

Business
Council of
Australia



submission

Submission to the Joint Select
Committee on Constitutional
Recognition of Aboriginal and
Torres Strait Islander Peoples

JANUARY 2015

*Working to achieve
economic, social
and environmental
goals that will benefit
Australians now and
into the future*

The Business Council of Australia is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

About this submission

The Business Council of Australia is committed to helping create the social and economic conditions in which Aboriginal and Torres Strait Islander peoples can achieve their full potential.

Recognition, respect and redress are vital to setting these conditions.

When the Australian Constitution was written, Indigenous peoples and their rights were not recognised or acknowledged.

Some discriminatory aspects of the constitution were changed through the 1967 referendum, but others remain.

It is time for meaningful change in our constitution to better reflect our history and the values and aspirations of Australia today.

This brief submission sets out the Business Council's position on the reasons for and process towards constitutional recognition, for consideration by the Joint Select Committee.

Summary of the Business Council position

• Constitutional recognition aligns with Business Council principles and values

- We are committed to equality of opportunity through freedom of choice and fairness as fundamental principles that support Australians to pursue their aspirations.
- Growth needs to be inclusive to ensure prosperity is shared and sections of the population aren't left behind.

• The Business Council will provide high-level support for recognition

- The Business Council will provide advice, guidance and support for BCA member companies on the process and how they might wish to be involved.
- The Business Council itself will continue to advocate for constitutional reform.

• Key elements of the process need to be settled in 2015

- For the Business Council and its members to fulfil this role, clarity on timing and the form of the question are required.
- Leaders need to deliver on strong cross-party support.
- Indigenous peoples need an opportunity to inform the question.

- **Constitutional recognition is not tokenistic**

- Respect and acknowledgment are central to improving long-term material outcomes for Indigenous people.
- Constitutional change that doesn't include significant changes to the body of the constitution can nonetheless be powerful and significant.

Recognition aligns with Business Council principles and values

The Business Council's 2013 *Action Plan for Enduring Prosperity* highlighted the importance of inclusivity to sustainable economic growth. Inclusive growth involves working to create opportunities for all Australians to participate and access opportunity, particularly those who are disadvantaged.

The effects of past dispossession and discrimination continue to have an impact on the lives – and life chances – of Indigenous Australians. Enduring prosperity in Australia won't be possible while significant overall disparities persist between Indigenous peoples and the rest of the population in measures of health, education, economic and social inclusion.

In order for Indigenous Australians to fully access the opportunities to participate in and share national prosperity, we must do what we can to address the causes of this disparity.

The national Apology and native title legislation are among some of the recent steps taken to come to terms and deal with past policies and practices and their ongoing effects on Indigenous peoples. Constitutional recognition is another important step in this process.

The Business Council will provide high-level support for recognition

The Business Council has been engaged in the process towards constitutional recognition since the involvement of then President Graham Bradley in the 2012 Expert Panel on Constitutional Recognition of Indigenous Australians.

Since then, we have continued to support the Recognise campaign and provide opportunities for our members to learn more about and support the campaign.

Our 2014 Indigenous Engagement Survey showed 27 per cent of Business Council member companies have made the decision to support Recognise and 29 per cent want to know more about how to be involved.

We will work with these and other member companies to find and pursue opportunities to share information about the process and advocate the importance of changing the constitution.

Key elements of the process need to be settled in 2015

The 2012 report of the Expert Panel to the Prime Minister has triggered a process towards change that is both timely and time-sensitive.

Setting a clear process and timeline will allow for a proper awareness campaign, community discussion and a clear advocacy agenda for supporters.

Failure to do so could squander current bipartisan support and lose important momentum Recognise and others have built over the past three years. If the current process is not followed through, it may be difficult to generate the political will in the near future to restart the agenda.

The Business Council agrees with the Joint Select Committee's position in its October 2014 Progress Report that action is required to focus the nation's attention on and build momentum towards a referendum.

The action required includes:

- a process to set a question that draws in and involves Indigenous people, the parliament and constitutional experts
- once the question is set, the Prime Minister should set a date for the referendum
- leaders across party lines, and across Commonwealth and state jurisdictions, will need to deliver strong support to give the referendum the best chance of success.

The Business Council is concerned about the dangers of holding a referendum concurrently with a federal election, and supports the concept of holding a referendum in 2017 to coincide with the 50th anniversary of the 1967 referendum.

Constitutional recognition is not tokenistic

As Australia matures, we will continue to refine and perfect our constitution and other institutions.

The current process for constitutional recognition is not a one-off opportunity for reconciliation and redress. It is part of a longer-term and multi-faceted approach to reconciliation and ending disparity that involves both substantive and symbolic reforms.

Symbolic reform to the constitution, such as an introductory statement or preamble that acknowledges and places value on Australia's rich Indigenous heritage, would not be tokenistic in and of itself.

The example of the value and role of the preamble to the United States Constitution gives an indication of how significant such statements can be in generating national unity, shared pride and a sense of inclusion and belonging.

The experiences of Business Council member companies show how recognition and respect are fundamental to creating the conditions for improved material outcomes for Aboriginal and Torres Strait Islander peoples.

Companies that have implemented successful Indigenous strategies point to the importance of the three interdependent elements of Reconciliation Australia's Reconciliation Action Plan (RAP) framework (relationships, respect and opportunities) in achieving tangible progress in areas like employment.

While opportunities are important, without building relationships with Indigenous communities and organisations, and fostering respect through initiatives like workplace education, companies find progress in employment very difficult to sustain.

This is not to say substantive change to the body of the constitution is not required, but rather to propose that symbolic change does not lack substance.

Currently, there is broad agreement across the political spectrum on adding some form of 'recognition' introductory statement or preamble to the constitution.

The removal of outdated references to race, in particular Section 25, is also uncontroversial.

The issue for the Joint Select Committee and others is how to preserve the positive aspects of the so-called 'race power' of Section 51 xxvi, which provides the basis for important current legislation like Native Title.

The need to preserve the kind of positive discriminatory power this section permits must be balanced with the need to protect against damaging discrimination. This is why the panel proposed a new Section 116A as a racial anti-discrimination clause.

The Business Council supports the Joint Select Committee's recommendation for a day of parliamentary debate to discuss this, and other, important matters and proposals. This should be preceded by a process, in addition to current consultations (including those of this committee), through which Indigenous Australians can play a key role in determining the referendum proposition.

If the final referendum proposition includes a 'recognition' preamble or statement and the removal of outdated race references, while preserving the ability of parliament to make laws to benefit Aboriginal and Torres Strait Islander peoples, the current generation of Australians will be in a position to significantly and meaningfully progress the ongoing process of reconciliation.

BUSINESS COUNCIL OF AUSTRALIA

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