



30 October 2014

Ms Toni Matulick  
Committee Secretary  
Joint Select Committee on Constitutional Recognition of  
Aboriginal and Torres Strait Islander Peoples  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By email: [jscatsi@aph.gov.au](mailto:jscatsi@aph.gov.au)

Dear Ms Matulick

**Re: Submission to the Joint Committee on Constitutional Recognition**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback into the current Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples (the Joint Committee) inquiry. The RANZCP is the principal organisation representing the medical speciality of psychiatry in Australia and New Zealand and is responsible for training, educating and representing psychiatrists on policy issues bi-nationally.

The RANZCP, guided by the Aboriginal and Torres Strait Islander Mental Health Committee and reflected in the *Reconciliation Action Plan 2014-2016*, is committed to promoting diversity and reconciliation in Australia. This includes addressing the inequality of mental health outcomes between Aboriginal and Torres Strait Islander peoples and other Australians as well as celebrating the value of Aboriginal and Torres Strait Islander heritage, culture and resilience and promoting self-determination and empowerment. The RANZCP welcomes the move towards constitutional recognition as an important step forward in this process.

If you would like to discuss any of the issues raised in the submission, please contact Dr Anne Ellison, General Manager, Practice, Policy and Projects via

[Redacted contact information]

Yours sincerely

[Redacted signature]

Dr Murray Patton  
**President**

Ref: 3792

## RANZCP Submission

# Constitutional Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution

October 2014



### Introduction

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) calls for the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. The profession of psychiatry is committed to addressing historical wrongs, supporting Aboriginal and Torres Strait Islander self-determination and working towards a vision of reconciliation and diversity in Australia. The RANZCP has developed a number of policy documents outlining this stance including:

- Position Statement 68 'Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution'<sup>1</sup>
- [Position Statement 42](#) 'Stolen Generations'
- [Position Statement 50](#) 'Aboriginal and Torres Strait Islander mental health workers'
- [Ethical Guideline 11](#) 'Aboriginal and Torres Strait Islander mental health: Principles and guidelines'
- [Submission](#) to You Me Unity on Constitutional Recognition, May 2011

In the following submission the importance of constitutional recognition from a psychiatric perspective is explored, followed by a discussion relating more directly to the terms of reference of the inquiry.

### Background

As a bi-national College, the RANZCP has had the benefit of learning from the experience of New Zealand, gaining additional guidance about the importance of recognition. The signing of the Treaty of Waitangi by over 500 Māori chiefs (representing most tribes) and the British Crown in 1840 was a seminal event with some important national consequences. Firstly, the treaty is embedded in the way of life of the nation. Secondly, it has transformed New Zealand society; Māori have faith in the treaty as a confirmation of rights and an affirmation of Indigenous status and respect. Lastly and fundamentally, the Treaty is a clear demonstration of the value New Zealand has for its indigenous peoples and their participation in society. The RANZCP identifies the importance of such recognition in New Zealand, and the positive implications for the health and wellbeing of the population on a whole, and keenly anticipates a time when Australia is able to achieve similar equality.<sup>2</sup>

In the Australian context, the RANZCP continues to be concerned that the health outcomes of Aboriginal and Torres Strait Islander peoples is far lower than that of the broader population. This is reflected in the fact that Aboriginal and Torres Strait Islander peoples have a life expectancy on average 17 years less than that of the broader population<sup>3</sup>. The prevalence of psychological distress and mental illness is similarly inequitably weighted. Australia with Aboriginal and Torres Strait Islander men and women are, respectively, 2.2 and 1.5 times more likely to be hospitalised for mental health-related conditions<sup>4</sup> and

<sup>1</sup> This document is currently being reviewed in order to bring it up-to-date with contemporary discourse on the issue. An updated version will be on the RANZCP [website](http://www.ranzcp.org) towards the end of 2014, available at <https://www.ranzcp.org>, under Statements and Guidelines.

<sup>2</sup> Durie M: 2013. *Nga Tini Whetu: Navigating Maori Future*, Huia Publishers, New Zealand.

<sup>3</sup> Recognise: 2014. 'Recognise what', available at: <http://www.recognise.org.au/recognise-what>, [accessed 1 September 2014].

<sup>4</sup> Australian Institute of Health and Welfare: 2013. *Aboriginal and Torres Strait Islander Health Performance Framework 2012: detailed analysis*. Cat. no. IHW 94 Canberra: Australia, pp. 639.

5.8 and 3.1 times more likely to die from mental and behavioural disorders<sup>5</sup>.

Psychiatrists acknowledge the intergenerational and ongoing dispossession, trauma and discrimination experienced by Aboriginal and Torres Strait Islander peoples that have contributed to these alarming statistics. The RANZCP is committed to addressing this by promoting initiatives that strengthen and empower Aboriginal and Torres Strait peoples and contribute to their healing. This includes recognising the unique position of Aboriginal and Torres Strait Islander peoples as the first peoples of the land and water now known as Australia and enshrining this in the constitution.

