

Joint Select Committee on Constitutional Recognition Relating to
Aboriginal and Torres Strait Islander Australians 2018
PO Box 6021
Parliament House
Canberra ACT 2600

17 September 2018

Dear Members of the Committee,

The National Congress of Australia's First Peoples welcomes the opportunity to contribute a submission relating to the constitutional recognition of Aboriginal and Torres Strait Islander peoples. Our submission reflects the expertise, experiences and lessons which National Congress has developed as the national representative body for Aboriginal and Torres Strait Islander peoples and organisations.

The constitutional recognition of Aboriginal and Torres Strait Islander peoples is an incredibly important issue. Our unique position as the original custodians of our lands, and our histories, cultures, languages and traditions, form a fundamental and integral part of Australia's heritage. Yet as we make up only 3% of the total population of Australia, Aboriginal and Torres Strait Islander peoples are all too easily sidelined in political discussions. We have grown all too accustomed to political expediency winning out over genuine efforts to improve the wellbeing of Aboriginal and Torres Strait Islander peoples.

The creation of an Aboriginal and Torres Strait Islander voice to Parliament would go a long way towards combatting the challenges which we face. The voice would not function as a "third chamber of Parliament," as some of its detractors have claimed. Rather, it would serve as a source of advice and expertise for the Australian Parliament, portfolio ministers and government agencies to draw on at all stages of policy development. It would ensure that the voices of Aboriginal and Torres Strait Islander peoples across Australia are heard when decisions are being made which will inevitably affect our lives. Perhaps most importantly, it would ensure that the Australian Government does things with us – not to us.

National Congress urges the Committee to carefully consider our recommendations. We look forward to working with you to secure a better future for Aboriginal and Torres Strait Islander peoples.

Yours sincerely,

Dr Jackie Huggins
Co-Chair

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National Congress of Australia's First Peoples

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

September 2018

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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 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, and 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 to governments regarding key policy decisions relating to Aboriginal and Torres Strait Islander affairs.

Executive Summary

National Congress welcomes the opportunity to once again contribute a submission to the Joint Select Committee on the issue of constitutional recognition relating to Aboriginal and Torres Strait Islander peoples.

National Congress acknowledges the symbolic importance of recognising Aboriginal and Torres Strait Islander peoples in the *Constitution*. We are the original custodians of our lands and waters, and our languages, cultures and histories possess an ongoing importance to the heritage of Australia. However, symbolic recognition is not enough. Aboriginal and Torres Strait Islander peoples are regularly sidelined when it comes to policy discussion: we make up only 3% of the voting population, and as a result it is all too easy for politicians who purport to have our “best interests” at heart to do things to us, rather than with us. In this context, the importance of enshrining an Aboriginal and Torres Strait Islander Voice to Parliament cannot be overstated.

The voice would not be, as its detractors have suggested, a third chamber of Parliament. It would serve to provide the Australian Government, portfolio ministers and government agencies with advice relating to proposed legislation; recommendations for amendments; statements regarding Australia’s compliance with the *UN Declaration on the Rights of Indigenous Peoples*; and independently developed policies designed to secure a brighter future for Aboriginal and Torres Strait Islander peoples. National Congress does not envisage that the voice’s advice would be binding, but insists that it should be taken on board in good faith and valued.

National Congress reiterates that, if adequately supported and resourced, it could function as the voice. National Congress was the product of the *Our Future in Our Hands Report*, released in 2009 following an extensive process of community consultation. The organisation now represents over 9,000 individual members and 180 organisations, and possesses a wealth of expertise relating to all aspects of Aboriginal and Torres Strait Islander affairs. Many of our governance procedures – including the creation of an independent Ethics Council made up of Aboriginal and Torres Strait Islander experts responsible for overseeing disputes resolution, gender parity requirements for nominations, and direct election of Co-Chairs and National Board Members – are specifically designed to ensure that we accurately represent the aspirations of Aboriginal and Torres Strait Islander peoples.

Most importantly, National Congress stresses that the Australian Government must take urgent action to ensure that the voices of Aboriginal and Torres Strait Islander peoples are heard, and that substantive policy changes are made to assist us in overcoming the challenges which we face. National Congress was established after five long years of consultations and negotiations. We cannot afford to wait that long for the establishment of the voice: to do so would unnecessarily jeopardise the lives of Aboriginal and Torres Strait Islander peoples.

National Congress thanks the Joint Select Committee for considering our submission. We look forward to working together to secure a brighter future for Aboriginal and Torres Strait Islander peoples.

National Voice

Function and operation

Question 1

What is the role of a national voice? How does it intersect with or differ from the role of any local/regional voice?

As noted by the Joint Select Committee in its interim report, the diversity of aspirations and perspectives between various Aboriginal and Torres Strait Islander communities and organisations frequently poses difficult political challenges. A lack of a clear, unified policy reform often leads to the failure of state, territory and federal governments to take effective action.

The primary function of a national voice would be to serve as a unifying body for Aboriginal and Torres Strait Islander peoples, communities and organisations across Australia. Unification at a national level will allow Aboriginal and Torres Strait Islander peoples to more effectively shape policy which affects our lives, and overcome the natural political disadvantage which we face as a group which makes up only 3% of the Australian population. The voice would provide the Australian Government with clear principles, guidelines and feedback relating to policies which affect Aboriginal and Torres Strait Islander peoples.

National Congress acknowledges that unity on issues relating to Aboriginal and Torres Strait Islander peoples is not always be easy to achieve. However, the presence of a national voice is necessary to ensure that conflicting perspectives can be adequately taken into account, and that solutions which are satisfactory to all relevant parties can be developed. Compromise and negotiation is certainly preferable to the status quo, where positive views of the Australian Government's policies are often selectively cited in order to overstate the level of community support which they possess.

This acknowledgment of the need for compromise and negotiation cannot, however, be taken as an excuse to abandon local and regional community consultation. Satisfactory solutions to the challenges facing Aboriginal and Torres Strait Islander peoples cannot be developed unless a breadth of perspectives is taken into account. As such, National Congress reiterates that the voice must be properly resourced and adequately structured to engage in consultation with our communities and organisations before providing advice to Parliament.

Question 2

What powers and functions should the national voice have – only advice on laws made under s 122 and s 51(xxvi) or broader policy issues?

