

Chapter 3

Next steps towards Constitutional recognition

Multi-partisan support for action in the 44th Parliament

3.1 In chapter two of this interim report, the committee noted the strong multi-partisan support for constitutional recognition of Aboriginal and Torres Strait Islander peoples. 'Support from the major parties at the Commonwealth level' is one of the 'five pillars to a successful referendum' discussed by Professor George Williams AO, including in his book *People Power*, co-authored by Mr David Hume.¹

3.2 The Expert Panel recommended that 'the referendum should only proceed when it is likely to be supported by all major political parties, and a majority of State governments.'² To this end, the committee has committed to visit most Australian states in 2014, towards reporting to Parliament on mechanisms for engagement that achieve public and bipartisan support in Australian states and territories.

Review of the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013*

3.3 On 28 March 2014, Minister for Indigenous Affairs the Hon Nigel Scullion announced a review into public support for constitutional recognition of Aboriginal and Torres Strait Islander peoples.³ Under the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013*, the Minister must initiate a review to:

- (a) consider the readiness of the Australian public to support a referendum to amend the Constitution to recognise Aboriginal and Torres Strait Islander peoples; and
- (b) consider proposals for constitutional change to recognise Aboriginal and Torres Strait Islander peoples taking into account the work of:
 - (i) the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples; and
 - (ii) Reconciliation Australia; and
- (c) identify which of those proposals would be most likely to obtain the support of the Australian people; and
- (d) consider the levels of support for amending the Constitution to recognise Aboriginal and Torres Strait Islander peoples amongst:

1 George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia*, UNSW Press, 2010.

2 *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 227.

3 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, 'Next Step Towards Indigenous Constitutional Recognition', 28 March 2014, <http://minister.indigenous.gov.au/media/2014-03-28/next-step-towards-indigenous-constitutional-recognition> (accessed 23 June 2014).

- (i) Aboriginal and Torres Strait Islander peoples; and
 - (ii) the wider Australian public; and
 - (iii) the Governments of the States and Territories; and
- (e) give the Minister a written report of the review at least 6 months prior to the day this Act ceases to have effect.⁴

3.4 The panel appointed to conduct this review is required to report to the Minister by 28 September 2014.⁵

3.5 The review panel includes former Deputy Prime Minister the Hon Mr John Anderson AO (Chair), Ms Tanya Hosch, Deputy Campaign Director of Recognise, and Mr Richard Eccles, Deputy Secretary of the Department of the Prime Minister and Cabinet.

3.6 Recognising their distinct roles, the committee will work closely with the review panel where appropriate.

Consultation and call for submissions

3.7 The committee will hold public hearings at locations around Australia in 2014. The committee held its first public hearing in Brisbane on 30 June 2014. A list of witnesses who appeared before the committee is in Appendix 4.

3.8 In Brisbane, the committee heard evidence that constitutional recognition has considerable public health benefits for Australia, including for the spiritual and psychological wellbeing of Aboriginal and Torres Strait Islander peoples.⁶ The committee heard that 'acknowledging our distinctive national identity'⁷ through recognition has the potential to strengthen Australia's international competitiveness as

4 *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013*, s. 4.

5 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, 'Next Step Towards Indigenous Constitutional Recognition', Media release, 28 March 2014, <http://minister.indigenous.gov.au/media/2014-03-28/next-step-towards-indigenous-constitutional-recognition> (accessed 23 June 2014).

6 Mr Selwyn Button, Chief Executive Officer, Queensland Aboriginal and Islander Health Council, *Committee Hansard*, 30 June 2014, p. 19; Mr Peter Arndt, Executive Officer, Catholic Justice and Peace Commission, Brisbane Archdiocese, *Committee Hansard*, 30 June 2014, p. 23.

