see these options as important in funding the representative body.

Issues where a consensus has begun to emerge

Major areas of consensus from workshop participants included:

- Principles guiding the formation of the representative body and behavioural standards to be applied to members of the body;
- The roles and functions of the representative body (including that the representative body **not** undertake a service delivery role);
- Ensuring the equal participation of men and women as representatives;
- Ensuring that there are mechanisms in place to ensure the participation of groups that are generally marginalised such as young people, people with disabilities, members of the stolen generation and mainland Torres Strait Islanders;
- Ensuring that there is representation of the diversity of Aboriginal and Torres Strait Islander peoples based on gender, geographical locations, relationship to country and cultural diversity;
- That the representative body be self-determining and that it operate independently of government influence (including through how the governance of the body is structured, and by receiving untied or discretionary recurrent funding);
- That all representative body members are Aboriginal and/or Torres Strait Islanders and there is a clear process to verify identity;
- Selection of new representative body representatives must be transparent, with a selection process determined by Aboriginal and Torres Strait Islander people and selections based on set criteria that includes identifying the specific and appropriate skills required.

Issues requiring further consideration

Issues on which no clear consensus emerged during the workshop included:

- Whether the national representative body should use a delegate or direct election model, and the role of merit selection in either model;
- How a panel of eminent Indigenous peers would operate in any selection process (it at all);
- Issues relating to structure of the national representative body and how it would engage at the regional and states/territory level; and
- Further details on the qualities and skills required for the national representative body leadership. This is to inform the development of selection criteria if a merit based selection process is used.

Attachment 3:

Extract from report on the outcomes of the first phase of consultations for a National Indigenous Representative Body – prepared by the National Indigenous Representative Unit, FaHCSIA, December 2008²¹

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Following is a summary of some of the key findings and feedback received as part of the first phase of consultations.

In general, there has been a high level of positive and productive feedback and there has been strong agreement that there is a need for a National Indigenous Representative Body.

Key findings

Consultation Process

- *The consultation process should be extended.*
There has been significant concern about the length of time allowed for the consultations and the limited locations visited. Strong support was given to extending the consultation period or (at minimum) conducting a further round of face to face consultations after the roundtable to gain feedback on any proposed model. A second phase of consultations has been agreed to by Minister Macklin, in response to this feedback.

General issues

- *Constitutional recognition of Aboriginal and Torres Strait Islander peoples.*
Constitutional recognition has been consistently raised as a priority and one that the NIRB could progress once established.
- *The UN Declaration on the Rights of Indigenous Peoples.*
Endorsing the UN Declaration has been particularly supported within the regional consultations and written submissions. The Rudd Government has expressed its support for the principles in the Declaration and has been consulting on an appropriate public statement to reflect this.
- *The terms 'Aboriginal and Torres Strait Islander' and 'Indigenous'.*
Across all of the consultation activities, many people have expressed that they are unhappy with the use of the term 'Indigenous' and that they would prefer the terms 'Aboriginal' or 'Torres Strait Islander'.

Role and Functions

- *The NIRB should have an advocacy role.*
Across all consultation activities, the primary role supported for the NIRB is to advocate and be the 'voice' for Aboriginal and Torres Strait Islander peoples. There was strong support for the body to advance and protect the human rights of Aboriginal and Torres Strait Islander people, and garner support for constitutional recognition. In addition, for the body to positively shape and promote Aboriginal and Torres Strait Islander aspirations at the national level and to the broader public.

"The Rep Body will be a 'voice' for Aboriginal and Torres Strait Islander people. This Body will voice our priorities, be able to negotiate, mediate and strategically debate our vision." (Public Submission 9)



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- *The NIRB should be able to monitor and evaluate Government service delivery and expenditure for Indigenous Affairs.*

There has been very strong support for a monitoring and evaluation role of government policies and services. Having a productive relationship with the Council of Australian Governments, other senior government forums and Senate Committees was also raised as key to the body's credibility.

"The body should be charged with a review and evaluation role and should monitor and report on the performance of state and federal expenditure." (Public Submission 24)

"The body must have the ability to bring consequences for inaction or under-action by mainstream organisations responsible for Indigenous program delivery. I believe this would assist the Government's agenda of mainstreaming." (Public Submission 33)

- *The NIRB should develop or influence policy.*

Indigenous policy development was raised as an important role that the NIRB should either undertake or have a significant influence into.

"A National body needs to make policy recommendations to all levels of government, otherwise it is a waste of time, a talk fest." (Public Submission 57)

"The primary role of a NIRB should be to provide the Indigenous community with a more prominent voice in the formulation, implementation and review of policy..." (Public Submission 65)

- *The NIRB should have an advisory role.*

Strong support has been given to the NIRB providing advice to Government and other stakeholders in the community and business sector on issues that affect Indigenous communities.

"NIRB would also become a peak advisory group providing both Government, Public Sector and Community based organizations, groups and individuals with advice and representation on Indigenous issues on a state and national level." (Public Submission 7)

- *The NIRB should have clear roles and functions*

There was concern about the body being overloaded or there being confusion about its role.. In some instances it was suggested that there should be a memorandum of understanding (MOU) with the Government or a terms of reference to ensure clarity and manage expectations.

- *The NIRB should consult communities.*

In some of the regional and ICC workshops it was recognised that considering the diversity of communities, it would be a difficult task for the NIRB to represent all views and opinions. However feedback has consistently been that the NIRB should be accessible and accountable and have two-way dialogue with grassroots people. This includes distributing information to local communities about its work, and what is happening in Indigenous and broader Australian affairs.

"to be truly representative for the whole of Indigenous Australia as an advocacy and advisory body is an ambitious and risky goal...Rather than ensuring the NIRB is 'representative' of all Indigenous Australia in order to remain viable, the NIRB [should] instead be obliged to ensure it remained accessible for all Indigenous Australian people and communities to engage or not engage as they choose." (Public Submission 12)

- Other roles and functions that were put forward include:

- Creating links with Aboriginal and Torres Strait Islander organisations;
- Promoting legislative reform;
- Following up on the recommendations of reports and inquiries;
- Some research capacity, but not duplicating existing work; and
- International engagement on the rights of Indigenous people across the world.

Structure

- *The NIRB should have fair and diverse membership.*

Strong support has been given to balanced representation in the NIRB. In particular, the importance of equity in gender, inclusion of youth and representation from urban, regional and remote communities has been consistently raised. There were mixed views about whether representation should reflect traditional law, culture and tribal groupings.

Attachment 3 | Extract from report on the outcomes of the first phase of consultations

The connected idea of a Circle of Elders received some support in the written submissions and consultations.

“The Executive (of the NIRB) should at all times be represented equally by Aboriginal men and women – and there should be mandated equal representation to ensure that women’s voices are heard and women’s access to the realisation of human rights is guaranteed.” (Public Submission 2)

There should be a balance of youth, middle aged and elders from every state, male and female, educated people and people with life experience...” (Public Submission 15)

“We need a balance of young people as representatives on our peak body also. It’s always easy to presume we know best for our kids, but don’t take the time to ask. I would like to see a balance of 50/50 men and women represented.” (Public Submission 16)

- *The NIRB should be independent from Government.*

There has been strong and consistent support for the NIRB to have independence from Government, in order for it to have a meaningful role and voice in decision making without fear of reprisal. In some cases this was qualified with the form that the body should take e.g. a statutory authority or an Aboriginal corporation. However the majority of feedback to date has not specified this level of detail.

- *NIRB representatives should not be handpicked*

There was widespread opposition to a membership that is handpicked by Government but a number of strong views about the best process for choosing representatives. A majority of people consulted wanted to elect the members, proposing a variety of ways to do this. This was also qualified with the condition that there should be an application or selection criteria process prior to nominations, to ensure that the NIRB has members with the appropriate knowledge and skill sets. Concerns were raised about how to avoid the problems with the ATSIC elections – either that people were elected with a handful of votes, or that the model disadvantaged minority groups, women or people without large family networks. There was also a strong desire for the model to support the development of new leadership rather than reinforcing the powerbase of existing influential leaders.

