



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

Round Table Discussion, Sydney

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About ANTaR

ANTaR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Peoples. We do this primarily through campaigns and advocacy in partnership with other likeminded organisations.

Our current national campaigns include:

- Constitutional Recognition and Equality – for Constitutional change to recognise Australia's First Peoples and remove discriminatory elements from our founding document;
- Justice - for action to reduce imprisonment rates and end deaths in custody; and
- Close the Gap – on Aboriginal and Torres Strait Islander health.

We also engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities' services and infrastructure and human rights.

ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997. ANTaR is a non-government, not-for-profit, community-based organisation.

Introduction

ANTaR appreciates the opportunity to participate in the Sydney Roundtable discussion of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (the Committee).

ANTaR wishes to assist the work of the Committee and welcomes the strong multi-party support for its establishment. We believe the Committee can play an important role in building parliamentary and public support for Constitutional change, in partnership with Aboriginal and Torres Strait Islander leaders and organisations.

ANTaR's general position on Constitutional Recognition

ANTaR supports reform of Australia's Constitution to recognise Australia's First Peoples, remove racially discriminatory provisions and protect future generations from discrimination on the basis of their race, colour or ethnicity. A detailed statement of our position can be found in ANTaR's Submission to the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.¹

Constitutional Recognition of Aboriginal and Torres Strait Islander peoples is one of ANTaR's high priority campaigns. We are currently working closely with Recognise and a coalition of other organisations to help build the community movement in support of constitutional change.

The Expert Panel's recommendations

ANTaR believes that the recommendations of the Expert Panel on Constitutional Recognition of Indigenous Australians should form the basis of any constitutional amendment put to the Australian people at a referendum.

We commend the Expert Panel's processes and report to the Committee. The Panel conducted an extensive consultation program, visiting 85 different communities in remote, regional and metropolitan Australia. It also received more than 3500 submissions and was informed by quantitative and qualitative public opinion research carried out by Newspoll.

ANTaR considers that the fact such a diverse group of eminent Australians produced a unanimous report adds to the credibility and authority of the Panel's recommendations.

Reaction to the Expert Panel's report

However, public comment in response to the Expert Panel's report indicate that more discussion will need to take place before a proposed Constitutional amendment is put to the people at a referendum.

¹ http://antar.org.au/sites/default/files/cr_submission.pdf.

For example, Professors George Williams², Anne Twomey³ and Frank Brennan⁴ as well as Generation One CEO, Warren Mundine⁵ could all be described as supporters of constitutional recognition and / or friends of the Expert Panel. Yet, all were publicly critical of the Panel's use of the term "advancement" in the fourth recital of the preamble to its proposed Section 51A.

ANTaR urges the Committee to engage with those who have been critical of aspects of the Panel's recommendations including Professors Twomey, Williams and Brennan and Mr Mundine in order to further refine the proposed Constitutional amendment that will be put to the Australian people.

ANTaR understands that Panel members themselves accept that there will need to be further discussion and refinement as part of the process that they have made such a strong contribution to. Panel member, Professor Megan Davis has agreed that "the Panel's recommendations should be 'the first word, not the last word, in what should be put to the Australian people'".⁶

Guiding principles in developing a model

In further refining the terms of a constitutional amendment that is most likely to be successful at a future referendum, ANTaR urges the Committee to adopt the four principles agreed to by the Expert Panel in assessing proposals for change:

In order to succeed at referendum, any constitutional amendment must:

- contribute to a more unified and reconciled nation;
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples;
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and

² George Williams, "Pathway to referendum success is now clear", *Sydney Morning Herald*, January 17, 2012: <http://www.smh.com.au/opinion/politics/pathway-to-referendum-success-is-now-clear-20120116-1q2yk.html>

³ Anne Twomey, "Indigenous Constitutional Recognition Explained – The Issues, Risks and Options", Constitutional Reform Unit, University of Sydney Law School, p.6: http://sydney.edu.au/law/cru/documents/2012/Indigenous_Recognition.pdf

⁴ Frank Brennan, "Where to from here?", *Constitution Day: Have Your Say Forum*, National Archives of Australia: <http://constitutionday.wordpress.com/where-to-from-here-by-professor-frank-brennan-sj-ao/>

⁵ Patricia Karvelas, "Warren Mundine to fight new race power in Constitution," *the Australian*, December 19, 2011: <http://www.theaustralian.com.au/national-affairs/warren-mundine-to-fight-new-race-power-in-constitution/story-fn59niix-1226225312800>

⁶ Megan Davis, "Where to next for Indigenous constitutional recognition?", *Constitution Day: Have Your Say Forum*, National Archives of Australia: <http://constitutionday.wordpress.com/where-to-next-for-indigenous-constitutional-recognition-by-professor-megan-davis-2/>

- be technically and legally sound.⁷

ANTaR hopes that any recommendations put forward by the Committee will also keep faith with the thousands of Aboriginal and Torres Strait Islander people who attended consultations with, or made submissions to, the Expert Panel.

In general terms, the majority of Aboriginal and Torres Strait Islander people who engaged with the Panel were concerned about the following three things:

1. **They wanted recognition in the Constitution** and greater inclusion in the life of the nation. People felt that their absence from the founding document matched their historical exclusion from many other aspects of Australian society.
2. **They wanted discriminatory elements removed.** For many Aboriginal and Torres Strait Islander people the discriminatory sections in the Constitution were a reminder of the racism they had experienced in their daily lives. Removing these sections would send a strong message that this kind of behavior would not be tolerated in Australia any more.
3. **They didn't want to be worse off as a result of any change.** Their experiences had left many Aboriginal and Torres Strait Islander people wary of any government initiative, no matter how well intentioned. They wanted assurances that any change would not leave them in a more disadvantaged and marginalized position.