7 Mr Shane Duffy, Chief Executive Officer, Aboriginal and Torres Strait Islander Legal Services Queensland, *Committee Hansard*, 30 June 2014, p. 1.

a tourist destination.⁸ Witnesses emphasised that the legal and practical impact of constitutional recognition remains a 'key question' for government.⁹

3.9 Some witnesses told the committee that their members supported the recommendations of the Expert Panel on the basis of the significant community consultation already conducted.¹⁰ Other witnesses indicated that a staged approach involving further public education may allow Australia to give effect to meaningful constitutional recognition over the longer term.¹¹ The committee also heard that, alongside but distinct from the process of constitutional change, the ability to engage in an ongoing dialogue with governments about treaty and sovereignty is important to some members of the Aboriginal and Torres Strait Islander community.¹²

3.10 The committee looks forward to receiving more evidence that will enable it to consider and report on mechanisms that would build on the work of the Expert Panel and contribute to further engagement across all sectors of the community.

3.11 In presenting this interim report to Parliament on steps that can be taken to progress towards a successful referendum, the committee notes that:

- a strong community base is likely to increase popular ownership of a referendum proposal;
- comprehensive popular education has a role in countering misunderstanding of proposals, scare campaigns, and voters' unwillingness to consider change;
- 'practical and substantive' proposals are more likely to succeed; and
- a referendum will be more likely to succeed if conducted according to a modern process, including distributing information about proposals using a range of media.¹³

3.12 The committee is mindful of ensuring that the mechanisms it recommends complement the ongoing work of RECOGNISE, the people's movement for

8 Mr Daniel Gschwind, Chief Executive Officer, Queensland Tourism Industry Council, *Committee Hansard*, 30 June 2014, p. 14.

9 Mr Shane Duffy, Chief Executive Officer, Aboriginal and Torres Strait Islander Legal Services Queensland, *Committee Hansard*, 30 June 2014, pp 3–6; Mr Ian Brown, President, Queensland Law Society, *Committee Hansard*, 30 June 2014, p. 8; Mr Selwyn Button, Chief Executive Officer, Queensland Aboriginal and Islander Health Council, *Committee Hansard*, 30 June 2014, p. 19.

10 Mr Peter Arndt, Executive Officer, Catholic Justice and Peace Commission, Brisbane Archdiocese, *Committee Hansard*, 30 June 2014, p. 23.

11 Mr Ian Brown, President, Queensland Law Society, *Committee Hansard*, 30 June 2014, pp 10–11.

12 Mr Shane Duffy, Chief Executive Officer, Aboriginal and Torres Strait Islander Legal Services Queensland, *Committee Hansard*, 30 June 2014, p. 1; Mr Wayne Wharton, Spokesperson, Brisbane Aboriginal Sovereign Embassy, *Committee Hansard*, 30 June 2014, p. 17.

13 George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia*, UNSW Press, 2010, pp 12–14.

constitutional recognition of Aboriginal and Torres Strait Islander Peoples.¹⁴ One of the key strategies of the RECOGNISE movement has been the Journey to Recognition which is building momentum for recognition around Australia.

3.13 The committee notes that the Minister for Indigenous Affairs the Hon Nigel Scullion stated on 28 March 2014 that the government would announce a draft amendment to the Constitution for public consultation in late 2014.¹⁵

3.14 The committee is not required to present a final report to Parliament until 30 June 2015. The committee intends to report on matters raised during consultation and will consider tabling a second interim report in 2014 before tabling its final report on or before 30 June 2015.

3.15 The committee welcomes and invites submissions on steps that can be taken to progress towards a successful referendum on the constitutional recognition of Aboriginal and Torres Strait islander peoples.

Mr Ken Wyatt AM MP
Chair

14 RECOGNISE is governed by the board of Reconciliation Australia, who received \$10 million in government funding in 2012–13 to build public awareness and community support for constitutional change.

15 Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, 'Next Step Towards Indigenous Constitutional Recognition', 28 March 2014.
<http://minister.indigenous.gov.au/media/2014-03-28/next-step-towards-indigenous-constitutional-recognition> (accessed 23 June 2014).