In order to have a meaningful role in advising the Australian Government on policies relating to Aboriginal and Torres Strait Islander peoples, the national voice must have the ability to review all legislation which it believes may have a tangible impact upon our peoples, communities and/or organisations. In addition, the voice should be provided with the resources and power to independently evaluate the ongoing effects of legislation, policy and programs.

National Congress asserts that the national voice must have the ability to review any legislation which it believes may have a tangible impact upon the lives of Aboriginal and Torres Strait Islander peoples. It would be highly inappropriate to restrict the ambit of the national voice to reviewing only legislation made under s 122 and s 51(xxvi) of the *Constitution*. Many laws disproportionately affect Aboriginal and Torres Strait Islander peoples, and yet are not explicitly related to race or the territories. The Cashless Debit Card Trial and the Community Development Program are significant examples of government programs which the voice must have the power to advise on, but which would likely to be excluded were unnecessary restrictions to be put in place. Furthermore, National Congress is concerned that such restrictions could provide incentives for politicians to seek support for legislation under alternative heads of power, thereby avoiding the voice's scrutiny.

Additionally, National Congress believes that the voice should have the power to independently propose policy to the Australian Government which it believes would be in the best interests of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander peoples make up only 3% of the Australian population and are therefore easily sidelined during elections and discussions surrounding policy. Empowering the voice with the ability to independently develop and propose solutions to the challenges facing our communities and organisations would allow challenges to be resolved both more quickly and more effectively.

Question 3

Which legislation should the voice have the power to advise on?

The national voice should have the power to advise on any legislation which may have a tangible impact upon Aboriginal and Torres Strait Islander peoples, communities, and/or organisations. This ambit is deliberately broad. The diversity of challenges which Aboriginal and Torres Strait Islander peoples face, and the comparatively higher proportion of our peoples who rely upon some form of government assistance, mean that many policies have indirect effects upon our peoples which must be accounted for. In this sense, the voice would function in a manner similar to the current Joint Committee on Human Rights, which reviews all bills and legislative instruments for compatibility with human rights.

The creation of specific terms of reference for reviews of legislation would ensure that all relevant issues are covered in the advice provided to Parliament. These terms could include:

- The impact of the policy upon the social, economic, cultural and spiritual wellbeing of Aboriginal and Torres Strait Islander communities;

- The appropriateness of the policy with respect to cultural, community and spiritual concerns; and
- The impact of the policy upon Australia's compliance with international human rights frameworks, especially the *UN Declaration on the Rights of Indigenous Peoples*, but also the *Optional Protocol to the Convention on Torture*, the Sustainable Development Goals, etc.

Question 3A

During which part of the policy making process should the voice provide its advice?

The voice should provide its advice at all stages of the policy-making process, ranging from the initial drafting process to providing ongoing reviews of policy implementation and effectiveness. National Congress asserts that providing the voice with flexibility as to how and when advice is provided allows for relevant issues to be addressed more quickly; risks to be identified and accounted for; and community consultations to be pursued in a timely manner when necessary. Given the lack of familiarity which many lawmakers have with Aboriginal and Torres Strait Islander affairs and the need to engage communities, providing the voice with the ability to provide advice at all stages of the policy making process is vital to developing lasting solutions to our challenges.

Ideally, the national voice should assess and provide recommendations relating to all proposed legislation before it is voted on or implemented. In particular, the voice should provide a statement regarding the compliance of legislation with the *UN Declaration on the Rights of Indigenous Peoples*. This is the same process currently used by the Parliamentary Joint Committee on Human Rights to comment on Australia's compliance with international human rights frameworks. By providing the voice with adequate resources to conduct community consultations effectively, the Australian Government can ensure that legislation is passed without impediment and with sufficient oversight.

Question 3B

By which avenues should this advice be provided? When?

National Congress stresses the importance of providing the voice with the flexibility to provide advice in the most timely and appropriate way possible. Offering the voice a range of avenues such as formal reports; discussion papers; reviews; meetings with community and organisational representatives; roundtables; and so on, would allow it the ability to provide advice in the manner best suited to the task at hand. Additionally, we believe that a statement of advice should be attached to all proposed legislation evaluating the impact of policies of Aboriginal and Torres Strait Islander peoples, and detailing any recommendations which the voice may have.

Question 3C

How could the voice advise the Executive in early stages of policy development?

See Question 3B. In general, National Congress believes that the voice should be given the flexibility to advise the Executive in the manner it believes will be the most effective. Involving the voice at the early stages of policy development through consultations regarding community aspirations and reviews of early policy drafts is essential to ensuring that policies relating to Aboriginal and Torres Strait Islander affairs are culturally safe and appropriate. This must include allowing the voice to independently provide advice to government agencies in order to facilitate inquiries and policy evaluations.

Question 3D

Should the provision of advice be mandatory or discretionary? Why?

National Congress believes that where laws are made specifically with respect to the territories or Aboriginal and Torres Strait Islander peoples, i.e. where they are supported by either s 122 or s 51(xxvi) of the *Constitution*, the referral of those laws to the voice, and the provision of advice, should be mandatory. In addition, the voice should be required to provide advice on all legislation which it believes could have a tangible impact upon Aboriginal and Torres Strait Islander peoples, communities and/or organisations.

Requiring the provision of advice on laws made under either s 122 or s 51(xxvi) of the *Constitution* ensures that relevant concerns, issues and risks are addressed with respect to legislation which explicitly affects Aboriginal and Torres Strait Islander peoples. This also serves as an important accountability mechanism, which discourages the negative perception of the voice as a body which only deals with issues which it perceives to be important.

Given the substantial amount of legislation which is considered by the Australian Government, the voice must be adequately resourced to be able to provide advice in a timely manner, and to adequately consider local and regional differences. National Congress also reiterates that allowing the voice to define the scope of what constitutes a relevant issue or legislation will prevent Parliament from restricting its ambit to merely matters which it wishes to be advised on.

Question 3E

Should that advice be made public and if so how and when?

Ensuring that advice provided by the voice is made public is central to maintaining its accountability. National Congress suggests that advice should be made public after the stage of policy-making to which it is relevant has concluded, and that non-confidential information (e.g. minutes from meetings, reports, discussion papers, etc.) should be made available for download online.