“Indigenous peoples are entitled to have a say on who represents them – it is a fundamental principle of self-determination... A national board or executive arm that is not elected in some way will not be representative, will lack legitimacy and credibility.” (Public Submission 24)

“The structure of the National Representative Body should be membership based, whereby communities, organizations and individuals can join and then be represented by a National Board or Executive who are selected (by an expert Indigenous panel) on the basis of skills and expertise, especially in the areas of health and healing, education, law reform, community development, native title and social justice.” (Public Submission 2)

“We believe the NIRB should give regional grass roots organisations a place at the table to ensure that they can continue to protect the interests of those they represent.” (Public Submission 93)

Funding

- *The NIRB should have sustainable and mixed funding sources*

There was strong support for Government to provide sustainable funding for the NIRB (particularly a main theme within the written submissions). However it was also felt that in order for the NIRB to have an independent voice it should not be reliant on government funding and should have alternative funding sources, for example through membership fees or fee-for-service. .

“The outcomes must be our own and we cannot feel like our funding will be cut if we stand up and speak out against a government policy or program.” (Public Submission 8)

Operations

- *The NIRB needs to be open and transparent*

It was also suggested that the operations and decision making by the NIRB should be open and transparent.

“The representative body should be held accountable for their time, actions and any decisions they make on behalf of the Aboriginal people of our land. For the representative body to be a true voice for Indigenous Australians they need to be able to hear what it is the Aboriginal people want and or need...” (Public Submission 44)

Attachment 4:

Corporate governance and behavioural standards for the new National Representative Body

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A consistent theme of the consultation process has been the need for the new National Representative Body to demonstrate the highest levels of integrity and corporate governance.

The Steering Committee for the consultations process has brought to peoples' attention the 'Principles of public life' as set out by the Committee on Standards in Public Life (Nolan Committee) in the United Kingdom to illustrate the standards that should be aspired to.²² They are reproduced here (as adapted by the Steering Committee).

Also attached is an extract from 'The Essential Corporate Governance Principles' as set out by the Australian Stock Exchange's Corporate Governance Council in their publication 'Principles of Good Corporate Governance and Best Practice Recommendations'.²³ These principles are intended to provide 'an industry-wide, supportable and supported framework for corporate governance which could provide a practical guide for listed companies, their investors, the wider market and the Australian community'.

a) Nolan Committee Principles on public life (as adapted)

These principles relate to all aspects of public life. They were created by the Nolan Committee for the benefit the public in any way. These principles will apply to all who are employed by the national Indigenous representative body. Note: the 8th principle has been added by the Steering Committee.

Eight Principles of Public Life

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefit for themselves, their family, or their friends.

Integrity

Holders of public office should not try to place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making appointments, awarding contracts or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. The holders of public office should give reasons for their decisions and restrict information only when the wider public interest clearly demands.



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Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

Behaviour

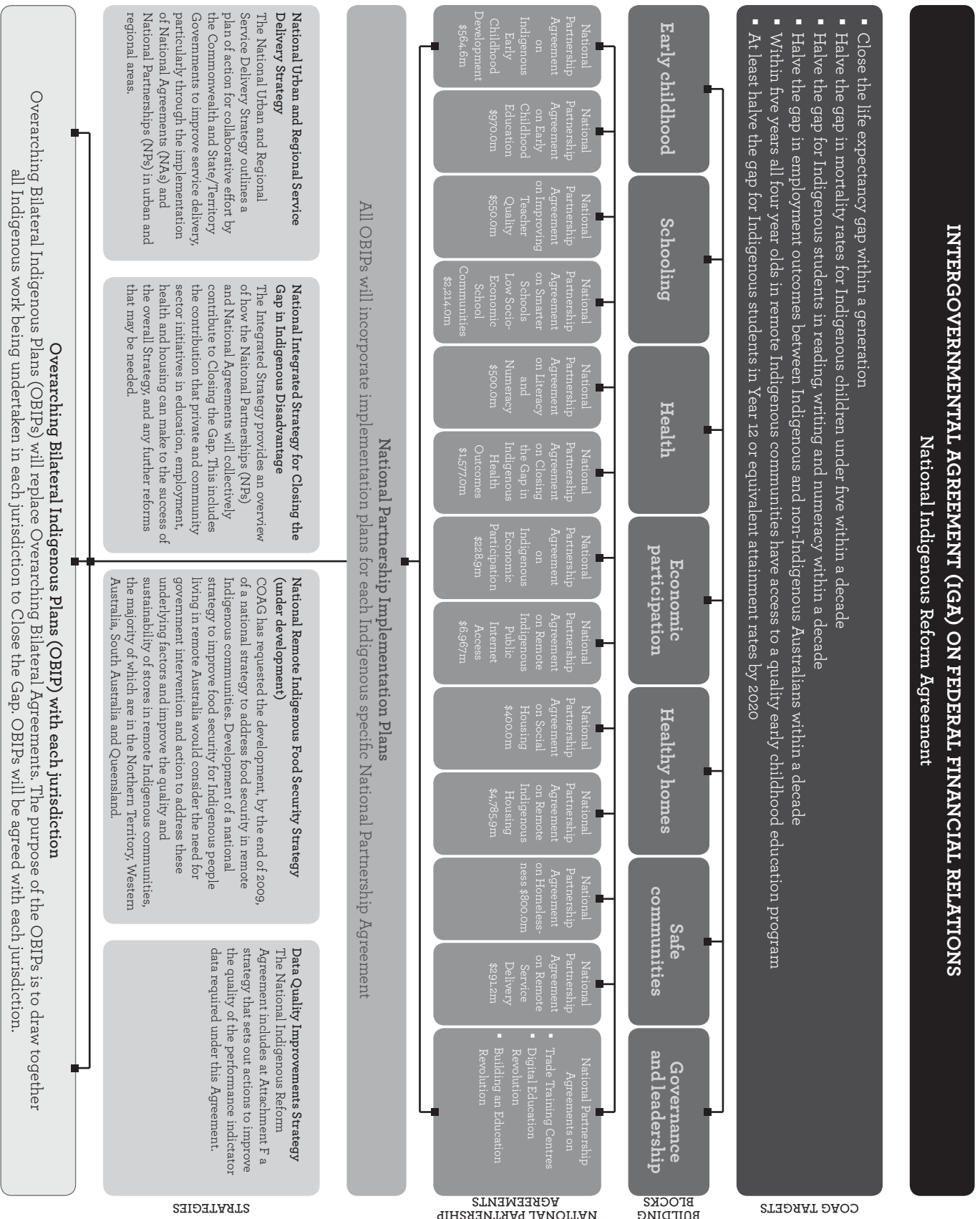
Holders of public office must exhibit at all times the exemplary levels of personal and corporate behaviour.

**b) ‘The Essential Corporate Governance Principles’ by the
Australian Stock Exchange’s Corporate Governance Council**

A company should:

1. **Lay solid foundations for management and oversight:** Recognise and publish the respective roles and responsibilities of board and management.
2. **Structure the board to add value:** Have a board of an effective composition, size and commitment to adequately discharge its responsibilities and duties.
3. **Promote ethical and responsible decision-making:** Actively promote ethical and responsible decision-making.
4. **Safeguard integrity in financial reporting:** Have a structure to independently verify and safeguard the integrity of the company’s financial reporting.
5. **Make timely and balanced disclosure:** Promote timely and balanced disclosure of all material matters concerning the company.
6. **Respect the rights of shareholders:** Respect the rights of shareholders and facilitate the effective exercise of those rights.
7. **Recognise and manage risk:** Establish a sound system of risk oversight and management and internal control.
8. **Encourage enhanced performance:** Fairly review and actively encourage enhanced board and management effectiveness.
9. **Remunerate fairly and responsibly:** Ensure that the level and composition of remuneration is sufficient and reasonable and that its relationship to corporate and individual performance is defined.
10. **Recognise the legitimate interests of stakeholders:** Recognise legal and other obligations to all legitimate stakeholders.

