

From: [Kerrigan, Rachel](#)
To: s22(1)
Cc: s22(1); s22(1); s22(1); s22(1); s22(1)
Subject: FW: SAG Co-Chairs - Documents for 24-26 February 2020 [SEC=OFFICIAL:Sensitive]
Date: Monday, 24 February 2020 10:15:38 AM
Attachments: [Building a sustainable Indigenous Representative body - 2008.pdf](#)
[ATT00001.htm](#)
[Getting it Right - community guide.pdf](#)
[ATT00002.htm](#)
[future_hands-report.pdf](#)
[ATT00003.htm](#)

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Hi s22(1)

See below and attached from Tom – he has asked that we share the attached reports with the groups for background reading. Also just to note his comments below.

FYI, I think he forgot to attach the paper with comments referred to below. I'll follow up on this with Tom, and also commit to share the reports he has attached as background reading.

Thanks
Rachel

From: Tom Calma s47F
Sent: Monday, 24 February 2020 9:56 AM
To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>
Cc: s22(1) @niaa.gov.au>
Subject: Re: SAG Co-Chairs - Documents for 24-26 February 2020 [SEC=OFFICIAL:Sensitive]

thanks Rachel, have now read the briefing papers and have some comments on page 36 and 38 of the attached. For completeness and I will also raise later today we need to ensure the brief references the Social Justice Commissioner and the social justice commissioners submission to the JSC. You will note that the JSC took on board a significant portion of our submission.

I also attach two seminal papers I submitted to Govt over a decade ago and one could only imagine what the life situation of Indigenous Australian's might be had the recommendation been taken up. The highlighted text is for my reference and clean copies of the reports are on the AHRC website. Must admit to deja vu when reflecting on the reports.

The Uluru group believe they had wide consultations hence some validity for their work but their consultations were dwarfed when compared to the national Indigenous representative body consultations (see pg51 <pg54/99> of the Future Hands Report.doc attached). I believe these reports should be shared with the co-design groups for bedtime reading to put into perspective why this exercise is important, as is their role in getting it right. Also fleshes out some of the material you have provided in the briefing papers.

Finally, for now, following is an extract from a social justice commissioner report (2009 but it is in all reports) that identifies the significance of the SJC that NIAA's briefings fail to recognise in a meaningful way.

[Aboriginal and Torres Strait Islander Social Justice Commissioner](#)

[The position of the Aboriginal and Torres Strait Islander Social Justice Commissioner was established within the Australian Human Rights Commission in 1993 to carry out the following functions:](#)

(1) Report annually on the enjoyment and exercise of human rights by Aboriginal peoples and Torres Strait Islanders, and recommend where necessary on the action that should be taken to ensure these rights are observed.

(2) Promote awareness and discussion of human rights in relation to Aboriginal peoples and Torres Strait Islanders.

(3) Undertake research and educational programs for the purposes of promoting respect for, and enjoyment and exercise of, human rights by Aboriginal peoples and Torres Strait Islanders.

(4) Examine and report on enactments and proposed enactments to ascertain whether or not they recognise and protect the human rights of Aboriginal peoples and Torres Strait Islanders

The Commissioner is also required, under section 209 of the Native Title Act 1993 (Cth), to report annually on the operation of the Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders.

Office holders

§ Mr Tom Calma: 2004 – present

§ Dr William Jonas AM: 1999 – 2004

§ Ms Zita Antonios: 1998 – 1999 (Acting)

§ Mr Mick Dodson: 1993 – 1998

...

For information on the work of the Social Justice Commissioner please visit the Commission website at:

http://humanrights.gov.au/social_justice/index.html

Rgs TOM

Prof Tom Calma AO

Co-Chair, Senior Advisory Group on the co-design of local, regional and national voices

E: s47F

M: s47F

On 24 Feb 2020, at 8:52 am, Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au> wrote:

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Will do, thanks Tom.

From: Tom Calma s47F

Sent: Saturday, 22 February 2020 2:56 AM

To: Kerrigan, Rachel <Rachel.Kerrigan@niaa.gov.au>

Cc: s22(1) @niaa.gov.au

Subject: Re: SAG Co-Chairs - Documents for 24-26 February 2020

[SEC=OFFICIAL:Sensitive]

Hi Rachel, please see pg 6 of the attached that should go in the briefs. the other highlights are for my reference so you only need to refer to pg 6 noting I have yet to review the other material. Rgs TOM

On 21 Feb 2020, at 6:09 pm, s22(1)
s22(1) <[redacted]@niaa.gov.au> wrote:

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Dear Marcia and Tom,

Please see attached the complete set of documents for your meetings on Monday 24 – Wednesday 26 February 2020.

