



AUSTRALIAN PRO BONO CENTRE

Interim Report to the Australian Government: Indigenous Voice Co-Design Process

Australian Pro Bono Centre Submission

April 2021

**Australian Pro Bono Centre
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ABOUT THE AUSTRALIAN PRO BONO CENTRE

The **Australian Pro Bono Centre** is the centre of leadership for pro bono legal services that aims to grow participation and excellence in pro bono, our unique contribution to closing the justice gap and creating a more equitable and sustainable society.

The Centre works to achieve this in three ways:

1. **Activating** new and existing pro bono legal professionals by promoting awareness of pro bono legal services, providing incentives to participate and advocating for policy reform;
2. **Equipping** pro bono legal professionals by providing practical tools and resources and reducing barriers and constraints to pro bono participation; and
3. **Connecting** members of the pro bono ecosystem through collaboration and best practice sharing.

More information on the strategies that the Centre uses to achieve this can be found in its [Strategic Plan](#).

The Centre's board of directors is comprised of representatives from across the legal profession, including a representative from the Public Interest Advocacy Centre, the pro bono clearing houses, the UNSW Law Dean, the Law Society of Western Australia, and a number of other constituencies including community legal centres, the Council of Australian Law Deans, and the legal profession.

The Australian Pro Bono Centre acknowledges the traditional custodians of the land on which it works, the Bedegal people of the Eora Nation. We pay our respects to the Elders – past, present and emerging – and the youth who are working towards a brighter tomorrow.



The Centre is grateful for the funding support it receives from the governments of the Commonwealth and Australian States and Territories. It is also grateful for the in-kind support it receives from UNSW Sydney (including the use of the Faculty's premises and facilities, and support from student interns), Australian Government Solicitor, HWL Ebsworth, and volunteers.

For more information, please contact the Centre at info@probonocentre.org.au.

SUMMARY

The Australian Pro Bono Centre (**Centre**) welcomes the opportunity to provide a submission in response to the *Interim Report to the Australian Government: Indigenous Voice Co-Design Process*.

For the reasons outlined in this submission, the Centre makes the **following recommendation**:

- The government adopt the recommendations set out in From the Heart's Submission No.1 (21 January 2021).¹ In particular, the Centre draws attention to From the Heart's calls for the establishment of a First Nations Voice enshrined in the Constitution, and notes the following three key points made in its submission:
 1. The government must honour its election commitment to a referendum once the model for the Voice has been settled;
 2. Enabling legislation for the Voice must be passed after a referendum has been held in the next term of Parliament; and
 3. The membership model for the National Voice must ensure previously unheard Aboriginal and Torres Strait Islander people have the same chance of being selected as established leadership figures.

¹ Available [here](#).

The Australian Pro Bono Centre is the nation's centre of leadership for pro bono legal services. It works at the heart of the Australian legal community as an adviser, advocate, researcher and resource provider, encouraging and supporting lawyers to respond to unmet legal need through pro bono work.

The Centre published its *Report on the 7th National Law Firm Pro Bono Survey* in February 2021. This report forms part of a longitudinal study of the pro bono practices of law firms in Australia with 50 or more lawyers. Thirty-eight law firms, including all of the top 25 firms by size, participated in the Survey. The Survey reveals that in the 2020 financial year, Aboriginal and Torres Strait Islander people were nominated as one of the top three client groups receiving pro bono legal support from law firm pro bono providers assisting individuals.²

Breaking those results down by firm size, Aboriginal and Torres Strait Islander people were nominated as a main client group in this category by:

- 44%, or four of the nine "Group A" firms (firms with 450 or more full-time equivalent lawyers)
- 47%, or seven of the 15 "Group B" firms (201 – 449 full-time equivalent lawyers)
- 36%, or five of the 14 "Group C" firms (firms with 50 – 200 full-time equivalent lawyers).³

Indigenous organisations were also nominated as one of the top four client groups receiving pro bono assistance from law firms supporting organisations.⁴

Similarly, the Centre's *Report on the Sixth National Law Firm Pro Bono Survey* revealed that Aboriginal and Torres Strait Islander clients were nominated in the 2018 financial year as one of the top three client groups receiving pro bono legal support.⁵

Both Survey results indicate that there are high levels of vulnerability and unmet legal need within this client group.