Attachment 5: Closing the Gap in Indigenous Disadvantage – Diagram of COAG commitments and process²⁴



Attachment 6:

Extracts from the United Nations Declaration on the Rights of Indigenous Peoples

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The *United Nations Declaration on the Rights of Indigenous Peoples* was adopted by the United Nations General Assembly in September 2007. In April 2009, the Australian Government formally endorsed the Declaration and indicated that it supports its aims and purposes.

Aboriginal and Torres Strait Islander peoples have continually emphasised the importance of the Declaration in guiding the work of the new National Representative Body.

The Declaration should be read as a whole. However, included here are extracts from the Declaration identifying the foundational principles of the Declaration as well as those that relate specifically to representation of Indigenous peoples.²⁵

Foundational rights

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Political and economic rights

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed



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consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Attachment 7: An overview of existing peak bodies, advisory councils and regional mechanisms

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Despite the absence of a National Representative Body, there exists a range of organisations that advocate for the interests of Aboriginal and Torres Strait Islander peoples. This includes through:

- an extensive array of national peak bodies that represent the different sectoral interests of Aboriginal and Torres Strait Islander service delivery organisations;
- land councils, native title representative bodies and prescribed bodies corporate established through the native title and land rights and native title systems;
- regional mechanisms for representing Aboriginal and Torres Strait Islander people that exist in some parts of the country; and
- mechanisms established by State or Territory governments to represent Aboriginal and Torres Strait Islander peoples in policy making processes.

Some of these organisations or mechanisms are representative of different communities or sectors of Aboriginal and Torres Strait Islander peoples, whereas others base their advocacy on their service delivery role.

This section of the paper identifies the key features of a range of different organisations and mechanisms that currently exist across Australia. While none of these organisations or mechanisms is capable of addressing the sheer breadth of issues required from a National Representative Body, they do provide a substantial base on which to build.

Each of these organisations or mechanisms, therefore, has a role to play either in contributing to the operations of, or through their relationship with, a new National Representative Body.

a) National Aboriginal and Torres Strait Islander Peak Bodies

There exists an extensive array of national peak bodies for Aboriginal and Torres Strait Islander peoples. A critical issue in the development of a new National Representative Body will be deciding how these peak bodies will interact and inform the work and decision making of the new National Representative Body.

Generally speaking, existing Aboriginal and Torres Strait Islander peak bodies represent the different sectoral interests of Aboriginal and Torres Strait Islander service delivery organisations. In other words, they deal with a particular professional area or service delivery role. This differentiates the role of these peak bodies from those of a National Representative Body. The National Body would need to consider all different perspectives in developing a clear vision of how to advance the overall wellbeing and priorities for Aboriginal and Torres Strait Islander peoples at a national level.

Many of these peak bodies are also elected, some with direct representation from the community level. Peak Aboriginal and Torres Strait Islander bodies offer significant expertise and experience that should be drawn on by the new National Representative Body.

The **Text Box** below provides an overview of a number of existing national Indigenous peak bodies and how they are constituted.²⁶



Text Box – Overview of existing National Aboriginal and Torres Strait Islander Peak Bodies	
Organisation	Function and Structure (purpose and elections/composition)
Aboriginal Tourism Australia (ATA)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Provide leadership and a focus for the development of Aboriginal tourism, consistent with Aboriginal economic, cultural and environmental values. Promote cultural integrity and authenticity across the tourism industry and provides education on Aboriginal and Torres Strait Islander protocols to the broader tourism industry. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> ATA is an industry organisation formed by Aboriginal and Torres Strait Islander tourism operators with a national membership. It is a Company Limited by Guarantee registered under the Australian Securities and Investment Commission (ASIC). It is a not for profit and a non government organisation.
Australian Indigenous Doctor's Association (AIDA)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Dedicated to the pursuit of leadership, partnership & scholarship in Aboriginal and Torres Strait Islander health, education and workforce. Advocate for improvements in Aboriginal and Torres Strait Islander health in Australia and equitable health and life outcomes for Aboriginal and Torres Strait Islander people Encourage Aboriginal and Torres Strait Islander people to work in medicine by supporting Indigenous students and doctors. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> A representative organisation for Aboriginal and Torres Strait Islander practitioners A not-for-profit, non-government organisation
Congress of Aboriginal and Torres Strait Islander Nurses (CATSIN)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Increase the recruitment and retention of Aboriginal and Torres Strait Islander peoples into nursing. Setting the agenda for, and advising on, a range of health related issues. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> CATSIN is a Professional Nursing Organisation that formally represents Indigenous nurses. It is an independent organisation with links to other professional bodies, and provides advice to these organisations.
Federation for Aboriginal and Torres Strait Islander Languages (FATSIL)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Promote the maintenance, retrieval and revival of Indigenous languages, through the support of community based language programs. Have Indigenous languages recognised as core elements in the development of all policy and legislation relevant to Aboriginal and Torres Strait Islander people in Australia.

Attachment 7 | An overview of existing peak bodies, advisory councils and regional mechanisms

<i>Organisation</i>	<i>Function and Structure (purpose and elections/composition)</i>
	<p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> FATSIL is the national peak body for community based language organisations It acts in an advisory role on issues relating to Indigenous languages to government and relevant non-government agencies, and provides a communication network to support information sharing between all target groups involved with Indigenous languages in Australia.
Indigenous APS Employees Network (IAPSEN)	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Support Indigenous employees to share information and experiences and promote cultural awareness and respect in the wider APS. Help Indigenous Australians improve their employment opportunities within the Australian Public Service. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> IAPSEN membership is open to any Aboriginal and Torres Strait Islander employee of a Commonwealth Government Agency. IAPSEN has networks in Townsville, Brisbane, Sydney, Melbourne, Adelaide, Perth and the ACT. The Chairs' Forum brings together the Chairs of all the regional IAPSENs to exchange information, discuss regional issues and provide regional perspectives on Indigenous Employment in the APS. The IAPSEN Chairs usually meet bi-yearly.
Indigenous Dentist's Association of Australia (IDAA)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Promote good oral health for Indigenous Australians and provides support for Indigenous dentists and dental students <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> The Association receives no government funding and is entirely dependent upon donations
National Aboriginal Community Controlled Health Organisation (NACCHO)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> NACCHO represents local Aboriginal community controlled health organisations at a national level to ensure that Aboriginal people have greater access to effective health care across Australia. NACCHO provide a coordinated holistic response from the community sector, advocating for culturally respectful and needs based approaches to improving health and well being outcomes through Aboriginal health organisations. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> A national peak Aboriginal health body representing Aboriginal Community Controlled Health Services throughout Australia. Its membership is composed of member organisations of a State or Territory peak Aboriginal community controlled health body affiliated with NACCHO. The Executive Committee is elected by the members at an AGM.