These include:

- SAG Co-Chair Run sheet
- EC Leaders – SAG Co-Chairs sessions
- EC Leaders – Co-Design Timeline
- National Co-Design Meeting Pack (Agenda and Papers – provided yesterday)
- Annotated Agenda – National Co-design Meeting
- Co-Design Voice Timeline
- National Meeting Opening Session – DRAFT Co-Chair presentation
- National Meeting Opening Session – DRAFT Talking Points
- SAG Co-Chair notes – joint meeting with Senior Officials Group
- Senior Officials Group member list

Please let us know if there is anything else you require. We're also interested to know how the Secretariat can better support you in your role.

Regards

s22(1)

Co-design Secretariat Team

Recognition, Policy and Empowered Communities Division

National Indigenous Australians Agency

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National Indigenous Voice Design Work-to-Date

Introduction to Agenda Item 5

INTRODUCTORY REMARKS - DONNA

- The National Co-design Group has done a lot of work to flesh out a national Indigenous voice. The starting point was looking at previous reports, including adopting the design principles from the 2018 Joint Select Committee report.
- To date, the National Group has focused on the functions of a national voice, and options for its structure and membership, and we will run through some of the key points from these discussions – which are set out in your papers.
- The National Group intends for a national voice to be complementary to local and regional voices.
- As with the local & regional work, the National Group is developing options that complement existing Indigenous bodies.
- There are a number of key issues that still need to be resolved, which we will work through separately.
- The group will continue to refine this work into options for inclusion in the interim report to the Government. Feedback from the Senior Advisory Group will be valuable in strengthening these options.

Areas of focus for SAG

Functions - Ray

- The National Group has agreed a voice would not have a role in service delivery, other than drawing on key elements in its role to provide national advice or highlight systemic issues.
- The National Group agreed that an Indigenous voice should have a right to advise Government on any matters that it believes are significant for Indigenous Australians.
- Within that broad scope, there has been an emphasis that the Government could consult with a voice on laws that particularly or significantly affect Indigenous Australians, including laws under the race and territories powers of the Constitution.
- There is still discussion on whether there should be an obligation on Government to consult on certain defined matters, or whether this should be an expectation.
- This function would be complemented by transparency mechanisms. This could include:
 - tabling advice in Parliament,

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- tasking a parliamentary committee with considering engagement with a national voice, and
- government could address consultation with a voice in explanatory memoranda for legislation.

Structure and Membership - Donna

- The National Group has agreed:
 - Members of a voice should be chosen by Indigenous Australians and represent geographic areas.
 - Within a national voice, there should be dedicated representation for youth and disability, and gender balance.
 - The overall number of members should be no more than the mid-30s, and ideally smaller if possible to allow for better functionality of the group.
 - The national voice must link in some way with local & regional voices, but the nature of these connections will be explored by the Linkages Working Group.
 - Regardless of using states or smaller regions as the source, the Torres Strait would have a representative.
 - Members will be supported by a secretariat.

There is ongoing discussion and further work with the National Group on:

- How to fairly distribute the numbers of membership across the country, including of remote Australia.
- The various ways in which membership is determined (direct election, or selection by the region, or appointment).
- The legal form of a voice.

Commission-style body – complementary to a voice - Ray

- An aspect the National Group has not discussed yet is the idea of a National Indigenous Policy Productivity Council, as proposed in the Cape York Institute model and included in the slide deck models.
- This body would be complementary to an Indigenous voice and be focussed on research and inquiries on matters referred to the body or self-initiated – similar to the Productivity Commission.
- There are a number of benefits of a complementary commission-style body like this:
 - Membership could be focussed on subject matter expertise and give a voice the ability to draw on qualified and independent advice to help inform its advice.
 - Streamlining Indigenous-led Indigenous-focussed research on the impact, administration and effectiveness of legislation, policies, programs and services for Aboriginal and Torres Strait Islander peoples.
- The Productivity Commission has just released a discussion paper recommending the establishment of a new Office of Indigenous Policy Evaluation.

