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## Co-design brings Voice an octave closer to success

The interim report into how an Indigenous Voice might give effect to the principal recommendation of the Uluru Statement from the Heart represents an astute next step on the path towards the outcome I have no doubt our nation will ultimately achieve — constitutional recognition of Aboriginal and Torres Strait Islander Australians in the form they have nominated.

The basis for my response to the report and my confidence about where it points us is founded on more than a decade of working alongside Indigenous colleagues towards a proposal for constitutional recognition that's acceptable to them and of value to Australia as a whole.

To succeed at a referendum, of course, the proposal must be broadly accepted by politicians and other influencers across the political spectrum (ideologically intransigent naysayers notwithstanding).

It was in this real-world context, and in line with the recommendation of a Joint Select Committee comprising five Liberal parliamentarians, four Labor, one from the Greens, and one independent, that the Indigenous Voice Co-Design Process was established just over a year ago by the Minister for Indigenous Australians, Ken Wyatt.

To assist him in the co-design process, the minister appointed the senior advisory group, led by Marcia Langton and Tom Calma, who guided the development of the interim report.

At the time the group was established and most recently in his Closing the Gap statement last February, the Prime Minister said a decision on whether the Voice would be enshrined in the Constitution, as proposed in the Uluru Statement, would be a made after the co-design process.

A separate process to revisit models for constitutional recognition was also mooted but, for the time being, it would appear the government has put the idea to one side — a sensible move given the conclusion of both the Referendum Council and the Joint Select Committee that the Voice was the only model of constitutional recognition acceptable to the people the nation seeks to recognise.

Through my own dealings with the Prime Minister, I believe his publicly expressed open-mindedness on whether a government he leads will take the question of a constitutionally enshrined Voice for Indigenous Australians to a referendum is sincere.

While equally mindful of the objections of a relatively small number of his more conservative colleagues, Scott Morrison, unlike his predecessor, remains genuinely open to the idea.

The interim report has advanced the cause in a number of important ways. At a high level, it

has clarified much about how a truly representative Voice, respected across the diversity of Aboriginal and Torres Strait Islander peoples, can improve policy outcomes for people on the ground and get a better bang for the buck of Australian taxpayers.

On a more granular level, the report offers a great deal of valuable thinking on how membership of the National Voice and associated local/regional bodies might be determined, what the body(ies) might look like and how they might function.

The group has also clarified — specifically and unambiguously — what the Voice will not be (and was never intended to be). It will not have the power to veto laws made by the parliament or decisions made by the government. It will not be in a position to obstruct or delay the workings of the parliament or the government. It will most certainly not constitute a third chamber.

Many of the advisory/representative proposals in the report are reminiscent of the best aspects of the Aboriginal and Torres Strait Islander Commis-

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sion, particularly those that focus on “ground-up” mechanisms to give Aboriginal and Torres Strait Islander peoples an unfiltered voice to parliament and the government on policies that impact their lives.

The co-design groups have wisely rejected any notion that the Voice should be handballed responsibility to deliver government services as ATSIC was, seeding inevitable conflicts of interest and corruption.

The fact that ATSIC, including its best features, was completely dismantled by the government at the time to overcome its worst features, after zero consultation with affected communities, illustrates why constitutional status for the Voice is so important.

It's commendable also that the co-design groups have charted a parallel course for the Voice to advise federal government along with the parliament so it might influence and advise on proposed laws and policies in the early stages of their development.

My only real concern with the interim report is the false divide it draws between issues on which the government and parliament should be obliged to consult and those around which this would be an expectation.

To limit the obligation to laws pertaining to race — laws under section 51(xxvi) of the Constitution, special measures or laws that seek to suspend the Racial Discrimination Act and laws under section 122 (the territories power) — is arbitrary and reinforces the negative prism through which Indigenous policy and people have been viewed for too long.

The counter argument to this is that widening the obligation to consult to include those described by the advisory group as “proposed laws and policies of general application which particularly affect, or which have a disproportionate or substantial impact on Aboriginal and Torres Strait Islander peoples” could be cumbersome and/or invite dispute.

I see no basis for such a concern. Any failure to consult, irrespective of whether consultation was obligatory or expected, may have political ramifications but would be non-justiciable and could have no legal consequences. The processes of the parliament and/or the government could neither be interfered with nor delayed.

So why not oblige policy-makers to take advice on a scope of matters of real concern to Indigenous Australians? If the overarching objective of establishing the Voice is to achieve better outcomes than we have to date (a very low bar), we should view the availability of this advice not as a burden but as a resource.

Early feedback on the interim report from a number of highly credentialled Aboriginal people, including Professor Megan Davis, a fellow member of the Referendum Council whose response was published in last Saturday's *Inquirer*, has been broadly positive.

I was one of a handful of non-Indigenous observers of the final days of the First Nations National Constitutional Convention in May 2017, and was privileged to take part in the final ceremony where the Uluru Statement received unanimous and joyous support.

It was a deeply moving and remarkable outcome from the most proportionally significant consultation process ever undertaken with Aboriginal and Torres Strait Islander Australians.

It is now imperative that the consultation process that will shape the final report of the co-design process needs to be carefully, respectfully and transparently mapped out to ensure free, prior and informed consent of the kind that was critical to the ongoing legitimacy of the Uluru Statement.

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