<i>Organisation</i>	<i>Function and Structure (purpose and elections/composition)</i>
National Aboriginal and Torres Strait Islander Ecumenical Commission (NATSIEC)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Work with the churches for a fair deal for Aboriginal and Torres Strait Islander Australians, and for the healing of our nation. Provide a forum for Aboriginal and Torres Strait Islander peoples to speak and take action on issues of faith, mission and evangelism; of Aboriginal and Torres Strait Islander spirituality and theology; of social justice and land rights. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> NATSIEC is the peak ecumenical Indigenous body in Australia. It is a part of the National Council of Churches and is comprised of Aboriginal and Torres Strait Islander peoples that represent a cross-section of church-related Aboriginal and Torres Strait Islander groups.
National Coalition of Aboriginal and Torres Strait Islander Social Workers Association (NCATSISWA)	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Bring together Aboriginal and Torres Strait Islander social workers as a professional body, to exchange information, ideas, and to network for the benefit of our communities. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> NCATSISWA is an independent and not for profit organisation that offers full memberships to indigenous people and associate non-indigenous people as well as those from interested government and community organisations
National Indigenous Higher Education Network (NIHEN)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Achieve parity for Aboriginal and Torres Strait Islander peoples in higher education; provide a forum for the staff of the Indigenous higher education sector to pursue common goals and objectives for Aboriginal and Torres Strait Islander peoples. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> NIHEN is a cohort of professional bodies, established to provide a representative voice for Indigenous higher education knowledge networks. Membership of NIHEN is open to each of the Indigenous Higher Education Centres within Australian public Universities, the Indigenous Faculty and Schools of Aboriginal and Islander/Indigenous Australian Studies, Indigenous Research Centres of Excellence and the Bachelor Institute of Indigenous Education.
National Indigenous Postgraduate Association Aboriginal Corporation (NIPAAC)	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Provide a network for Indigenous postgraduate students; Advocate for and to represent the interests of Indigenous postgraduate students at a national level; Promote research into Indigenous issues and the training of Indigenous researchers; Educate researchers on appropriate protocols when dealing with issues of cultural and social significance to Indigenous peoples. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> An association for Indigenous scholars and leaders since 1989. Membership of NIPAAC is open to all indigenous-Australian postgraduate students, Elders and ex-postgraduate students. There is also non-voting membership for non-Indigenous Australian postgraduate students. The Association is an incorporated Association under the Aboriginal Corporations Act

Attachment 7 | An overview of existing peak bodies, advisory councils and regional mechanisms

<i>Organisation</i>	<i>Function and Structure (purpose and elections/composition)</i>
National Indigenous Youth Movement of Australia (NIYMA)	<p><i>Primary objectives</i></p> <ul style="list-style-type: none"> Engage other young indigenous peoples with life. Support young Indigenous peoples in life and career pursuits. Celebrate all successes among the membership. Promote self-awareness, healing and wellness among the membership and our communities. Contribute to the revival of Indigenous cultural and spiritual values, beliefs and practices for today's world. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> NIYMA is a not for profit organisation founded and run by Indigenous young people from the ages of 18-30 years of age. NIYMA's executive structure is comprised of 6 indigenous young people.
National Native Title Council	<p><i>Primary Objectives</i></p> <ul style="list-style-type: none"> Committed to forging strong and collaborative partnerships with key stakeholders in native title as well as Indigenous affairs policy; The main focus is on promoting the development of better solutions for resolving native title and securing adequate resources for Native Title Representative Bodies (NTRBs) and Native Title Service providers (NTSs); Seeks to maximise the significant contribution that native title makes to achieving and improving the economic, social and cultural participation of Indigenous people. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> Comprised of Native Title Representative Bodies and Native Title Service providers across Australia; Voluntary membership, incorporated as an autonomous public company; Chief Executive Officers of NTRBs and NTSs participate in the Council, and elect a Chairperson and Deputy Chairperson.
National Sorry Day Committee (NSDC)	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Work in unity with its members, the Stolen Generations, Aboriginal and Torres Strait Islander communities, government, social justice and community organisations, so that the 54 recommendations of the <i>Bringing Them Home</i> Report are finally achieved. <p><i>Structural organisation</i></p> <ul style="list-style-type: none"> The NSDC is made up of a variety of indigenous and non-indigenous members, including members of the Stolen Generation networks. Each State and Territory has established affiliated Sorry Day Committees/Networks. The names of these affiliated bodies today reflect the broad spectrum of groups that the National Sorry Day Committee membership consists of (i.e. Journey of Healing, Bringing Them Home, Sorry Day, Stolen Generations or Link Up). The NSDC has a mandate from the Stolen Generations, through its affiliated Regional/ State/Territory bodies. NSDC is presided over by an executive committee, comprised of indigenous and on-indigenous people.

<i>Organisation</i>	<i>Function and Structure (purpose and elections/composition)</i>
Ngalaya Aboriginal Corporation	<p><i>Primary objective</i></p> <ul style="list-style-type: none"> Comprised of Indigenous lawyers and law students nationally Seeks to cooperate and collaborate to achieve an equality of justice for all Australians. provide assistance to Indigenous law students and Indigenous law graduates ensure Indigenous law students attain the same graduation and work place participation rates as those attained by other students. <p><i>Structure</i></p> <ul style="list-style-type: none"> An Indigenous Corporation under the <i>Aboriginal Councils and Associations Act 1976</i>.
Positive Aboriginal Torres Strait Islander Network (PATSIIN)	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Work within Indigenous communities and with government and service providers to represent the interests of Indigenous Australians <p><i>Structural organisation</i></p> <ul style="list-style-type: none"> A national membership-based network of Indigenous people living with HIV/AIDS. The network is auspiced by National Association of people Living with HIV/AIDS
Secretariat of National Aboriginal and Torres Strait Islander Child Care (SNAICC)	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Provide a strong voice for Aboriginal and Torres Strait Islander children and families through a national body which represents Aboriginal and Torres Strait Islander children's services and promotes the rights, needs and aspirations of Aboriginal and Torres Strait Islander children and families. <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> A national non-government peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and families. SNAICC operates from a membership base of Aboriginal and Torres Strait Islander community-based child care agencies, Aboriginal Children's Services, family support services, foster care agencies, link up and family reunification services, family group homes, community groups and voluntary associations, long day care child care services, pre schools, early childhood education services and services for young people at risk. SNAICC is governed by a National Executive made up of Aboriginal and Torres Strait Islander community-controlled children's and families' services. The National Executive is elected directly through postal ballot by SNAICC's full members, who are Aboriginal and Torres Strait Islander community-controlled children's and families' services, for a two year term.
Stolen Generations Alliance	<p><i>Primary Objective</i></p> <ul style="list-style-type: none"> Work for healing, truth and justice <p><i>Structural Organisation</i></p> <ul style="list-style-type: none"> Its members are comprised of indigenous and non-Indigenous people who have been active in the Journey of Healing, since the release of the Bringing Them Home Report. It has an executive comprised of Indigenous and non-Indigenous members from all States and territories of Australia.

b) Land Councils and Native Title Representative Bodies

Nationwide, there are 17 Native Title Representative Bodies (NTRBs) and Native Title Services (NTSs), established under the *Native Title Act 1993* (Cth). NTSs do not have a representative role.

Many NTRBs emerged out of local 'land councils', which were established under State and Territory land rights legislation which predated the native title system. Many of these land councils have a long history of representing Aboriginal and Torres Strait Islander interests at a regional or State/Territory-wide level.

The first land councils were established in the Northern Territory under the *Aboriginal Land Rights Act 1976* (Cth) with a range of responsibilities to run land claims and manage existing land trusts by taking instruction from traditional owners on development issues. Since the introduction of the *Native Title Act 1993* (Cth), these land councils effectively operate under two statutes and as a result have two sets of operational responsibilities.

New South Wales also has a land rights system, which is established under the *Aboriginal Land Rights Act 1983* (NSW). The NSW Aboriginal Land Council network operates as a two-tiered structure, comprising the peak statutory authority – the New South Wales Aboriginal Land Council (NSWALC) – and 121 Local Aboriginal Land Councils (LALCs). The objectives of both NSWALC and the LALCs is generally to “improve, protect and foster the best interests of Aboriginal persons” within their respective jurisdictions.

Both the NSWALC and LALCs are governed by elected Boards. The 9 Councillors that make up the NSWALC Board are elected to represent each of the regions that the 121 LALCs are grouped into across the state.