- This new Office would oversee the implementation of the new Indigenous Evaluation Strategy – which is soon to be finalised by the Productivity Commission.
- The Office will also coordinate a whole-of-government approach to evaluating policies and programs affecting Indigenous Australians, and overseeing and reporting on Government agencies' performance in implementation.
- The Productivity Commission has recommended the new Office should be established within a Commonwealth independent statutory authority – but doesn't recommend which agency.
- The functions of this Office would sit well together with the proposed functions of the commission-style policy body – and could be joined together in a new agency.
- This approach will strengthen the policy rigour of the advice the voice could draw on, but would increase the cost of establishing a voice.

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Quick Reference Guide

FUNCTIONS

Agreed functions

The National Co-design Group agreed the following advice functions for the national Indigenous voice:

Role	Proactive, unencumbered right on behalf of Aboriginal and Torres Strait Islander Australians to advise Parliament and Government on: <ul style="list-style-type: none"> a) matters it considers of critical importance to the social, spiritual and economic wellbeing of Aboriginal and Torres Strait Islander Australians, and b) any other matter it believes has a significant impact on Aboriginal and Torres Strait Islander Australians.
Type of advice	Public advice, with discretion for confidential deliberations Clear advice, with discretion to reflect diversity of Indigenous views Periodic statements on the work of the voice
Scope	Laws proposed under s51(xxvi) and s122 of the Constitution Any other laws that particularly or significantly affecting Aboriginal or Torres Strait Islander Australians
Policy advice	Government to engage with the voice as early as possible in the development of policy and proposed laws where its advice is being sought
Accountability Options	Advice is tabled in Parliament Bills to include a statement addressing consultation with a national Indigenous voice where appropriate Parliamentary Committee to examine engagement with a voice, and whether advice has been appropriately considered

Will advice be binding?

No.

Advice from the national Indigenous voice would not be binding on Government or Parliament. However, the Government or Parliament would reasonably be expected to consider the advice of the national Indigenous voice on relevant matters. This preserves parliamentary sovereignty.

Will the Government be obliged to consult?

No.

The requirement on the Government has been drafted with a principle of flexibility but with accountability.

It is expected the Government would request advice from the national Indigenous voice prior to introducing legislation. These matters include laws introduced under s51(xxvi) and s122 of the Constitution, or other laws that particularly or significantly affect Aboriginal and Torres Strait Islander Australians.

Any failure by the Government to comply with this expectation would be highlighted through accountability mechanisms.

Can the national Indigenous voice compel the provision of information?

No.

This was deemed not necessary where there are good accountability mechanisms to highlight any obstruction in gathering information.

Can the national Indigenous voice choose not to provide advice?

Yes.

The national Indigenous voice may choose not to provide advice, even if the Government or Parliament requests it.

The Government would not be able to direct the national Indigenous voice.

Can the national Indigenous voice veto Government decisions?

No.

However, they can provide clear and public advice to the Government and Parliament on the impacts of a policy decision.

Will the national Indigenous voice administer Government programs?

No. However, it may provide advice on the design of a Government program.

Will the national Indigenous voice replace existing Indigenous bodies?

No.

Will the national Indigenous voice undertake evaluations?

No, the national Indigenous voice would not evaluate Government programs or policy. However, it could provide advice on evaluation issues – for example identifying issues where evaluation might be needed and how they might be more effective.

Will the national Indigenous voice mediate or facilitate interactions between Indigenous organisations?

No.

Will the national Indigenous voice be involved in local and regional matters?

No, the national and Indigenous voice would generally not be involved in local and regional matters, except in instances of broader issues of national concern.

STRUCTURE AND MEMBERSHIP

Agreed structure and membership principles

The National Co-design Group agreed the following principles for the structure and membership of the national Indigenous voice:

Connection to local and regional voices	Structurally connected to local and regional voices, possibly through membership
Defining regions	Regions should align with local and regional voices, as defined by the Local and Regional Co-design Group
Determining membership	Strong support for membership to be chosen by Aboriginal and Torres Strait Islander Australians
Specific representation	Should have specific representation for youth and people with disability Should link with, not replace, existing bodies that represent special interest groups Should broadly ensure equal gender representation
Achieving representation	Representation for these groups should be structurally ensured
Size	No more than mid-30's
Term limit	Three or four year terms, staggered terms
Max. number of terms	Maximum of two terms allowed per member. Consideration was given to having a third term for chairs and deputies
Sub-committees	Sub-committees were considered an option to progress specialised work

How will regions be defined?

