



7 September 2018

Director, Aboriginal Policy Unit
Department of the Premier and Cabinet
2 Havelock Street
West Perth, Western Australia 6005

By email: AboriginalPolicy@dpc.wa.gov.au

Dear Director

Discussion Paper: An office for advocacy and accountability in Aboriginal affairs in Western Australia

The Australian Human Rights Commission (the Commission)¹ welcomes the opportunity to provide feedback on the Department of Premier and Cabinet's Discussion Paper: *An office for advocacy and accountability in Aboriginal Affairs in Western Australia* (the Discussion Paper).²

The need for greater accountability

The Commission is broadly supportive of the rationale provided in the Discussion Paper for the creation of the proposed new office.

The Commission concurs with the Government of Western Australia's stated view that there is a 'need for greater accountability and transparency across government, and better alignment of government services to community needs'³ and that 'existing systems and structures sometimes allow the public sector to continue doing what it has always done despite poor or worsening outcomes'.⁴

Furthermore, the Commission agrees that there is need of an 'independent entity with the express function of holding Ministers and agencies accountable for improving opportunities for Aboriginal people'.⁵

Statutory offices

As is noted in the Discussion Paper, Australian jurisdictions have approached the challenge of filling this accountability gap in a number of ways. The Commission is of the view that the creation and adequate resourcing of independent statutory offices can be of great benefit to promoting the rights and interests of Aboriginal and Torres Strait Islander peoples.

The proposed new office outlined in the Discussion Paper bears many similarities to the role of the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Commonwealth level. The Commission welcomes the prospect of further capacity

being provided at the State level, and of working together with this new office on shared priority areas.

Representative bodies and accountability

As is the case with the Aboriginal and Torres Strait Islander Social Justice Commissioner role at the Commonwealth level, independent statutory offices at the State level are put in place to perform an advocacy and accountability function quite separate from that of Aboriginal and Torres Strait Islander representative bodies (or what are now, since the Uluru Statement, sometimes being referred to as ‘Voices’) such as the National Congress of Australia’s First Peoples or those bodies which have been developed, or are currently under development, in the A.C.T and Victoria.

The Commission notes the Western Australian Government’s acknowledgement that many Aboriginal people in their State want an official representative structure, and commends the Government’s stated intention to commence separate discussions on this issue in the future.⁶

Representative bodies are an essential vehicle for self-determination and can also play an important role in keeping governments accountable, particularly if legislative mechanisms are put in place. For example, the A.C.T. Parliament has enacted provisions that give the A.C.T Indigenous elected representative body functions to participate in Estimates proceedings. These provisions allow for the invitation of non-parliamentary representatives of Aboriginal and Torres Strait Islander communities to sit with the parliamentary committee for questioning of agencies.

A. Function of the new office

The Commission supports a systems-level role for the new office and particularly welcomes the proposal that the office be able to assess the consistency of policy and performance with human rights.

B. Business of the new office

The Commission supports the view that ‘the office should be free to determine which issues relevant to the interests and well-being of Aboriginal Western Australians to focus on’,⁷ and that while State-level issues are likely to predominate, that the office should also be free to speak about Commonwealth and local government policies and performance, and about how the three levels of government work together’.⁸

C. Structure and powers of the new office

The Commission supports the creation of an independent new office set out in legislation. The office-holder should be an Aboriginal person. The Commission takes no issue with the proposal to appoint officer-holders for five years with the possibility of reappointment, and supports the provision that removal should require Parliamentary approval.

D. Name of the new office

The Commission supports the proposal that the Government of Western Australia consult with Aboriginal people within its jurisdiction regarding the naming of the new office.

Were the role to be named 'First Nations Voice' as has been put forward as one of the stated suggestions,⁹ this may risk conflating perceptions of this role with that of a representative body. A name including a title such 'Commissioner' may be more suitable to ensure clarity on this point.

E. Appointment process

The Commission supports the proposal that Aboriginal and Torres Strait Islander people and organisations should have a role in the appointment process for the new office.

Thank you once again for the opportunity to provide comment on this process.

Yours sincerely



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¹ The Commission is Australia's national human rights institution with 'A' status accreditation, and is established by the Australian Human Rights Commission Act 1986 (Cth). The Commission has responsibilities under the AHRC Act to examine the enjoyment and exercise of human rights by Aboriginal and Torres Strait Islander peoples. The Commission also has responsibilities to report on the effect of the Native Title Act on the exercise and enjoyment of human rights of Aboriginal people and Torres Strait Islanders. See s 209 of the *Native Title Act 1993* (Cth).

² Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [2]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

³ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [2]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

⁴ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

⁵ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [2]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

⁶ Department of the Premier and Cabinet, Government of Western Australia, *An idea for making government work better for Aboriginal people*, Community Information Sheet, DPC0005_280318. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Making-Gov-Work-Better.pdf> (viewed 29 August 2018).

⁷ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [11]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

⁸ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [11]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).

⁹ Department of the Premier and Cabinet, Government of Western Australia, *An office for advocacy and accountability in Aboriginal affairs in Western Australia*, (June 2018), Discussion Paper, [12]. At <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/Accountability/Documents/Accountability-discussion-paper.pdf> (viewed 29 August 2018).