Although native title advocacy, agreements, claims and determinations are a central focus of NTRBs, NTSs and land councils under State and Territory land rights legislation, these bodies increasingly undertake roles in related areas of land management, community development and employment and training programs. Land management units have developed into significant resource centres receiving support from a range of government and non-government agencies to run programs from ranger groups to Indigenous ecological knowledge maintenance.

The range of support services and programs, their structure and election procedures and the increased regionalisation of some land councils or NTRBs have contributed to imbuing these institutions with some degree of representativeness for Indigenous communities in certain parts of Australia.

However, their legitimacy, authority, resources and effectiveness is not uniform. They are usually governed by a membership that has achieved land rights grants, or has achieved or asserts native title. They are not usually representative of those Indigenous groups that cannot demonstrate traditional ownership of areas covered by the land council or NTRB, nor do they always have close ties to existing Indigenous community service organisations. They are, nevertheless, important bodies in the wider landscape of Indigenous representation, particularly at the local and regional level.

There are a further range of organisations that are beginning to operate through the native title system. These are Prescribed Bodies Corporate (PBC). The prime object of prescribed bodies corporate is to hold the native title rights and interests granted by a determination of native title on trust or as an agent for native title holders. Once the determination is made a PBC is then registered on the National Native Title Register as a Registered Native Title Body Corporate (RNTBC). The primary roles of PBCs are to:

- Protect and manage determined native title, in accordance with the native title holders' wishes; and
- Provide a legal entity through which native title holders can conduct business with government, and others, interested in accessing or regulating native title lands and waters.

As at 30 June 2008, there were 57 RNTBCs, and 12 determinations of native title currently awaiting determination to become Registered Native Title Body Corporates. While funding support is limited for such bodies, and they are differently constituted, they are emerging as a new organisational structure that has representative responsibilities in relation to traditional owners who have had their native title recognised.

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There are a further 12 determinations of native title currently awaiting determination of a Prescribed Body Corporate, to become the Registered Native Title Body Corporate.

c) Regional mechanisms

Torres Strait Regional Authority

The Torres Strait Regional Authority (TSRA) is an Australian Government Statutory Authority established in 1994 under the Aboriginal and Torres Strait Islander Commission Act 1989, which is today known as the Aboriginal and Torres Strait Islander (ATSI) Act 2005.

The TSRA has the responsibility to:

- Formulate, coordinate and implement programs for Torres Strait Islander and Aboriginal people living within the region;
- Monitor the effectiveness of these programs, including programs conducted by other bodies;
- Advise the Minister for Indigenous Affairs on matters relating to Torres Strait Islander and Aboriginal Affairs in the Torres Strait;
- Recognise and maintain the special and unique Ailan Kastom of the Torres Strait Islander people living in the Torres Strait Region; and
- Undertake activities necessary to perform its function as defined by the ATSI Act 2005.

Former ATSIC Regions

ATSIC Regional Councils were disbanded from 1 July 2005 and the majority of these regions no longer have formally recognised regional representative structures.

A number of regional partnership agreements have been put in place since 2005. However, the majority of these agreements have been established between governments and collectives of community and/or corporate organisations within a region.

Current agreements and associated structures within regions include: the Murdi Paaki Regional Assembly; Ngaanyatjarra Council; the Groote Eylandt Regional Partnership Agreement; and the Regional Partnership Agreement between the Tasmanian Government, the Australian government and three regional partners.

d) State and territory level Aboriginal and Torres Strait Islander advisory structures

There are a variety of existing representative and advisory structures at the State and Territory Government level for Aboriginal and Torres Strait Islander peoples.

Australian Capital Territory

The ACT Government created an Indigenous representative body in May 2008. Called the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) it was created under the *Aboriginal and Torres Strait Islander Elected Body Act 2008*. The ATSIEB consists of 7 elected members appointed for a term of three years. The elected body includes a Chair and Deputy Chair and it meets at least six times per year as well as meeting regularly with Ministers and Chief Executives of Government Departments.

The body reports to the ACT Minister for Aboriginal and Torres Strait Islander Affairs as stipulated in the Act and is mandated in s9 of the Act to consult with, and consider, the views of the United Ngunnawal Elders Council (UNEC) in the exercise of all its functions. The body is also obliged by s11 to conduct a community forum at least twice per financial year on areas of interest to Indigenous residents, at which any Indigenous resident may participate.

Some of the other functions of the body as outlined in section 8 of the Act include:

- to receive, and pass on to the Minister, the views of Aboriginal people and Torres Strait Islanders living in the ACT on issues of concern to them;
- to represent Aboriginal people and Torres Strait Islanders living in the ACT and to act as an advocate for their interests;

Attachment 7 | An overview of existing peak bodies, advisory councils and regional mechanisms

- to foster community discussion about issues of concern to Aboriginal people and Torres Strait Islanders living in the ACT and report the outcomes of those forums to the Minister;
- to conduct research and community consultation to assist ATSIEB in the exercise of its functions; and
- to propose programs and design services for Aboriginal people and Torres Strait Islanders living in the ACT for consideration by the government and its agencies.

New South Wales

The NSW Department of Aboriginal Affairs (DAA) works with Aboriginal people, government agencies, and the private and community sectors to promote the interests of Aboriginal people in NSW. The DAA 10 year plan *'Two Ways Together'* (2003-2012) is a mechanism for delivering on its seven priority areas of health, housing, education, culture and heritage, justice, economic development and families and young people. The *Two Ways Together Coordinating Committee* (TWTCC) oversees the management of *Two Ways Together*.

The TWTCC includes representation from peak NSW Aboriginal organisations, as well as State and Commonwealth Governments. The NSW Government sees the National Representative Body working with the TWTCC, rather than through the agency of single peak bodies.

A Coalition of Aboriginal peak bodies is also in its formative stages and includes

- the NSW Aboriginal Land Council (NSWALC);
- the Aboriginal Housing Office (AHO);
- the Aboriginal Health & Medical Research Council (AH&MRC);
- the NSW Aboriginal Education Consultative Group (AECG);
- the NSW Aboriginal Justice Advisory Council (AJAC);
- the Aboriginal Child, Family and Community Care Secretariat (AbSec), and
- Link-Up.

This Coalition of Aboriginal Peak bodies could also usefully assist the National Representative Body with community consultation in New South Wales.

The NSW Government also has a number of consultative and advisory forums on specific issues, for example the Aboriginal Cultural Heritage Advisory Committee provides advice to the Minister for Climate Change and the Environment.

The NSW Aboriginal Land Council and the Aboriginal Housing Office, with the support of the DAA initiated a meeting in October 2008 for the purpose of providing an opportunity for NSW Peak Bodies to explore the potential for reaching a unified NSW position on some key issues and characteristics of a National Representative Body. These recommendations have been published in a report by the Department of Aboriginal Affairs.

It is the NSW Government's intention that the representative body should not replace the already established specialist advisory bodies but work with them and draw on their expertise.

Northern Territory

The NT Government established its first Indigenous Affairs Advisory Council in February 2009. Members are appointed by the NT Minister for Indigenous Policy following nominations. The Indigenous Affairs Advisory Council consists of 16 members, including a Chair and Deputy Chair. The primary role of the Indigenous Affairs Advisory Council is to provide advice and make recommendations regarding the implementation and further development of the 'Closing the Gap of Indigenous Disadvantage: A Generational Plan of Action'.

The Council will also assist the Northern Territory Government to effectively engage with Indigenous people, organisations and communities and provide advice on the Government's endeavours in addressing Indigenous disadvantage in the Northern Territory.

The Indigenous Affairs Advisory Council is considered to be independent of Government, with its role guided by its terms of reference.

According to the NT Minister for Indigenous Policy, Aboriginal people in the Northern Territory are not lacking in representative structures. The Minister has requested that the National Indigenous

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Representative Body complements and does not duplicate the vast array of governance bodies involving Aboriginal people that already operate in the Territory.