The public distribution of the advice provided by the voice, of course, raises serious concerns with respect to the privacy of individuals and communities involved in consultations. National Congress therefore recommends that personal information and details relating to specific events should only be published with the consent of the parties concerned. Where they are referred to but consent has not been given, they should be redacted from the publicly available version of the advice.

National Congress of course accepts that some additional exceptions may be made with respect to legislation concerning sensitive issues such as defence and intelligence. However, we envisage that such exceptions would be relatively rare, and must be thoroughly justified by the Australian Government.

Question 4

How should issues of justiciability (challenge in the courts) be dealt with?

National Congress asserts that the functions of the voice should be non-justiciable. As the function of the voice is to act as an advisory body, and not – as has been suggested by some – as a “third chamber of Parliament,” ensuring that the voice is non-justiciable would allow the supremacy of the Australian Parliament to be respected, and avoid the uncertainty created by interventions by the High Court. Furthermore, non-justiciability would allow the voice to operate as an independent advisory body without the threat of judicial intervention in its functions.

With respect to how the non-justiciability of the voice could be established, National Congress is broadly supportive of proposals to insert words to the effect of “debating proposed laws,” which has the effect at common law of indicating that the body concerned has functions which are non-justiciable.

Question 5

Should the voice be responsible for service delivery?

National Congress strongly asserts that the voice should not be responsible for service delivery. The purpose of the voice is not merely to be a national service provider: it is to function as an advisory body to Parliament, which guarantees that the voices of Aboriginal and Torres Strait Islander peoples across Australia are heard at each stage

of the policy-making process. To task the voice with service delivery would, in National Congress' view, be highly inappropriate.

National Congress notes that one of the contributors to the downfall of the Aboriginal and Torres Strait Islander Commission ("ATSIC") was the fact that it was responsible for both service delivery and advocacy relating to Aboriginal and Torres Strait Islander affairs. This meant that it was overburdened, and could not perform either of its functions to an adequate standard. Allowing the voice to specialise in reviewing and overseeing government legislation would ensure both the timely and effective provision of advice.

Additionally, National Congress is concerned that giving the voice responsibility for service delivery would severely damage its independence, by increasing its reliance upon the Australian Government for the provision of funding. It is also difficult to imagine how the voice could be actively critical of service delivery programs which it itself would be responsible for administering. As such, National Congress reiterates its position that the voice should serve solely as an advisory body, with no additional function as a service provider.

Question 6

Should the voice have a say on the provision of services by government (state, territory and local governments)?

National Congress believes that the voice should be able to provide advice and guidance relating to the provision of services by government. Aboriginal and Torres Strait Islander peoples are disproportionately affected by decisions relating to service provision due to the unique range of social, economic, health, geographic and cultural challenges which we face. Allowing the voice to provide some oversight in an advisory role over the delivery of services is an important step towards ensuring that effective and lasting solutions are developed.

Additionally, allowing the voice to have a say on the provision of government services would encourage the allocation of funds to programs and service providers capable of delivering lasting solutions to Aboriginal and Torres Strait Islander communities. National Congress stresses, for instance, that appropriately supported Aboriginal and Torres Strait Islander community-controlled organisations (many of which are overlooked during government tendering processes) are uniquely capable of offering culturally safe and community-oriented solutions which are potentially far more effective in resolving the challenges which our peoples face. A national voice would be best placed to ensure that adequate consideration is given to social and cultural factors, in addition to economic factors, in the design and delivery of government services.

Question 7

Should the voice have the power to review government expenditure?

In general, National Congress views allowing the voice to oversee government expenditure as a logical extension of allowing it to provide advice relating to policy and service delivery. Decisions relating to government spending have a profound impact upon Aboriginal and Torres Strait Islander communities and organisations, and thus reviewing the efficacy and distribution of that spending is crucial to allowing the voice to fulfil its role as a representative body for our peoples.

National Congress notes that the Productivity Commission's Indigenous Expenditure Report is frequently met with consternation by Aboriginal and Torres Strait Islander leaders, communities and organisations. Government estimates of expenditure relating to Aboriginal and Torres Strait Islander affairs frequently overstate the amount which is spent on programs specifically aimed at our peoples: of the \$33.4 billion cited as Indigenous expenditure in 2017, just \$6 billion was spent on Aboriginal and Torres Strait Islander-specific programs. Allowing the voice to have oversight over government spending would ensure both more accurate reporting of the distribution of expenditure and greater transparency, as well as, in all likelihood, more effective programs.

Question 8

Should the voice have the power to self-initiate inquiries?

The national voice should have the power to self-initiate inquiries into issues relating to Aboriginal and Torres Strait Islander affairs as it sees fit. National Congress does not believe that it is appropriate to restrict the scope of the voice's powers to merely examining matters referred to it by the Australian Government or the Commonwealth Parliament. Although its primary function is to act as an advisory body to Parliament, this role is best fulfilled when the voice is able to function autonomously, and to investigate issues which may have escaped the government's attention.

Aboriginal and Torres Strait Islander peoples have long and frequently been treated as political footballs by governments. The small proportion of Australia's population – only 3% - which our peoples make up mean that we are particularly vulnerable to being marginalised in the interests of political parties. As a result, many of the challenges which affect Aboriginal and Torres Strait Islander peoples, communities and organisations receive comparatively little attention. In order to properly represent the interests of our peoples, the voice must be able to self-initiate inquiries into issues so that it may make appropriate suggestions to Parliament as to how they may be resolved.

Question 9

How could the voice review programs and service delivery?

The review of extant policy and programs is essential to ensure effective and efficient government, and to guarantee that public funds are not wasted on programs which are ineffective and do not benefit Aboriginal and Torres Strait Islander peoples.

National Congress emphasises the importance of engagement and collaboration with Aboriginal and Torres Strait Islander communities and organisations through consultations as part of an effective process of evaluating programs and government service delivery. Too often, a focus on quantitative data obscures the social, familial and cultural ramifications of government policies which have long-term impacts upon the wellbeing Aboriginal and Torres Strait Islander peoples. The interpretation of this data also tends to be one-sided and influenced by the government's political calculations. Additionally, the usefulness of quantitative data can be significantly limited by issues relating to data collection, such as the inadequate framing of questions and difficulties controlling variables.

The voice must be afforded the resources and power to consult with those it is responsible for representing and ensure that these impacts are properly accounted for.

