

List of recommendations

Recommendation 1

1.7 The committee recommends that each House of Parliament set aside a full day of sittings to debate concurrently recommendations of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples as set out in this report with a view to achieving near-unanimous parliamentary support for and building momentum towards a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution.

Recommendation 2

1.10 The committee recommends repealing section 25 of the Constitution.

Recommendation 3

1.13 The committee recommends not inserting the Expert Panel's proposed new section 127A.

Recommendation 4

1.17 The committee recommends the repeal or amendment of section 51(xxvi) to remove the reference to race.

Recommendation 5

1.19 The committee recommends that the Parliament consider three structural options for constitutional recognition of Aboriginal and Torres Strait Islander peoples that follow, noting the committee's view that any proposal must preserve both existing Commonwealth laws relying on section 51(xxvi) and the Commonwealth's power to make laws with respect to Aboriginal and Torres Strait Islander peoples.

OPTION 1 – New section 51A with a broad prohibition of racial discrimination incorporating the Expert Panel's section 116A amendment

51A Recognition of Aboriginal and Torres Strait Islander Peoples

Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;

Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;

Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.

116A Prohibition of racial discrimination

The Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin.

Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group;

OPTION 2 – New section 51A with a limited prohibition of discrimination by the Commonwealth against Aboriginal and Torres Strait Islander peoples

51A Recognition of Aboriginal and Torres Strait Islander peoples

Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;

Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;

Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;

- (1) The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples, but not so as to discriminate adversely against them.
- (2) Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of Aboriginal and Torres Strait Islander peoples.

OPTION 3 – Redraft section 51(xxvi) to allow the Commonwealth Parliament to make laws with respect to Aboriginal and Torres Strait Islander peoples with the option of enacting an Act of Recognition

51 Legislative Powers of the Parliament

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(xxvi) Aboriginal and Torres Strait Islander peoples.

Recommendation 6

1.41 The committee recommends that a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution take place at or shortly after the next federal election in 2016.

Recommendation 7

1.43 The committee recommends that the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* should be extended to align with the proposed timing of a referendum.