Queensland

There are two principal Indigenous advisory mechanisms in Queensland:

- The Aboriginal and Torres Strait Islander Advisory Council, and
- Ministerial Indigenous Roundtables with Mayors of Discrete Indigenous Communities.

There are also community based mechanisms, such as negotiating tables, to resolve social and economic issues at the local level.

The Queensland Aboriginal and Torres Strait Islander Advisory Council was established in December 2008 to provide strategic advice on policy, programs and service delivery to the Minister for Aboriginal and Torres Strait Islander Partnerships and the Premier. The Council consists of 14 Aboriginal and Torres Strait Islander Queenslanders and the Minister as Chair. Members are not appointed to represent any particular organisation, interest group or region and are appointed for a two-year term..

The Council meets quarterly, with additional meetings if required to consider emerging policy or program issues.

The Ministerial Indigenous Roundtables are a key engagement mechanism between the Minister for Aboriginal and Torres Strait Islander Partnerships and other relevant state Ministers, the Australian Government and the mayors of Queensland's discrete Indigenous communities. The Ministerial Indigenous Roundtables meet on a six monthly basis. The roundtables facilitate intensive consideration of current and emerging policy, program and service delivery challenges and enable the Mayors to make a direct contribution to closing the gap in life outcomes for Indigenous Australians in Queensland.

The Queensland Government sees the National Representative Body interacting with existing mechanisms as an advisory body and not one with decision-making powers. The Queensland Government sees membership of the body comprising of senior Indigenous advisors from each jurisdiction with an elected Chair, including a Queensland representative establishing a direct relationship between the National Representative Body and the principal advisory mechanism, QATSIAC, at the state level.

South Australia

There are two significant state level representative structures in SA, the South Australian Aboriginal Advisory Council (SAAAC) and The Commissioner for Aboriginal Engagement.

The SAAAC is a 10 member Aboriginal Council that provides advice to the Minister for Aboriginal Affairs and Reconciliation. It is the peak level advisory body to the State Government on Indigenous Issues. Members are appointed by the Minister on a merit based selection process. They are appointed for their expertise in specific areas.

A Commissioner for Aboriginal Engagement was appointed in January 2008 for a term of two years. The Commissioner is responsible for identifying systemic barriers to Aboriginal people's access to government, non-government or private services; mentoring Aboriginal leaders; and publicly advocating for engagement between the broader community and Aboriginal people.

Victoria

The Premiers' Aboriginal Advisory Council (PAAC) was established in 2005 and provides the Victorian Government with high level policy advice on Indigenous policy and issues impacting Indigenous Victorians.

The PAAC provides advice to the Government on strategic issues in Indigenous policy, and acts as a forum for Indigenous community perspectives to inform Government direction and processes. PAAC supplements existing Indigenous consultative arrangements in other portfolios and broad-based community consultations on specific initiatives.

Western Australia

The WA Government appointed its first Indigenous Implementation Board in January 2009. The terms of membership are staggered to ensure strong continuity. Members are chosen based on their expertise and influence.

The purpose of the Board is to build stakeholder involvement; ensure that recommendations from earlier reports have been implemented where appropriate; and consider the structural underpinnings of Indigenous disadvantage and recommend ways in which service delivery can be enhanced.

Tasmania

The Office of Aboriginal Affairs (OAA), in the Department of Premier and Cabinet, consults informally as required in relation to specific issues with representatives from peak Aboriginal organisations, key elders and individuals within the Tasmanian Aboriginal community who are not aligned with major Aboriginal organisations. The OAA also provides information to other government agencies and non-government organisations about appropriate contacts within the Aboriginal community.

e) Inter-governmental councils and advisory structures

In addition to the Aboriginal and Torres Strait Islander bodies listed above, there exist a range of mechanisms within governments to coordinate advice on Aboriginal and Torres Strait Islander affairs. These are generally not representative in their focus.

Ministerial Council of Aboriginal and Torres Strait Islander Affairs

The Ministerial Council of Aboriginal and Torres Strait Islander Affairs (MCATSIA) is a forum through which Commonwealth and State and Territory Ministers with responsibility for Aboriginal and Torres Strait Islander affairs can meet to discuss issues of mutual interest and to consider reports on relevant Commonwealth, State, Territory and Local Government activities.

The Council comprises of the Ministers with responsibility for Aboriginal and Torres Strait Islander affairs from the Commonwealth and each of the States and Territories. The President of the Australian Local Government Association and the chair of the Torres Strait Regional Authority are non-voting participating members of the Council. The New Zealand Minister for Maori Development attends as an observer.

MCATSIA is supported by a standing committee of senior officials from the Commonwealth, State and Territory departments with responsibility for Aboriginal and Torres Strait Islander affairs. This committee is referred to as SCATSIA – the Standing Committee for Aboriginal and Torres Strait Islander affairs. For further information see <http://www.mcatsia.gov.au>

COAG Working Group on Indigenous Reform

The COAG Working Group on Indigenous Reform brings together the Australian Government and all State and Territory Governments. Its membership includes senior executive officers from relevant Commonwealth and State Government Departments and it is chaired by the Minister for Families, Housing Community Services and Indigenous Affairs.

The Working Group's objective is to close the gap on Indigenous disadvantage, focusing in particular on these targets:

- to close the life expectancy gap within a generation
- to halve the gap in mortality rates for Indigenous children under five within a decade, and
- to halve the gap in reading, writing and numeracy achievements within a decade.

Coordinator General for Remote Indigenous Services

The new 'Coordinator-General for Remote Indigenous Services' will report to the Minister for Families, Housing, Community Services and Indigenous Affairs and work closely with Indigenous people, community groups, industry and government organisations to make in-roads into closing the gap.

The 'Coordinator-General for Remote Indigenous Services Bill 2009' was passed in June 2009 and the Government announced the appointment of Mr Brian Gleeson to the position.

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The role of the Coordinator General is to monitor, assess, advise in relation to, and drive:

- the development and delivery of services and facilities by governments, in each remote location specified by the Minister, to a standard broadly comparable with that in non-Indigenous communities of similar size, location and needs elsewhere in Australia, including through:
 - improvements to the coordination of the development and delivery of such services and facilities; and
 - reforms to the development and delivery of such services and facilities; and
 - progress towards achieving the Closing the Gap targets in those specified locations.

The Secretaries Group on Indigenous Affairs (SGIA) and Sub-Group Executive Coordination Forum on Indigenous Affairs (ECFIA)

ECFIA supports the work of SGIA and meets every 6–8 weeks and is chaired by Secretary FaHCSIA. Its role includes:

- Coordination of cross portfolio Indigenous policy
- Regular reports on Closing the Gap targets, investments and expenditure decisions and emerging priorities.
- Oversees overarching bilateral agreements to ensure high level Australian Government leadership and governance for the national Partnership Agreement on Remote Service Delivery.

Indigenous Higher Education Advisory Council

The Indigenous Higher Education Advisory Council (IHEAC) provides policy advice to the Minister for Education, Employment and Workplace Relations on improving outcomes in higher education for Indigenous students and staff relating to their participation, progression and retention both in study and in employment. The Council is currently in its second term.

IHEAC is currently working on a number of initiatives, including embedding Indigenous cultural competency in universities, examining Indigenous student finances and scoping the possibility of an Indigenous Learned Academy and Indigenous Centre for Researcher Development.

For further information, see the Department of Education, Employment and Workplace Relations – http://www.dest.gov.au/sectors/indigenous_education/programmes_funding/programme_categories/support_for_education_providers_staff/indigenous_higher_education_advisory_council.htm

National Indigenous Health Equality Council

Established in 2008, the new National Indigenous Health Equality Council (NIHEC) brings together the Australian Government, the Aboriginal and Torres Strait Islander community including the Aboriginal Community Controlled Health sector, and the broader health sector, working in partnership to work towards the attainment of equal health status between Aboriginal and non-Aboriginal peoples.