Question 10

How should the voice interact with the Parliament in a transparent, accountable manner representing the views of Aboriginal and Torres Strait Islander peoples across Australia? Should the advice from the voice be binding or advisory only?

In National Congress' view, the function of the voice should not be to act as a "third chamber of Parliament." As such, we do not foresee that the advice provided by the voice would be treated as binding. However, reflecting the aspirations of the Special Gathering Statement made earlier this year, the advice must be seriously considered and valued, and any recommendations must be evaluated in good faith. In this sense, it would be treated similarly to the outcomes of Senate Estimates hearings in terms of its direct impact on reshaping and refining government policy.

Ensuring that the voice is transparent and accountable in the way that it represents the views of Aboriginal and Torres Strait Islander peoples across Australia is paramount. The publication, where possible, of documents detailing the advice provided by the voice and the facilitation of community consultations will allow members of both the Aboriginal and Torres Strait Islander and non-Indigenous communities to review the function of the voice and raise any relevant concerns or issues. National Congress reiterates, however, the importance of maintaining the privacy of individuals who do not consent to having their personal information shared is extremely important: maintaining community support for and trust in the voice requires ensuring that it does not jeopardise the safety or privacy of those it is responsible for representing.

However, National Congress stresses that the voice must also be provided with the opportunity to remain accountable and transparent in its representation of Aboriginal and Torres Strait Islander peoples. That is, the independence of the voice from the Australian Government and political influences must always remain a paramount concern. Transparency is a two-way street: the government cannot, and must not, seek to exert undue pressure upon the voice, and then subsequently claim that it is acting improperly. As such, we assert that measures must be implemented to secure the independence of the voice, and to prevent its advice from being distorted by political influences.

National Congress welcomes the opportunity to discuss further accountability measures as part of this submission. These will be explored in response to additional questions below.

Question 11

What resources would be required for the operation of an effective voice?

As this submission has detailed, in order to successfully provide quality advice to the Australian Government and represent the voices of Aboriginal and Torres Strait Islander peoples, the voice will be required to perform a wide variety of functions. These include not only advising government agencies, Portfolio Ministers and Parliament on the viability and potential outcomes of proposed legislation, but also proactively creating and recommending new policy, conducting evaluations of extant programs, overseeing and executing inquiries on relevant issues, and consulting with local and regional communities.

Logically, the voice will require stable sources of funding to ensure that it is able to act independently and convey concerns regarding government policy where necessary. National Congress invites the Joint Select Committee to learn from the mistakes of the past, and to ensure that it is not set up to fail. It is no use providing the voice with a plethora of responsibilities and then subsequently starving it of the resources which it requires to fulfil them. We stress that providing the voice with appropriate resources is a cost-saving measure in the long run, as it more effectively streamlines the development of policy, and prevents wasteful expenditure on ineffective or unpopular programs.

Question 12

What governance mechanisms should oversee the national voice?

As outlined in our first submission to the JSC and elaborated upon herein, National Congress asserts that it should be considered as the voice – a role that it currently plays to the degree possible given its very limited financial resources. Built into the

original National Congress constitution and organisation is an independent council that monitors its ethical standards and conduct. National Congress proposes that this structure be retained in the Voice and that the Ethics Council should be comprised of experts on Aboriginal and Torres Strait Islander affairs with a diverse range of backgrounds and expertise, who are able to provide quality advice on standards and guidelines to the Board, members and staff. Additionally, the Ethics Council is responsible for mediating internal disputes should they arise, and assist in the process of determining appropriate disciplinary measures where necessary.

Question 12A

How are internal disputes resolved?

National Congress notes that it, and its Ethics Council, already have well established procedures for dispute resolution. These procedures have been built in accordance with a number of central principles, including the promotion of amicable resolutions, and ensuring that the values and aspirations of Aboriginal and Torres Strait Islander peoples are accurately reflected.

As noted above, the formation of an independent monitoring body as part of the voice would allow internal disputes to be heard by unbiased decision makers. Internal disputes should be brought before this body (the “Ethics Council”), and parties to the dispute should be given a fair opportunity to have their cases heard, and to present any relevant evidence which they may possess. The Ethics Council should then make a determination as to the appropriate resolution of the dispute.

While some degree of procedural strictness is obviously required to ensure that all parties are treated fairly, National Congress would recommend against any quasi-judicial level of formality (i.e. representation by legal counsel, and so forth). Formal environments can be intimidating and unfamiliar to many individuals, and therefore has the potential to dissuade the reporting of misconduct and disputes. Additionally, allowing parties to be heard in a calm and welcoming environment would alleviate the stress associated with dispute resolution.

Where appropriate, internal disputes may also be resolved according to mediation procedures. In a mediation, the parties to the dispute would be able to meet in the presence of an impartial mediator, who can ensure that resolutions relating to the dispute are conducted in a calm and confidential environment. Mediation has a number of advantages: in many cases, it offers a speedier resolution to the dispute; it is less formal (and therefore in some ways less impersonal and intimidating); and perhaps most of all, allows the parties to come to their own satisfactory determination.

However, mediation should not be a mandatory part of the disputes resolution process, and should be conducted only with the agreement of both parties involved, and if the Ethics Council believes it to be an appropriate course of action. Where mediation fails, the dispute could then be referred to the Ethics Council for determination.

Question 12B

If members of the voice act in a way as to bring the voice into disrepute, what is the procedure for removing them?

National Congress wishes to draw the Joint Select Committee's attention to its own existing processes and procedures for dealing with misconduct by its members and representatives. In particular, we recommend the implementation of a Code of Conduct, so that clear expectations are set for all members of the voice.

The Ethics Council may be responsible for overseeing the process by which those who bring the voice into disrepute are potentially removed. The procedure for removal must abide by the legal requirements for removing members from constituted organisations, which can be generally summarised as follows:

- The member who is the subject of the allegations and potentially subject to disciplinary investigation should be informed of the grounds of the investigation;
- The member in question should be given the opportunity to make a response after being provided with the relevant information, in accordance with their right of reply;
- The Ethics Council must remain impartial and give ample consideration to due process and natural fairness in recommending a course of action to be taken;
- The investigation should be completed as soon as practicable; and
- The Board of the voice should be responsible for making the final decision relating to the recommendations provided by the Ethics Council.

Structure and membership

Question 13

Who should be able to choose national representatives?