The Law Council of Australia's comprehensive research on the state of access to justice in Australia, culminating in the *Justice Project Final Report* (the **Justice Project Report**), confirmed that Aboriginal and Torres Strait Islander people are "more likely than non-Indigenous people to experience multiple, intersecting legal problems", and that legal services are not equipped to meet this soaring demand.⁶

Building on the Justice Project Report, the Centre has developed the *Justice Project: Pro Bono Tool* (the **Tool**).⁷ The Tool maps pro bono opportunities to assist with priority justice issues for Aboriginal and Torres Strait Islander people identified in the Justice Project Report. The Tool provides pro bono

² Australian Pro Bono Centre, *Report on the 7th National Law Firm Pro Bono Survey: Australian firms with 50 or more lawyers* (Report, February 2021) 45, available [here](#).

³ Data provided to the Centre in response to the 7th National Law Firm Pro Bono Survey Questionnaire.

⁴ Australian Pro Bono Centre, *Report on the 7th National Law Firm Pro Bono Survey: Australian firms with 50 or more lawyers* (Report, February 2021) 46, available [here](#).

⁵ Australian Pro Bono Centre, *Report on the Sixth National Law Firm Pro Bono Survey: Australian firms with 50 or more lawyers* (Report, February 2019) 43, available [here](#).

⁶ Law Council of Australia, *The Justice Project Final Report: Part 1 – Aboriginal and Torres Strait Islander People* (Final Report, August 2018) 4, available [here](#).

⁷ Australian Pro Bono Centre, *Justice Project: Pro Bono Tool – Aboriginal and Torres Strait Islander Peoples* (Webpage), available [here](#).

providers with practical resources to help them source potential pro bono opportunities and form partnerships. As part of this research, the Centre has recently identified 52 organisations across Australia working on justice issues for First Nations people including: 15 national organisations, one Australian Capital Territory organisation, 14 New South Wales organisations, six Northern Territory organisations, six Queensland organisations, three South Australian organisations, one Tasmanian organisation, three Victorian organisations, and six Western Australian organisations.⁸ Many of these organisations require pro bono support, demonstrating the significant breadth of legal need for this client group.

The research set out above demonstrates that First Nations people have significant unmet legal need. The Uluru Statement from the Heart acknowledges this problem, and proposes a clear solution:

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Constitutional enshrinement of a First Nations Voice is widely supported by constitutional law experts. In the Public Lawyers submission to this co-design process (20 January 2021), a group of academics working in constitutional law and other areas of public law set out their “strong and unanimous view that for the Voice to have legitimacy, to achieve its objectives and perform its functions, it must be constitutionally enshrined”.⁹

The Law Council of Australia notes that while Aboriginal and Torres Strait Islander people experience high rates of criminal justice interaction, “[r]espect for the principle of self-determination is key to addressing existing disempowerment and the ongoing intergenerational impact of colonisation”.¹⁰ The Centre’s view is that the best way to address the level of disadvantage and vulnerability experienced by First Nations people, which manifests itself in a disproportionate need for legal assistance including pro bono support, is to provide an enduring avenue for input by Aboriginal and Torres Strait Islanders people into the legislation and policies governing their own affairs. A First Nations Voice requires security and legitimacy to argue a contrary position to the government of the day. If it is established by legislation, it runs the significant risk of being ignored or later abolished by parliament.

⁸ Three organisations that were identified work across more than one jurisdiction, so the total number of organisations is 52, not 55.

⁹ Available [here](#).

¹⁰ Law Council of Australia, *The Justice Project Final Report: Part 1 – Aboriginal and Torres Strait Islander People* (Final Report, August 2018) 4, available [here](#).

The Centre has publicly supported the Uluru Statement from the Heart.¹¹ Respecting this principle of self-determination, the Centre now recommends that the government implement the highest legal framework available, namely a First Nations Voice enshrined in the Constitution as requested by First Nations people in the Uluru Statement from the Heart. Transformative, institutional reform is required to ensure First Nations peoples have a voice and to ensure they are formally unified with other Australians within the democratic framework of our state. This could be the enduring legacy of this government if it heeds the words of the submissions made in response to the Interim Voice Report.

The appropriate next steps in the Indigenous Voice co-design process have been comprehensively addressed in From the Heart's submission:

RECOMMENDATION

The government adopt the recommendations set out in From the Heart's Submission No.1 (21 January 2021). In particular, the Centre draws attention to From the Heart's calls for the establishment of a First Nations Voice enshrined in the Constitution, and notes the following three key points made in its submission:

1. The government must honour its election commitment to a referendum once the model for the Voice has been settled;
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3. The membership model for the National Voice must ensure previously unheard Aboriginal and Torres Strait Islander people have the same chance of being selected as established leadership figures.

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¹¹ See Centre website page [here](#).