It provides advice to the Minister for Health and Ageing on strategic priorities for Aboriginal and Torres Strait Islander Health and any specific matters referred to it by the Government and the Australian Health Ministers' Advisory Council (AHMAC) and assists the development and monitoring of progress towards 'closing the gap' of Indigenous disadvantage.

The NIHEC has 14 members comprising a Chair, a Deputy Chair and 12 other members. The Council will meet at least four times a year. Where possible, NIHEC aims to hold community forums in these locations to discuss local issues with community members and the health sector.

For further information see <http://www.nihec.gov.au>

National Aboriginal and Torres Strait Islander Women's Gathering

The National Aboriginal and Torres Strait Islander Women's Gathering (NATSIWG) is an annual event for Indigenous women from across the country to meet and determine working priorities for the annual Ministerial Conference on the Status of Women (MINCO).

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The Gathering provides a voice and acts as a conduit between MINCO, Officials from the Women's Advisers Meeting (WAM) and Aboriginal and Torres Strait Islander women in their local communities.

The NATSIWG Working Group advise MINCO on identified national priority issues for Aboriginal and Torres Strait Islander women.

For further information, contact the Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs – <http://www.fahcsia.gov.au/sa/women/overview/ofw/Pages/Intergovtliaison.aspx#natsiwg>

National Indigenous Law and Justice Advisory Body

The Australian Government is establishing a new national Indigenous law and justice advisory body to provide high level policy advice on Indigenous law and justice issues. The proposed role of the advisory body is to:

- provide expert advice to the Australian Government, and through it to relevant intergovernmental bodies, on a range of Indigenous law and justice issues,
- facilitate linkages across various levels of government, business and the community,
- consider government policies affecting Indigenous law and justice outcomes, and
- advocate for policies that promote good practice.

Nominations for membership closed at the end of February 2009. Nominations will be considered by a selection panel and members of the advisory body will be appointed by the Minister for Home Affairs, the Hon Bob Debus MP for terms of up to two years, with the possibility of reappointment.

For further information, see the Attorney-Generals Department – <http://www.ag.gov.au/indigenousadvisorybody>

Indigenous Advisory Committee (Environment Protection and Biodiversity Conservation)

An Indigenous Advisory Committee (IAC) was established in 2000 under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). The IAC advises the Minister for the Environment, Water, Heritage and the Arts on the operation of the EPBC Act, taking into account the significance of Indigenous peoples' knowledge of the management of land and the conservation and sustainable use of biodiversity.

The IAC is made up of members who are Indigenous Australians who have been selected on the basis of their expertise in Indigenous land management, conservation and cultural heritage management.

The members of the IAC have a wide range of skills and knowledge in the fields of park management, Indigenous land and sea country management, health, tertiary education and local, regional and state Indigenous affairs.

The IAC meets at least twice a year. Meetings are rotated around States and regions, with at least one meeting in Canberra and one meeting on-country.

For further information see the Department of Environment, Water, Heritage and the Arts – <http://www.environment.gov.au/indigenous/committees/iac.html>

Attachment 8:

Terms of reference for Steering Committee for consultation process

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The Hon Jenny Macklin MP
Minister for Families, Housing, Community Services
and Indigenous Affairs

Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
Facsimile: (02) 6273 4122

MN08-004251

Mr Tom Calma
Aboriginal and Torres Strait Islander Social Justice Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

Dear Mr Calma *Tom*

I am writing to confirm our agreed arrangements in regards to the second and final phase of consultations on the national representative body.

I confirm that you will auspice and appoint an independent, Indigenous Steering Committee which would run the consultations and present a preferred model to Government in July 2009, along with potential nominees for an interim body. This work will be done as part of your functions and role as the Aboriginal and Torres Strait Islander Social Justice Commissioner. An agreed Terms of Reference is attached.

I am advised that the Attorney-General has consulted the President of the Australian Human Rights Commission and they are both satisfied with this arrangement.

I understand you are close to finalising the membership of the Steering Committee. I trust the membership of the Committee will appropriately reflect gender balance, as well as representation from urban, regional and remote areas.

Funding is available to assist you to support this work and will require a proposal to be submitted to my department. The department is able to offer logistical and in kind support.

I would prefer to announce the way forward prior to the end of the year and propose that we release a joint statement. In that release, I would like to announce the extended consultation process, what it involves and the role of yourself and the Steering Committee. Our media team will contact your office to finalise a draft as soon as possible.

The Department will provide you with a copy of the summaries of the consultations held to date and submissions received, as well as an analysis of these consultations. These can inform the Roundtable meeting.

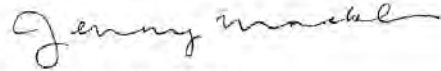
In closing, I would like to reaffirm that I value your leadership on this vital issue for Aboriginal and Torres Strait Islander Australians. The Australian Government has said it will deliver this election commitment within this term of Government. I know that it will not be



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easy to achieve broad support for one type of model, and agree it is essential that we work together in a spirit of good faith and trust.

Yours sincerely

A handwritten signature in cursive script, reading "Jenny Macklin".

JENNY MACKLIN MP

NATIONAL REPRESENTATIVE BODY – PROCESS MOVING FORWARD

The Aboriginal and Torres Strait Islander Social Justice Commissioner at the Australian Human Rights Commission will convene a Steering Committee to develop a preferred model for a National Indigenous Representative Body. The Commissioner will participate on the Steering Committee as an *ex officio* member to facilitate its deliberations and their work.

The Steering Committee shall report to the Social Justice Commissioner on all matters. The Social Justice Commissioner shall continue to exercise his statutory functions independently of the Steering Committee and the Department.

Terms of Reference for the Steering Committee

The objective of the Steering Committee is

- to develop a representative model that has strong community support
- and is consistent with the guidelines for funding set by Government.

The Steering Committee

- will develop a model for national representation of Indigenous Australians for presentation to the Australian Government in July 2009. This timeline is to enable the final body to be established by December 2009.
- will (in conjunction with the Department) facilitate the formal advertisement calling for nominations in December 2008 for an Initial Indigenous Leaders Roundtable in February 2009 and a possible second roundtable in June 2009. This advertisement will include criteria of the qualities and experience for nominees.
- will select and announce the participants in the roundtable (approx 100 -120 attendees).
- will coordinate the program and running of the roundtable(s), with the following agreed elements:
 - reviewing the outcomes of the consultations and submissions to date
 - endorsing the way forward, including further community information and consultation after the first roundtable
 - considering and assessing in detail several models, including the preferred model and guidelines for funding
 - presenting a preferred model to Government in July
 - Making recommendations in regards to the establishment of an interim body in July 2009 which will operate until the final body takes effect.
- will work in partnership with the Department where appropriate, and negotiate arrangements for logistical support.
- will liaise with the Department on advertisements for nominations.
- will liaise with the Department on the parameters on an ongoing basis.

Budget

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The Government

- will provide modest supplementary funding to facilitate this work.
 - Some additional "in kind" assistance can also be offered by the Department – e.g., logistical support and help pulling together the materials after the consultations.
 - The budget as well as the nature and extent of Departmental support will be negotiated.
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Attachment 9: Acknowledgements

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The following individuals made a substantial contribution to the consultation process and the work of the Steering Committee. Our thanks to everyone listed and to everyone else who contributed to the process.

Steering Committee for the National Representative Body consultations

Chair: Mr Tom Calma

Members:

- Mr Mark Bin Bakar;
- Ms Tanya Hosch;
- Mr Geoff Scott;
- Dr Jackie Huggins AM;
- Mr Tim Goodwin;
- Ms Yananymul Mununggurr;
- Mr Jason Glanville; and
- Mr John Toshi Kris.

Ms Nala Mansell-McKenna withdrew from the Committee in July 2009. Ms Rosalie Kunothe-Monks was originally confirmed on the committee but was unable to participate. Professor Mick Dodson was invited to participate on the committee as an expert advisor.