All Aboriginal and Torres Strait Islander peoples who are fit and proper persons should be eligible to take part in elections for the voice. This is in line with the representative nature of the voice, and the importance of engaging community members and leaders in the process of providing advice to the Australian Government on legislation and policy.

There are a number of different options for the structure of elections for national representatives. National Congress welcomes the opportunity to discuss these options, and they are detailed below.

Question 14

By what process should they be chosen?

Like National Congress, the voice's national representatives should be chosen via a process of democratic election, in which Aboriginal and Torres Strait Islander peoples 18 years or older are eligible to participate. This ensures that the voice is truly representative of the aspirations of Aboriginal and Torres Strait Islander communities and organisations. Furthermore, encouraging community members to participate in elections is vital to maintaining popular investment in the voice, and avoiding the perception that it is merely "just another" organisation without the capacity to meaningfully influence government policy. This would be in line with Australia's obligations under the *UN Declaration on the Rights of Indigenous Peoples*, and contribute significantly to the empowerment of Aboriginal and Torres Strait Islander peoples.

National Congress echoes the concerns raised by the New South Wales Aboriginal Land Council and Ms Patricia Turner in their respective submissions with respect to the representation of Aboriginal and Torres Strait Islander peoples living in remote and regional Australia. Given the diversity of Aboriginal and Torres Strait Islander experiences, it is important the voices of all of our peoples are heard.

National Congress therefore asserts that measures must be implemented to allow communities the autonomy to decide the way in which they are represented. This has the advantage of taking into account the differing social and cultural practices of different Aboriginal and Torres Strait Islander groups, and recognising and valuing the importance of customary practices such as the election of elders via oral reclamation. This recognition is important, as it ensures that the voice legitimately represents the views of Aboriginal and Torres Strait Islander peoples, rather than only those who are capable or willing to participate in formal elections.

The creation of a national body, such as an Aboriginal and Torres Strait Islander Electoral Certification Authority, could serve to certify the results of any local elections, identify the individuals who have been elected, and delineate electorate or constituency boundaries as necessary.

As noted above, a number of options exist with respect to the electoral model for the national voice. Two of these options are discussed below.

Option 1: Direct election

One possible option for an electoral model would be for candidates to be directly elected by voters, in a manner similar to that used to elect members of the House of Representatives. Candidates could stand for election in a given state or territory, and would represent that state or territory if elected. Measures could be implemented to ensure that the number of representatives elected in each state and territory correlates with the population of that region; i.e. states with higher populations, such as New South Wales, would receive a higher number of seats in the national voice.

Option 2: Region-based elections

Another possible option is for individual communities to select representatives to speak on their behalf. The number of representatives would correlate with the population of the community, such that communities (such as those located in inner city areas) with higher populations elect a higher number of representatives.

These communities could then be grouped into a number of regions of roughly equal population (as per National Congress' Truth and Justice Commission Proposal, included in the previous submission made to the Joint Select Committee, the appropriate number would be approximately 62). The community representatives would then be called together to elect two individuals to represent the region in the national voice. Those elected as national representatives would remain accountable to their regional delegates through measures such as mandatory reporting of the voice's activities; spending disclosure requirements; and community consultation and forums.

A regional electoral model has the benefit of allowing for greater scope with regards to recognising traditional cultural practices such as group discussions and oral acclamation. Such practices may be difficult to accommodate under a model which is more akin to that which is used in federal elections. National Congress reiterates the importance of valuing the views of all Aboriginal and Torres Strait Islander peoples to ensure that the voice is truly representative.

Question 15

How long should members serve?

National Congress suggests that, similarly to members of both the House of Representatives and the ACT Aboriginal and Torres Strait Islander Elected Body, members of the national voice should serve for a term of three years. This strikes a good balance between allowing for members to build experience working with the Parliament, portfolio ministers and government agencies in order to pursue substantive policy change, and providing voters with opportunities to hold their representatives to account.

National Congress stresses, however, that members' terms should overlap with those of members of the House of Representatives. That is, elections for the national voice should be held at a different time – preferably in a different year, if possible – to elections for the Federal Parliament. This will allow for greater continuity in the advice provided by the voice; the opportunity to provide incoming governments with recommendations relating to proposed policies (and in particular, those contained in their electoral platforms); and the prevention of electoral fatigue and confusion within communities.

Question 16

How does the voice ensure equal representation of men and women?

National Congress' constitution ensures gender parity for all elected positions. This requirement should be retained. Each region could elect two representatives to serve as members of the national voice. To ensure equal representation of men and women, a policy could be implemented which requires at least one of those representatives to be a woman. National Congress notes that it has a similar policy with respect to the election of its Board of Directors and co-Chairs, and that it has been highly successful in not only ensuring equal gender representation on the National Board, but also promoting engagement by female members with the organisation and electoral process.

Question 17

How does the voice ensure both young people and elders are heard?

First, young people and elders should be encouraged to nominate. This can be accomplished through a mixture of community outreach programs seeking to raise awareness of the voice and its elected nature, and initiatives specifically targeted at young people and elders to encourage participation in the electoral process, consultations and forums.

Furthermore, specific forums and processes for enabling young people and elders to be heard should be developed and implemented. Generalised community consultations may not always be appropriate for ensuring that voices from all sectors are heard: some individuals may not feel comfortable sharing their experiences with the whole community, or may have issues relevant to their particular age group sidelined in favour of more general discussion. Therefore, National Congress believes that the voice should develop youth-only and elder-only forums, as well as other procedures, which allow individuals from all age groups to be heard.

Question 18

What duties should such representatives have to their constituents?

National Congress characterises the duties which representatives have to their constituents as being similar to those which Members of the House of Representatives currently possess to their constituents. This includes being required to provide reports relating to any expenses to either or both the Ethics Council and the Aboriginal and Torres Strait Islander Electoral Authority, and to publish details of spending so that they can be subject to public scrutiny. Furthermore, members should be required to detail to their constituents the content of the advice and recommendations they have

made to Parliament, government agencies and portfolio ministers; notable achievements which either they personally or the voice have made; and details regarding upcoming policy decisions and issues.

In addition, members should be responsible for conducting community consultations and inquiries in conjunction with the Australian Government. This could serve as an extension for current consultations which are undertaken unilaterally by government departments and portfolio ministers: members of the voice could seek to guide and reshape these measures to ensure that all Aboriginal and Torres Strait Islander peoples are given a fair opportunity to have their opinions heard. Additionally, members could report upon relevant issues to community delegates, to provide them with the opportunity for reflection and to make any recommendations which they may have. This could also serve as an accountability measure, to verify the impact which members of the national voice have had in their positions.