Regional boundaries would be defined by the Local and Regional Co-design Group. Interactions between the regions and the regional boundaries used to structure the membership of the national Indigenous voice will be discussed by the Linkages Working Group at their upcoming meeting.

What regional boundaries are being considered?

The National Co-design Group have developed membership options using state boundaries, former ATSIC zones, and existing NIAA regions as the basis for defining the regional boundaries. These boundaries have been amended slightly for this exercise to ensure they are fit for purpose (see maps on [pages 16, 18 and 20 of the SAG meeting pack](#)).

How will the national Indigenous voice ensure all communities are represented?

Connection to place is a key consideration, but needs to be balanced with ensuring the membership size remains workable. Not every community is able to be represented individually on the national Indigenous voice.

Key considerations include: how to aggregate regions, alternative selection processes, and aiming for gender balance, whether at the national level as a whole or the regional level.

How will membership be determined?

Membership to the national Indigenous voice could be determined by election, selection by local or regional groups, Ministerial appointment, or a combination of all three.

The most appropriate method will depend on a number of factors, including how the national and local and regional voices are connected. The National Co-design Group have noted a strong preference for elections.

How will elections be carried out?

The way in which elections could be conducted is yet to be discussed, and will be a matter for the Linkages Working Group and the National Group's Structure and Membership Working Group.

Will native title holders be specifically represented in the national Indigenous voice?

No. The National Co-design Group considered the need for the national Indigenous voice to have specific representation requirements for native title holders.

As this particular stakeholder group is able and likely to engage with the national voice through their individual representative groups, the Group agreed specific representation in the voice's membership was not required.

Why are youth and people with disability being provided specific representation?

Youth and people with a disability are specifically represented due to their disproportionate over-representation in the broader Indigenous population, and possible under-representation in the membership unless structurally guaranteed.

Why not encourage specific representation for other cohorts?

We acknowledge there are other cohorts who may be keen to be included in the voice through structurally guaranteed membership. However, we are confident these cohorts are adequately represented by groups and existing bodies who are capable of working with the voice to provide advice on relevant topics, without the need for structurally guaranteed membership.

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REPORTS AND MODELS CONSIDERED

- Building a Sustainable National Indigenous Representative Body, 2008, Aboriginal and Torres Strait Islander Social Justice Commissioner
- Our Future in Our Hands, 2009, Aboriginal and Torres Strait Islander Social Justice Commissioner
- ATSIC Review
- Referendum Council Final Report 2017.
- A First Nations Voice in the Constitution – Design Report, Report to the Referendum Council, 2017, Cape York Institute for Policy and Leadership
- Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (JSC) 2018 - Interim and Final Reports,
- Submissions provided to the 2018, JSC

Proposed Models

- Design Propositions and Rationale for National Voice Co-design, 2020, Cape York Institute for Policy and Leadership
- Scope for the National Indigenous Voice, 2020, Jeff Kennett.
- Advisory Council, Uphold and Recognise, JSC submission 172
- Speaking for Country, Uphold and Recognise, JSC submission 172
- Cape York proposed model, JSC submission 244
- First Nations Voice model, Ms Patricia Anderson AO, Professor Megan Davis, Mr Noel Pearson et al, JSC submission 479

Australian Examples (Historical and Current)

- National Aboriginal Conference
- Aboriginal and Torres Strait Islander Commission
- National Congress of Australia's First Peoples
- National Aboriginal Community Controlled Health Organisation
- Prime Minister's Indigenous Advisory Council
- Coalition of Aboriginal and Torres Strait Islander Peaks Organisations
- Productivity Commission
- ACT Aboriginal and Torres Strait Islander Elected Body
- First People's Assembly of Victoria
- Torres Strait Regional Authority

International Examples

- Assembly of First Nations
- National Congress of American Indians
- Maori Council
- Sami Parliament of Sweden
- Sami Parliament of Norway
- Sami Parliament of Finland

In addition, the National Co-design Group has received the environmental scan of previous and existing bodies, as the Senior Advisory Group has received.