Secretariat – Australian Human Rights Commission

- Josephine Bourne;
- Darren Dick; and
- Jessica McAlary.

Assistance was provided from time to time by Fabienne Balsamo; Allyson Campbell; Bernice Pemberton; Clare Tapp and staff of the Aboriginal and Torres Strait Islander Social Justice Unit at the Australian Human Rights Commission.

Public Affairs and website support was provided by Louise McDermott, Leon Wild and Connie Chung.

Consultancy and advisory services were provided with substantial pro-bono discounts by:

- The Nous Group (Ray Judd, Harris Van Beek, and Tim Watts);
- Alice McDougall; and
- Trish Burrows.

National Representative Body Support Unit – Department of Families, Housing, Community Services and Indigenous Affairs

First Stage (July 2008 – January 2009):

- Geoff Richardson
- Jim Ramsay
- Sandra Dahl
- Cheryl Foster
- Alison Hughes
- Donna Murray
- Lee-Anne Barnes



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- Margaret Oliver
- Dianne Collins
- Phil Maslen
- Michael Zitha
- Gail Ah Kit
- David Smith

Adelaide Workshop (January – March 2009):

- Geoff Richardson
- Cheryl Foster
- Alison Hughes
- Lee-Anne Barnes
- Dianne Collins
- Phil Maslen
- Michael Zitha
- Dave Smith
- Sharon Condron

Second Stage (January 2009 – ongoing):

- Geoffrey Richardson
- Cheryl Foster
- Alison Hughes
- Doug Hynd
- Phil Maslen

Our thanks to the numerous other individuals who provided advice and support from time to time during the consultation process.

Endnotes

- 1 <http://www.pc.gov.au/gsp/reports/indigenous>.
- 2 A recent report also identifies the challenges that remain within an international context. The Sustainable Governance Indicators report for 2009 was recently published by Bertelsmann Stiftung. It analyzes and compares the need for reform in OECD member countries, as well as their ability to respond to current social and political challenges. The project is designed to create a comprehensive data pool on government-related activities in the world's developed, free-market democracies. In addition, it uses international comparisons to provide evidence-based input for reform-related public discourse taking place in these countries. Australia comes in just above the OECD average and is ranked 12th. The Australian country reports identify the absence of a national Indigenous representative body and poor achievement in addressing socio-economic conditions facing Indigenous peoples as matters of concern. See: <http://www.sgi-network.org/index.php?page=index&index=status> and http://www.sgi-network.org/index.php?page=countries_keyfindings&country=AUS.
- 3 For information about the national commitments, National Partnerships and Integrated Strategies see: http://www.coag.gov.au/coag_meeting_outcomes/issues_by_subject.cfm
- 4 Prime Minister Kevin Rudd, Speech on Closing the Gap, Parliament, 26 February 2009.
- 5 http://www.adcq.qld.gov.au/ATSI/Oration_2009.html
- 6 *Closing the Gap on Indigenous Disadvantage: The challenge for Australia, February 2009*: http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Documents/closing_the_gap/p1.htm.
- 7 See for example: *Social Justice Report 2007*, Chapter 1; *Social Justice Report 2006*, Chapters 2 and 3. See also: Tom Calma, Essentials for Social Justice: Reform, Speech, 20 February 2008, http://humanrights.gov.au/about/media/speeches/social_justice/2008/essentials_reform20080220.html.
- 8 http://www.anao.gov.au/download.cfm?item_id=72FB4EBA1560A6E8AA264BEDDE31262F&binary_id=B97AC9B41560A6E8AA6AFDBC6040F2AC
- 9 http://www.pc.gov.au/_data/assets/pdf_file/0015/90132/02-overview.pdf, p3.
- 10 http://www.pc.gov.au/_data/assets/pdf_file/0013/90310/cs20090707.pdf.
- 11 http://www.fahcsia.gov.au/sa/indigenous/pubs/general/Documents/closing_the_gap/p1.htm
- 12 <http://www.reconciliation.org.au/home/reconciliation-resources/australian-reconciliation-barometer>
- 13 In this model, organisations, national Indigenous peak bodies, regional and/or state/territory level representative organisations could nominate a delegate/s to represent them in the National Representative Body. The delegate can be selected in a number of ways; elected from within the organisation or group, or appointed by its Board, officers or elders.
- 14 An **electoral** college is a group of electors who are selected to elect a candidate to a particular position in an agency, organisation or public office. Often the electors represent different organisations and bodies, with each organisation or body represented by a particular number of electors or with votes weighted in a particular way. In some cases, though, the electors are simply people whose knowledge, expertise and experience, ideally, would provide a better choice of candidate(s) than a larger electorate.
- 15 The necessary training may include a mix of training programs. Some that may be suitable include the Australian Institute of Company Directors, St James Ethics Centre and the Cranlana Programme.
- 16 Note: if there are less than 20 representative organisations that meet the criteria established for this chamber, then the Chamber will have less than 40 delegates to the National Congress. It is anticipated that the number of bodies eligible in this chamber will rise over time, particularly as regional and state/ territory level structures are created or improved.
- 17 This process is broadly based on the accreditation procedures for National Human Rights Institutions (NHRIs) at the United Nations and international level. In that process, NHRIs are assessed regularly through processes established by the International Coordinating Committee of NHRIs (ICC) on whether they meet criteria for genuine, independent national commissions as laid down in a resolution of the General Assembly of the United Nations. Those that qualify have full speaking status at the UN Human Rights Council, whereas those that do not qualify have restricted status and recognition. For further information on this process and the ICC see: <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx>.
- 18 In the event of a part-time member retiring or dying, it is proposed that they would be replaced by the candidate (of the same gender as the member they are replacing) who finished next in the election ballot.
- 19 The Steering Committee notes that this is a complex task. As a comparison, it took 3 full time officers at least 12 months to incorporate Reconciliation Australia when it was established.
- 20 Issues to be addressed include stating the voting rights of members, determining the number of the National Executive and the powers of the National Executive and procedures for appointing and retirement of Congress and National Executive Members among other things.
- 21 The full summary, including a description of the first round of consultations and copies of public submissions are available online at: <http://www.fahcsia.gov.au/sa/indigenous/progserv/engagement/NIRB/Pages/default.aspx>.
- 22 <http://www.parliament.uk/about/how/members/standards.cfm>.
- 23 ASX Corporate Governance Council, Principles of Good Corporate Governance and Best Practice Recommendations, March 2003, Available online at: <http://www.nfcgindia.org/ASXRecommendationsonBestCorporateGovernancePractices.pdf>
- 24 Source: Department of Prime Minister and Cabinet.
- 25 For the Declaration see: <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>
- 26 Please note: this list does not include state and territory level bodies, such as state-based education communities.

Further information

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Creating a sustainable National Representative Body for Aboriginal and Torres Strait Islander peoples

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In December 2008, the Australian Government requested that the Aboriginal and Torres Strait Islander Social Justice Commissioner convene an independent Steering Committee of Aboriginal and Torres Strait Islander people to develop a preferred model for a national representative body for Aboriginal and Torres Strait Islander peoples.

The Steering Committee's task was to:

- develop a preferred model for a new national Indigenous representative body for presentation to the Australian Government in July 2009;
- make recommendations in regards to the establishment of an interim body from July 2009 which would operate until the finalised body takes effect; and
- ensure strong community support for such a representative model.

This is the final report of the Steering Committee. It sets out the Committee's proposed model for a new National Representative Body for Aboriginal and Torres Strait Islander peoples.

The report sets out a vision of the substantial contribution that we hope the new National Representative Body will play over the next generation in order to ensure that the cultures and human rights of Aboriginal and Torres Strait Islander peoples are respected and protected, and so that Aboriginal and Torres Strait Islander children can truly enjoy equal life chances to all other Australians.

August 2009



**Australian
Human Rights
Commission**

everyone, everywhere, everyday