



**ABORIGINAL AND TORRES STRAIT ISLANDER
COMMISSION**

**SUBMISSION
TO THE**

**SENATE LEGAL AND CONSTITUTIONAL
REFERENCES COMMITTEE**

INQUIRY INTO AN AUSTRALIAN REPUBLIC

MARCH 2004

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION

Lovett Tower Phillip ACT 2606 • PO Box 17 Woden ACT 2606

Tel: (02) 6121 4000 • Fax: (02) 6281 0772

www.atsic.gov.au

ABN 36 144 315 154

TABLE OF CONTENTS

Executive Summary	3
Terms of Reference	3
Purpose	4
Assessment of Issues	4
ATSIC Position	4
Revised Constitution	5
Community Participation	5
Conclusion	6
Recommendations	6

61 7 40480112

EXECUTIVE SUMMARY

The establishment of the Republic would represent a bold assertion of Australia's national identity. However, for that new identity to be inclusive and truly Australian, it must address proper acknowledgement of Indigenous prior ownership.

By focusing on the finer details of the process for moving towards an Australian republic and functions, powers and selection of a Head of State, the Terms of Reference appear too narrow to allow a substantial submission from an Indigenous perspective.

In this regard, ATSIC considers that the processes should encourage rather than foreclose, the chances of Indigenous Australians participating as candidate for the selection of a Head of State. In other words, the processes must manifestly embody and advance the principle of substantive equality, cognisant of the symbolic and nation-building significance of the role of Indigenous Australians.

If the Terms of Reference were broader to allow the Rights of Indigenous people to be considered fully, ATSIC would submit on the following matters:

- The establishment of a Republic provides the opportunity to redefine the relationship between non-Indigenous and Indigenous Australians, and formally acknowledge their status and rights.
- A Republic would be of little value if it did not recognise Indigenous peoples' prior ownership of Australia and special status and cultural identity.
- To achieve a Republic of significant value, there should be constitutional changes to acknowledge and protect the status and rights of Indigenous people, through a new Preamble, revised Constitution, the incorporation of a Treaty style provision, and a Bill of Rights. These have always been considered by ATSIC as necessary changes required for achieving a bona fide Republic. Reserved seats in Parliament for Indigenous Australians should also be considered to be a goal for Indigenous peoples of Australia.

ATSIC requests that the Committee consider the position of Indigenous people, and implement fair and equitable processes that are fully inclusive of Indigenous Australians. The process for moving towards an Australian Republic must be open, accessible, and clearly explained to Indigenous people.

TERMS OF REFERENCE

The terms of reference do not address fundamental issues affecting Indigenous people which allow for comment on Indigenous Rights and Constitutional change.

61 7 40480112

Be that as it may, ATSIC believes that the Committee, when conducting community consultations, must ensure there is participation by Indigenous Australians.

PURPOSE

ATSIC's interest in the Republican issue is based on Indigenous aspirations for constitutional change which protects Indigenous rights.

ASSESSMENT OF ISSUES

ATSIC Position

The ATSIC present position towards the establishment of an Australian Republic is basically unchanged from its position in 1995, when ATSIC first considered the implications of a potential Australian Republic for Indigenous people. This position is outlined below.

Revised Constitution

A revised Constitution is required to secure protection for those Indigenous rights already recognised as well as those recognised in the future. The legislative response to *Mabo*, the *Native Title Act 1993* (Cth), did not definitively address the question of Aboriginal status. The legislation itself failed to grant Aboriginal rights the protection many Aboriginal leaders demanded. Rather, it left them vulnerable to arbitrary interference. The 1998 amendments to the *Native Title Act* demonstrated just how vulnerable Indigenous rights were in the absence of Constitutional protection.

Although a new preamble is appropriate and desirable, it must be noted that this alone does not provide the necessary Constitutional protection required for Indigenous people. Provisions that accommodate the protection of Indigenous rights must be placed in the body of the Constitution to achieve the necessary enforceable legal effect.

ATSIC has continually expressed a desire for Constitutional reform and a new preamble in order to acknowledge the unique status and inherent and inalienable rights of Indigenous Australians, and to formally address the relationship between Australia and Indigenous peoples. The following reflect this desire:

- ATSIC's Corporate Plan for 1992-1996.
- In 1995 the ATSIC Board of Commissioners appointed a **Constitutional Reform Advisory Committee** under section 13 of the ATSIC Act to advise the Board on constitutional reform matters.
- In May 1997 the then ATSIC Chairperson, Lois O'Donoghue, presented a paper to the **National Reconciliation Convention**.

61 7 40480112

- In February 1998 the **National Constitutional Convention** voted that any new Preamble to the Constitution should acknowledge "the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders". In another resolution, the convention also agreed that the Preamble should also include "recognition that Aboriginal people and Torres Strait Islanders have continuing rights by virtue of their status as Australia's Indigenous peoples". ATSIC requests that the committee honour these resolutions made by the convention, for the benefit of all Australians.
- The then ATSIC Chairman, Mr Gatjil Djerrkura, outlined a number of broad goals the ATSIC Board had adopted for constitutional change.

These included:

- **A New Preamble** recognising the status of Indigenous people as the First Australians, and indicating a respect for the land and Indigenous cultural heritage;
 - **A Bill of Rights** that included specific recognition of the rights of Indigenous Australians;
 - **Constitutional protection** against adverse discrimination on the grounds of race, and protection of the unique status and rights of Indigenous peoples; and
 - **Reserved seats in parliament for Indigenous Australians.**
- At the **Republican National Convention** in 1999 Mr Gatjil Djerrkura stated that a new preamble was of great symbolic significance and would also establish the nation's vision for the future. "The vision is the way ahead and in time, we would expect that the vision in the Preamble would be reflected more and more in the substantive clauses."

Section 25

ATSIC reiterates its position that was in the submission to the Senate and Legal Constitutional References Committee into the Inquiry into the Progress towards a National Reconciliation (March 2003). The position is that Section 25 which gives rise to discrimination on the basis of race as it relates to voting should be removed from the constitution.

Community Participation

The terms of reference state that the "committee is also required to facilitate wide community participation in this inquiry by conducting public hearings throughout Australia, including in rural and regional areas". ATSIC requests that the committee is inclusive of Indigenous people and communities while undertaking these

61 7 40480112

community consultations, noting that Indigenous people have been neglected in the past, especially in remote locations.

CONCLUSION

This submission notes that the narrow Terms of Reference of the Inquiry precludes proper consideration of the rights and status of Indigenous peoples.

ATSIC believes that a Republic should offer an opportunity to redefine the relationship between non-Indigenous and Indigenous Australians, and is of little value if the prior ownership, special status, and cultural identity of Indigenous people are not formally recognised.

Despite the limited scope of the Inquiry, ATSIC urges the Committee to be mindful of the importance of acknowledging the rights, interests and concerns of Indigenous people at all times when proceeding with the Inquiry.

RECOMMENDATIONS

ATSIC recommends to the Committee that:

- a) *That a Republic be accompanied by a revised constitution (including the removal of Section 25, replaced by a section that reflects protection on the basis of race), a new preamble, incorporation of a Treaty style provision, and Bill of Rights, to acknowledge and protect the status and rights of the Indigenous peoples of Australia.*
- b) *The process for moving towards an Australian Republic should be open, accessible, and clearly explained to Indigenous people, and*
- c) *Participation of Indigenous people and communities in the public hearings be ensured by the Committee.*