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23 July 2014

**Joint Select Committee on Constitutional Recognition of  
Aboriginal and Torres Strait Islander Peoples**

PO Box 6100  
Parliament House  
CANBERRA ACT 2600

**REFERENDUM ON CONSTITUTIONAL RECOGNITION**

**SUBMISSION**

**Introduction**

1. This submission is in response to the Interim Report issued by the Committee on 15 July 2014, and the previous recommendations of the Expert Panel. It is submitted by me as an interested citizen, who supports some (but not all) of the changes to the Constitution recommended by the Committee.

**Scope of Submission**

2. The methodology of the Expert Panel's work included an objective in formulating its recommendations, that each proposal must:

2.1 "contribute to a more unified and reconciled nation", and

2.2 "be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums".

3. This submission argues that the recommendations of the Committee will not achieve these objectives. Much of the debate, analysis and opinion to date, has focused on whether there will be a "Yes or No" vote on a single question. This submission discusses the alternative of a "Yes and No" vote. That is, it argues against combining the separate issues into a single question, so that at least some of the proposed changes will be approved.

4. The submission asserts that reference to any race, including to Aboriginal and Torres Strait Islander (ATSI) peoples, is likely to be rejected, and other forms of recognition of those peoples should be pursued.

5. It also suggests more minimalistic changes, which would be more likely to be accepted by an overwhelming majority of Australians.

**Recommendations – Interim Report**

5. The Interim Report recommends the following five changes to the Constitution:

5.1 Repeal Section 25 of Chapter 1, Part 3.

2.

5.2 Repeal Section 51(xxvi) of Chapter 1, Part 5.

5.3 Insert new Section 51A in Chapter 1, Part 5; recognizing and acknowledging a number of issues relating to ATSI people, and conferring legislative power to make laws with respect to those people..

5.4 Insert new Section 116A in Chapter 6; prohibiting racial discrimination.

5.5 Insert new Section 127A in Chapter 7; recognizing English as the national language, and acknowledging ATSI languages.

6. Each of the above are interconnectable and are capable of standing as separate questions, and in my view should be presented in that way. By combining the five issues into a single question, it is supporting a “Yes or No” argument, rather than a “Yes and No” argument. So many citizens, like me, will be inclined to vote “No”, because while I support some of the changes, I do not support them all.

7. Despite contrary advice from experts on Referenda, the Committee continues to support a “single question” approach. For example, Professor Williams and Mr David Hume, two leading experts, suggest this is a “recipe for failure” (*People Power: The History and Future of the Referendum in Australia*; UNSW Press 2010).

8. This is an informed opinion, but even as an assertion it seems the Committee is similarly persuaded, without publicly saying so. If not, why does the Committee insist on delaying the Referendum when commissioned *Newspoll* research showed that 82% of citizens are claimed to support the proposed changes.

9. I submit that the reason for this lack of confidence in the research is clear. The *Newspoll* telephone research of over 1500 people was conducted with voters who mostly had no or little knowledge of the Constitution. This was evident from the previously conducted *Newspoll* focus groups, albeit involving only 50 people. Even much of the Press is uninformed, suggesting that one option is to include “recognition” in the Preamble to the Constitution, even though there is no such Preamble.

11. The Committee must therefore be aware that a single question is in serious doubt of passing, given that the pre-referendum process will include a “No” case, and consequently a much more informed community of voters.

### **Repeal of Sections 25 and 51(xxvi)**

12. I submit that most Australians, of all races, would support the removal of all reference to race in our Constitution. If these two questions were put separately, I have no doubt that they would be approved by an overwhelming majority. There is no place for racial distinction in a multi-cultural nation as Australia, where all citizens should be treated as equals.

13. As submitted below, preference of any one race over another is likely to be resented and rejected by voters.

### **Insert new Sections 51A and 127A**

14. I submit that these two changes are simply statements of self-evident fact, and should not be included. Importantly, it is these changes that are most likely to cause resentment by other races, and rejection of a single question.

3.

15. The Expert Panel's objective included that recommendations must; "contribute to a more unified and reconciled nation". A key question therefore arises. How can we argue on the one hand that all existing reference to race should be repealed, and on the other hand, argue that preferential acknowledgment to one race should be included. This is hardly "unifying".

16. Further, the legislative power conferred by proposed Section 51A is virtually identical to existing Section 51(xxvi). It would be more acceptable to amend that sub-section by deleting the words "the people of any race", and inserting the word "people". This would be a more minimalist, and acceptable change.

17. It is also here that use of a "Yes and No" question becomes critically important, and I suggest that citizens of the many races in Australia would object to the proposed change. There is therefore a risk that a single question will result in all changes being rejected, even though some of the separate changes would be supported.

**Insert new Section 116A**

18. Section 116 of Chapter 5 prevents discrimination on religious grounds, and could easily be extended to include race, colour, ethnic or national origin. A more "minimalist", and therefore acceptable change, would be to repeal Section 116 and insert the word "religion" in the proposed new Section 116A, along with race, colour etc.

19. Subsection (2) is simply to ensure the continuation of other related laws, such as the Racial Discrimination Act and various Aboriginal Land Rights Acts. This would be unnecessary if the suggestion in paragraph 16. above (amend Sect 51(xxvi) was adopted, and is likely to be more acceptable as it avoids any reference to a particular race.

**Conclusion**

20. It is illogical to argue that existing offensive references to race should be removed, but others should be inserted. By presenting the proposed changes as separate questions, it will at least allow for the racist provisions to be repealed. This will facilitate a more unified nation, united by an overwhelming majority of Australians of all races, consistent with the Expert Panel's objectives.

21. Some of the recommended changes are unnecessarily complicated, and the Committee should consider the more minimalistic approaches suggested in this submission.

22. I confirm that there is nothing in this submission which is confidential, and I agree that the Committee may, at its sole discretion, publish it as a public document.

*(Signed)*

Robert Ludlow  
Victoria