Question 19

Should the voice have the power or obligation to conduct consultation or inquiries?

The voice should have the means and power to conduct consultations and inquiries where it is desirable and practical to do so. This should ultimately be determined by Aboriginal and Torres Strait Islander communities, and the aspirations and other relevant matters which they raise. Consultations, inquiries and ongoing monitoring of extant programs are particularly important given the complexity and importance of many policy issues relating to Aboriginal and Torres Strait Islander affairs, which require the input, expertise and evidence provided by individuals with a diverse range of cultural, social, economic and political experiences.

Given that the voice will occasionally have to deal with matters which require a quick turnaround or are particularly sensitive in nature, National Congress does not view it is appropriate to place an obligation upon the voice to conduct consultations or inquiries for every piece of proposed legislation. However, an expectation should be set that these steps will be taken routinely, by ensuring that the Australian Government is encouraged to work in partnership with the voice, and provide adequate justifications where it calls upon it to act. Generally, the voice should be guided by the needs of the communities and regions which it represents.

Question 20

What mechanisms can be used to promote the active participation of Aboriginal and Torres Strait Islander peoples in the voice at the national level?

See above. In general, ensuring that electoral processes account for customary practices; holding ongoing consultations and inquiries; and encouraging diversity in

the voice will build community enthusiasm for the voice. Perhaps most importantly, the voice will also be reliant upon the Australian Government to take its recommendations in good faith and to implement them, so that it is able to have a real and tangible impact upon Aboriginal and Torres Strait Islander peoples' wellbeing. This positive impact will allow the voice to affirm its representative status via consultations and evaluations, and establish its long-term sustainability.

Question 21

How can local voices be effectively represented at the national level?

See Question 14. In general, members of the national voice should work with local and regional representatives, organisations and authorities to ensure that topical matters which impact at a regional level are dealt with in a manner which is fair and representative of all affected Aboriginal and Torres Strait Islander peoples. Members of the national voice would serve to channel advice and recommendations from these local and regional voices to the national voice.

Question 22

How should the national voice interact between existing representative bodies, in particular local/regional bodies and community-based organisations?

The voice should not function as the exclusive body responsible for all consultation with Aboriginal and Torres Strait Islander communities and organisations, but it can coordinate them. National Congress currently includes a chamber of 40 delegates for peak representative organisations, and another for other Aboriginal and Torres Strait Islander organisations. If the Voice is established and functioning well, organisations will nominate representatives for election. This ensures representation, and creates further opportunities for participation by all organisations at a national level. NC recognises that many local and regional bodies and community-based organisations may wish to continue to provide advice and hold consultations separately to the voice, and strongly believes that they should continue to be allowed to do so. As such, broad statutory requirements which currently exist with regards to consulting Aboriginal and Torres Strait Islander peoples – such as those which require Parliamentary Committees to take into account the views of our communities and organisations in inquiries such as the one currently being conducted by the Joint Select Committee – should be maintained.

The national voice may take advice or seek submissions from local and regional bodies and community-based organisations, in a similar manner to which Parliamentary Committees and government departments presently seek submissions. In addition, forums should be convened on topics relevant to the issues being considered by the voice, and Aboriginal and Torres Strait Islander peoples should be invited and provided with the means to contribute. National Congress reiterates,

however, the necessity of protecting the anonymity of participants where they do not consent to having information about them published, to avoid possible reprisal and breaches of privacy.

Question 23

How would the voice interact with national Indigenous organisations with expertise in areas such as health, housing and education?

See above. Where the voice is required to deal with issues relating to a specific policy area (e.g. health, housing or education), it would have the ability to seek advice from national organisations with expertise in those areas via initiatives such as topical forums and consultations, and incorporate that advice into the recommendations provided to the Australian Government.

National Congress stresses that Aboriginal and Torres Strait Islander peak organisations have a wealth of experience and expertise in dealing with many of the challenges which our peoples face. Organisations such as the Closing the Gap Steering Committee, Redfern Statement Alliance and National Health Leadership Forum should continue to be provided with the ability to directly contribute to both reviews of extant policy and the development of recommendations and policy proposals.

Establishment and Interpretation

Question 24

What is the relationship between the national voice and the local/regional voice?

As discussed above, the national voice would serve as the unifying body which accounts for the perspectives provided by local and regional voices and negotiates policy positions which are satisfactory to all parties. National Congress recognises that there exists a diversity of viewpoints and opinions with respect to policies relating to Aboriginal and Torres Strait Islander affairs, and that unification may sometimes be a difficult process. However, the national voice must be provided with the resources necessary to unite Aboriginal and Torres Strait Islander peoples, organisations and representative bodies in order to effectively advise the Australian Government on policy decisions.

The national voice would maintain a close relationship with local and regional voices by, for instance, engaging in community consultations and seeking advice on any policy matters it is in the process of reviewing. Members of the national voice could be held accountable by the communities which have elected them through the electoral cycle, and through establishing requirements which require national members to report on the progress made by the voice to local and regional organisations. In

addition, the relationship between the national and local and regional voices should be a collaborative one, which allows matters of particular concern to local and regional organisations to be elevated and prioritised if sufficiently justified.

Question 25

What is the relationship between the national voice and the Minister for Indigenous Affairs, and other members of the Executive? How will it work?

Many of the features of the relationship between the national voice and the Minister for Indigenous Affairs and other members of the Executive have already been outlined. National Congress suggests that the voice should serve as the mandated primary source of advice on issues relating to Aboriginal and Torres Strait Islander affairs. Positions which could be used to circumvent this priority, such as the Special Envoy on Indigenous Affairs, or the Indigenous Advisory Council, should be abolished following the establishment of the voice, or alternatively serve only as secondary, supplementary sources of advice.

Where a matter is referred to the voice by the Executive, the voice will seek to provide advice on that matter in the means it deems most appropriate. In most cases (i.e. where there is no need for a quick turnover), the provision of advice will follow a period of community consultation and confirmation, in which the members of the national voice will be responsible for gathering the perspectives of individuals living in the regions that elected them.