However, ANTaR also recognizes that any proposed change to the Constitution must also achieve the support of non Indigenous Australians who will make up the overwhelming majority of voters in a referendum.

In a submission to the Expert Panel, Jane McLachlan reflected on the lessons of the 1967 referendum and how these might apply to the current proposals for constitutional recognition:

... a confluence of social currents occurred in the late 1960s which helped to produce the high "Yes" vote. Significant among these was a growing sense of Australian identity that incorporated Aborigines into the nation and rejected racism based on colour. The referendum not only benefited Indigenous Australians - it gave white Australians the opportunity to make a statement about themselves. I believe that the proposed constitutional referendum is more likely to be successful if it takes into consideration what today's non-Indigenous Australians want to say about themselves now.⁸

It is therefore vital that the terms of a constitutional amendment recommended by the Committee also speak to the aspirations and identity of non Indigenous Australians.

⁷ Report of the Expert Panel, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, Commonwealth of Australia, January 2012, p.xi.

⁸ Jane McLachlan, Submission no 3426 to Expert Panel on Constitutional Recognition of Indigenous Australians: <http://www.recognise.org.au/have-your-say/submission/3426>

ANTaR wishes to contribute to the discussion around the terms of a constitutional amendment that will be put to the Australian people in a referendum. We commit to doing this in an open, respectful and consensus building way. We agree with Shadow Attorney General Senator George Brandis that the tone of this debate will be vital to the outcome:

Nothing is surer to defeat the referendum than if the public discussion of the proposal is conducted in a hectoring, angry or righteous manner. Every citizen who participates in the discussion has the same right to be heard because although this proposal has a special significance for Indigenous people, the Constitution belongs to every Australian equally. In particular, people of a conservative frame of mind who are skeptical and suspicious of constitutional change will need to be convinced of the desirability of the measure; and their skepticism is every bit as legitimate as the proponents' enthusiasm.⁹

So unless all sides of the debate are prepared to compromise and act in good faith, we will squander the opportunity of a generation to make significant progress towards a just and reconciled Australia.

Factors determining ANTaR's support for constitutional recognition

ANTaR has been active in the campaign to build support for constitutional recognition and will continue to do so in the lead up to the proposed amendment being agreed to by the Parliament.

In assessing whether we will be ultimately able to support the amendment in a referendum campaign ANTaR will draw on the Expert Panel's four principles and be guided by the views of Aboriginal and Torres Strait Islander people, including:

- Members of our Indigenous Reference Group;
- Current and former Aboriginal and Torres Strait Islander Social Justice Commissioners;
- The National Congress of Australia's First Peoples; and
- Our campaign partners in the Close the Gap Steering committee.

We will also take note of public opinion research on the views of Aboriginal and Torres Strait Islander people such as the recent Auspoll research commissioned by Recognise.

Current campaign activities

⁹ Senator the Hon George Brandis SC, Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, Second Reading:
<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F3a4c3452-93f7-4947-a798-2bb8395d1f51%2F0004%22>

ANTaR has been heartened by the goodwill shown by all sides of politics, the overwhelmingly constructive nature of the debate to date and the increasing public support for constitutional recognition.

We believe that the things the vast majority of Aboriginal and Torres Strait Islander people asked for in their communications with the Expert Panel were modest and reasonable and that these will be perceived to be so by the vast majority of non-Indigenous Australians.

We urge Parliamentarians to work together so that a way can be found to meet these requests in the process of constitutional recognition.

Although we are mindful of the complexities, particularly around amending section 51 (xxvi), ANTaR is optimistic about the Parliament's ability to agree on a proposed constitutional amendment that is supported by Aboriginal and Torres Strait Islander people as well as non-Indigenous Australians.

Accordingly, we have commenced campaigning in support of Constitutional recognition in partnership with Recognise and a network of other organisations, many of whom are also our partners in the Close the Gap campaign.

We have recently produced a "Spread the Word" card aimed at facilitating word of mouth support for constitutional recognition. This card will be distributed to ANTaR supporters, but it may also be a useful tool for Parliamentarians' electorate offices and government departments.

We have received financial support from Recognise and have recently written to our supporters seeking funds to enable us to carry out the following activities in 2013:

- Establish, train and resource local organising committees across selected Federal electorates. These people will become part of the grassroots movement for change;
- Hold a national policy workshop bringing together Aboriginal leaders, legal experts and political strategists to contribute to the right model being put to the people at the referendum;
- Conduct national and state campaign summits to boost the knowledge and skills of key ambassadors and activists;
- Extend Rock for Recognition, the concert series we started with Oxfam Australia, across regional Australia to particularly engage and motivate young people;
- Produce high impact campaign materials to be distributed online and at major festivals and other events;
- Develop billboard, online and video advertising to drive the message for change;
- Help resource and support the national Journey to Recognition currently being developed by Recognise; and
- Appoint a project officer who will build support for constitutional recognition among the Vietnamese Australian community.

Conclusion

ANTaR welcomes the opportunity to participate in the Sydney Roundtable discussion to be conducted by the Committee.

We would like to continue assisting the Committee as it builds on the important work of the Expert Panel to shape the terms of a constitutional amendment to be put to the people at a referendum.

We look forward to making the strongest contribution we can in the campaign to right one of our nation's oldest wrongs by ending the exclusion of Aboriginal and Torres Strait Islander people from the Australian Constitution.