National Congress believes that the Minister for Indigenous Affairs should be required to work closely with the voice on all major policy decisions relating to Aboriginal and Torres Strait Islander affairs. This includes referring issues and proposals to the voice during the early stages of the policy creation process; providing it with ongoing information regarding the development of policies; and engaging it in evaluating the efficacy of programs during and following their implementation. Other ministers or government agencies could also refer matters to the voice where they believe that they may have a tangible impact upon Aboriginal and Torres Strait Islander peoples. These matters could be referred to in a manner similar to that used during Senate Estimates, in which the voice has the opportunity to ask questions relating to government policy and scrutinise the executive.

National Congress reiterates, however, that the voice should also have the power to self-initiate inquiries and to develop policies informed by Aboriginal and Torres Strait Islander peoples, which can be presented to the Minister for Indigenous Affairs, other Ministers, or the Australian Government. That is, while the Minister for Indigenous Affairs should work closely with the voice, the voice's powers and ambit should not be limited by the Executive. Many aspects of policy relating to Aboriginal and Torres Strait Islander affairs are sidelined due to political expedience or a lack of understanding relating to the aspirations and needs of our peoples, and the voice must retain the freedom to advocate for these issues.

Finally, while National Congress believes that the voice must work closely with the Minister of Indigenous Affairs, we strongly assert that it should retain a degree of independence from the Executive. That is, it would be highly inappropriate for the Minister for Indigenous Affairs, or any other member of the Executive, to serve as a member of the voice, in the same way that it would be inappropriate for non-Ministers to sit in Cabinet. The voice must be provided with the independence necessary to have robust discussions regarding proposed policies, and to act without interference from the Australian Government.

Question 26

What is the most cost effective way the voice can be implemented?

National Congress believes that if properly resourced, it could be redeveloped into the national voice. With offices in Canberra, Sydney and Brisbane, and over 9,000 individual members, National Congress already possesses much of the basic infrastructure needed to embark on the project of representing the views of Aboriginal and Torres Strait Islander peoples across Australia. By restoring funding to the organisation, the government would empower it to use this infrastructure to engage in the functions required of an effective advisory body to Parliament.

Additionally, National Congress highlights the fact that it was the result of a number of years of community consultation, resulting in the *Our Future in Our Hands* Report in 2009. This was a costly delay which left Aboriginal and Torres Strait Islander peoples without a unified, national representative body for a period of almost five years following the abolition of the Aboriginal and Torres Strait Islander Commission. Such delays are costly not only in monetary terms, but also in terms of the substantial damage that is caused to our communities when policies are implemented without the oversight and advice of Aboriginal and Torres Strait Islander leaders and organisations. Redeveloping National Congress into the national voice would effectively avoid this delay.

Question 27

What is the relationship with state, territory and local government? Should the voice have the power to advise the Council of Australian Governments?

As the national unifying body for Aboriginal and Torres Strait Islander affairs, the voice will naturally maintain an important relationship with state, territory and local governments. The voice would, importantly, provide state, territory and local governments with information regarding the implementation of national policies; the consequences of possible interactions between these policies and state and local-level policies; and with recommendations with respect to aspects such as policy implementation and operation which state, territory and local governments may play some part in.

The voice would also serve as a useful co-ordinating body, which can advise state, territory and local governments on ways to co-ordinate policy implementation so as to maximise their benefit to Aboriginal and Torres Strait Islander peoples. For instance, the voice could provide guidance to policies which it has designed that require implementation at the state, territory and/or local government-level. Unified action, across state and territory borders, is important for maintaining the equality of outcomes for Aboriginal and Torres Strait Islander peoples, and ensuring that national standards relating to issues such as cultural safety and community engagement are met.

Finally, the voice could provide advice relating to state, territory and local-level matters, either by working directly with the relevant agencies, or through attendance of meetings of the Council of Australian Governments where necessary. National Congress recognises, however, that local and regional voices may occasionally be better suited to providing advice on regional matters with which they are more familiar. In these cases, we believe that the voice should work in conjunction with local and regional organisations in order to ensure that all relevant issues are covered.

Question 28

Should the national voice be in the Constitution? If so, what should the Constitution say?

As recommended by both the final report of the Referendum Council and the Statement from the heart, the national voice should be enshrined in the *Constitution*. In past years, Aboriginal and Torres Strait Islander representative organisations – dating back to the National Aboriginal Consultative Committee, and perhaps most notably the Aboriginal and Torres Strait Islander Commission – have been disbanded in the name of political expediency. While National Congress acknowledges the existence of some issues surrounding the conduct of individuals employed by these organisations, there has never been – and will never be – a good reason to throw the baby out with the bathwater. Representation for Aboriginal and Torres Strait Islander peoples, and a direct advisory voice to Parliament, are structurally necessary for the advancement of our communities and organisations.

The acknowledgment of Aboriginal and Torres Strait Islander peoples would be an important step towards reconciliation. Recognising the position of First Peoples as the original custodians and owners of Australia, and reconciling with Australia's colonial history is, as asserted in National Congress' previous submission relating to Constitutional Recognition, is not only of symbolic importance, but also has profound impacts in terms of healing intergenerational trauma and allowing our peoples' stories to be shared. Enshrining the national voice in the *Constitution* would pave the way for a more collaborative and respectful approach towards Aboriginal and Torres Strait Islander affairs, and a brighter future for our peoples, communities and organisations.

General

Question 29

What is the most appropriate and effective means for constitutional recognition of Aboriginal and Torres Strait Islander peoples?

National Congress acknowledges the symbolic importance of constitutional recognition for Aboriginal and Torres Strait Islander peoples. The formal acknowledgment, embedded in the founding document of the Commonwealth of Australia, of Aboriginal and Torres Strait Islander peoples as the original custodians of our land, and of our cultures, histories and languages, would be an important step towards reconciliation and overcoming past trauma.

However, mere symbolic recognition is not sufficient, and must be combined with substantive change to assist Aboriginal and Torres Strait Islander peoples in overcoming the challenges which we face. Aboriginal and Torres Strait Islander peoples are easily sidelined by the Australian political process: we make up only 3% of the Australian population, and therefore frequently lack the political capital necessary to push for substantial policy reform. Enshrining an advisory body to Parliament, responsible for reviewing legislation, providing advice to the Executive and the Australian Government, and proposing policy reforms would allow Aboriginal and Torres Strait Islander peoples to overcome this disadvantage.

Question 30

Should the voice be constitutionally entrenched, enacted by legislation, both or either? Why?

National Congress' view is that the representative and advisory nature of the voice should be constitutionally entrenched, but that the precise details relating to its makeup and functions should be defined by legislation. This will ensure that the voice cannot simply be abolished or sidelined in the name of political expediency, while ensuring that it does not become a "third body of Parliament." Additionally, allowing some scope for the voice's functions and makeup to be defined by legislation will ensure greater flexibility, meaning that the Australian Government can, for instance, expand its size and scope when unforeseen or particularly difficult issues need to be resolved.

Question 31

What order should the implementation of The Voice (local, regional, or national) proceed?

- ***Should a referendum or statute to establish The Voice (local, regional, or national) come first?***

- ***Should consultation to co-design The Voice (local, regional, or national) precede or follow legislation or a referendum?***
- ***Should some provision be made in relation to the possibility of an unsuccessful referendum?***
- ***What benefits and challenges do these alternative approaches present?***

National Congress believes that the voice should be initially created via legislation, either by amending the *Aboriginal and Torres Strait Islander Act 2005* (Cth), or by creating new legislation supported by either the “race power” or the “external affairs power” contained in ss 51(xxvi) and (xxix) of the *Constitution* respectively. This is necessary due to the urgent need for greater input from Aboriginal and Torres Strait Islander communities in the design and delivery of government policy and programs. However, a referendum to constitutionally enshrine the voice should be sought soon after its creation via legislation, to ensure that it will not be abolished or de-funded as many Aboriginal and Torres Strait Islander organisations have been in the past.

Consultation to co-design the voice should precede the enactment of legislation to ensure that community support and faith in its capacity to represent the aspirations of Aboriginal and Torres Strait Islander peoples is maximised. However, National Congress asserts that much of the community consultation required to create an effective representative body was done in the process of preparing the *Our Future in Our Hands Report* in 2009. Many of the concerns expressed by Aboriginal and Torres Strait Islander peoples then are still highly relevant now, and should be incorporated into the design of the new national voice.

We reiterate our suggestion from our previous submission that National Congress, if properly resourced, could function as the voice. National Congress currently operates out of three capital cities – Sydney, Brisbane and Canberra – and, if provided with the necessary funding and support, could easily be expanded to cover the entirety of Australia. Additionally, we possess many of the structures necessary to avoid the pitfalls of past Aboriginal and Torres Strait Islander organisations: the Ethics Council, made up of experts in Aboriginal and Torres Strait Islander affairs, oversees National Congress’ activities and assists in the resolution of disputes and investigation of any potential misconduct. The existence of quotas for female representatives, and an electoral structure which allows all members to have a direct say in the makeup of the National Board, could be expanded to create a truly representative body for all Aboriginal and Torres Strait Islander peoples.

National Congress notes that opinion polling strongly indicates that a referendum to enshrine the voice in the constitution would be successful. In the unlikely event that it is not, however, we recommend that the voice continue to operate, using the relevant legislation as a basis for its operations. We urge the Australian Government to not make the same mistake as past governments by defunding the voice in the name of political expediency, and reiterate the importance of continuing to seek advice and guidance from Aboriginal and Torres Strait Islander communities regardless of whether it is required by the *Constitution*.

Question 32

What should a constitutional provision for The Voice (local, regional, or national) encompass? Why?

- ***Should it acknowledge the unique status of Aboriginal and Torres Strait Islander peoples, their enduring presence, languages, cultures, and heritage? If so, how?***
- ***Should it ensure the non-justiciability of the structure or function of The Voice? How could it do this and why is it important?***
- ***Should it describe the structure and functions of The Voice? Why?***
- ***What provision should it make for possible local, regional, and national elements of The Voice?***

As detailed above in response to Question 28, National Congress believes that the constitutional provision for the voice should require that there be a representative advisory body for Aboriginal and Torres Strait Islander peoples, and broadly define its functions and powers. In addition to the proposed s 60A referred to above, National Congress suggests that an additional provision should be added which acknowledges the unique status of Aboriginal and Torres Strait Islander peoples; our position as the original custodians of our land; and the enduring importance of our presence, languages, cultures and communities to the heritage of Australia.

The issue of non-justiciability has been discussed above, in response to Question 4. In short, National Congress believes that it would be appropriate in the interests of maintaining the independence of the voice that its functions remain non-justiciable. This could be accomplished by inserting the words “debating proposed laws” into the constitutional provision enshrining the voice, which has the effect at common law of indicating non-justiciability.

The constitutional provision for the voice should contain elements which ensure that its representative nature; independence; and functions relating to providing advice and developing policy are maintained. However, the constitutional provision should not be a substitute for legislation, and precise details relating to the provision of resources, operation and makeup of the voice should be left to the Australian Parliament to decide. There should merely be enough to ensure that future governments cannot, out of political expediency, seek to undermine the voice or sideline it.

Question 33

How could a constitutional provision for The Voice (local, regional, or national) safeguard its longevity?

Aboriginal and Torres Strait Islander peoples have grown accustomed to seeing representative bodies come and go. As we make up just 3% of the Australian population, it is all too easy for our organisations to become scapegoats; for funding for our programs to be cut in the name of “fiscal responsibility”; and for our voices to be ignored. Enshrining the status of the voice as a representative body, responsible

for advising Parliament on relevant legislation and providing policy proposals, would help to prevent it from going the way of past organisations.

Question 34

What should a statutory provision for The Voice (local, regional, or national) encompass? Why?

A statutory provision for the voice should encompass the functions, operations, and makeup of the voice. National Congress accepts that although a number of the core roles and powers of the voice should be constitutionally enshrined, it should not function as a third body of Parliament, and should instead be shaped by the Australian Parliament.

National Congress strongly asserts that provisions should be made in the legislation creating the voice for the independence of the individuals selected as members of the voice. It would be unacceptable for the Australian Government to seek to undermine the legitimacy and independence of the voice by exerting its influence over the voice, as past governments have sought to do over organisations such as the Aboriginal and Torres Strait Islander Commission. Providing for transparency through establishing reporting requirements and ensuring that all activities are overseen by an Ethics Council (as described above) would allow the voice to function as a truly representative body for Aboriginal and Torres Strait Islander peoples.