Importantly, constitutional recognition is also about celebrating and valuing the diversity of Australia as a nation, and recognising the contribution of Aboriginal and Torres Strait Islander peoples within this context. Aboriginal and Torres Strait Islander communities have produced many great leaders who have long worked tirelessly towards self-determination, as well as achieving excellence in their chosen fields, including sports, health, law, politics and more. Aboriginal and Torres Strait Islander communities' deep, spiritual connection to the land has persevered, despite adversity, with sacred knowledge and customs continuing to be passed down through the generations. Further, mainstream society is also beginning to take note of the importance of this body of knowledge, with guidance increasingly being sought from Aboriginal and Torres Strait Islander elders to inform land and water care, with excellent results. Aboriginal and Torres Strait Islander communities continue to use traditional artistic methods, preserving Dreamtime stories and cultural knowledge through this practice. In addition to this, Aboriginal and Torres Strait Islander communities have also produced some of the country's greatest and most original artists, achieving local and international acclaim in arenas including visual arts, theatre, dance, filmmaking, music and poetry, with this creative output regularly showcased at international film festivals, art shows and theatres worldwide.

Such important contributions across all these areas enrich the fabric of Australian society. Acknowledging Aboriginal and Torres Strait Islander peoples in the constitution would allow Australia to move forward in the spirit of partnership and unity and to fully embrace the uniqueness and diversity that is the essence of Australia. Psychiatrists recognise that, just the inequitable policies of the Australian Government in the past have incurred significant trauma and psychological damage for Aboriginal and Torres Strait Islander peoples, forward-thinking, empowering policies made to redress this can have positive effects on the mental health of all Australians. Constitutional recognition would have a positive effect on the self esteem not only of Aboriginal and Torres Strait Islander peoples; it would benefit all Australians and work to reinforce the collective national pride. As well as addressing a national wound, it would make a significant contribution to the lives, health and wellbeing of many on an individual basis.

### **Steps to progress a successful referendum**

With respect to the terms of reference of this inquiry, namely 'steps that can be taken to progress towards a successful referendum on Indigenous Constitutional Recognition', the RANZCP appreciates the complexities of achieving a successful referendum. Williams and Hume write that 'bipartisan support' is one of the 'five pillars' of success in this area<sup>6</sup>. With this in mind, the RANZCP is pleased to have the opportunity to add its voice to the growing support for constitutional recognition that is building across diverse sectors of Australia.

Two more pillars described in Williams and Hume's book and cited in the Committee's *Interim Report* is

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<sup>5</sup> Garvey D: 2008. *A review of the social and emotional wellbeing of Indigenous Australian peoples*. Australian Indigenous HealthInfoNet, pp.11, available at <http://www.healthinfonet.ecu.edu.au/uploads/docs/sewb-review.pdf>, [accessed 5 September 2014].

<sup>6</sup> Williams G, Hume D: 2010. *People power: The history and future of the referendum in Australia*, UNSW Press, Sydney, Australia.

‘popular ownership’ and ‘a sound and sensible proposal’.<sup>7</sup> To this end, the RANZCP supports Recognise’s *first four* recommendations as a ‘sound and sensible’ model for constitutional recognition that has had broad and deep community consultation and widespread support. The RANZCP supports the overall theme of the fifth recommendation, however suggests some important modifications, as discussed below.

### Phrasing of Recognise’s recommendation to insert a new Section 127A

Upon its review of Recognise’s recommendations, the RANZCP, guided by the Aboriginal and Torres Strait Islander Mental Health Committee (ATSIMHC) identified some issues with the fifth recommendation, as it is on the website. The fifth recommendation is as follows, italics have been added to highlight the problematic aspects of the statement:

- **Insert** a new Section 127A – recognising Aboriginal and Torres Strait Islander languages *were* this country’s first *tongues*, *while confirming that English is Australia’s national language*.

The issues identified by the RANZCP and the Aboriginal and Torres Strait Islander Mental Health Committee are:

- The use of the past tense, i.e. ‘were this country’s first tongues’ implies that Aboriginal and Torres Strait Islander languages are a thing of the past. The RANZCP recommends that this be changed to present tense, ‘are’.
- The RANZCP reflects that the ATSIMHC membership were not comfortable with reference to Aboriginal languages as ‘tongues’ and recommend that the phrase be changed to ‘Aboriginal languages’.
- The RANZCP suggests that the phrase ‘while confirming that English is Australia’s national language’ was not appropriate for inclusion in this recommendation. The juxtaposition between Aboriginal and Torres Strait Islander languages which ‘were’ the country’s first languages, compared with the now national language of English relegates Aboriginal and Torres Strait Islander languages to the past and implies limited relevancy in the present. Further, English is widely understood to be the principal language spoken in Australia; however English does not have an official legal status as a national language. The predominance of English in Australia is unchallenged and there is no need to officialise it as the sole national language into the Constitution and thus Australia’s body of law. Doing so in this context would be inappropriate and would seem to send the wrong message about the diversity of Australian society. The RANZCP recommend that this phrase be omitted<sup>8</sup>.

The RANZCP recommends that the fifth recommendation be re-phrased as follows:

- **Insert** a new Section 127A – recognising Aboriginal and Torres Strait Islander languages are this country’s first languages.

### Recommendations

As per Recognise’s first four recommendations, the RANZCP strongly supports the idea that Australians should vote in a constitutional referendum to:

- **Remove** Section 25 – which says the States can ban people from voting based on their race;
- **Remove** Section 51 (xxvi) – which can be used to pass laws that discriminate against people based on their race;

<sup>7</sup> Commonwealth of Australia: 2014. *Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*. July, Canberra, Australia, pp.5.

<sup>8</sup> Reilly A: 2012. ‘Principles of recognition’, *Right Now: Human Rights in Australia*, available at: <http://rightnow.org.au/writing-cat/case-legislation-report/principles-of-recognition-comments-on-the-you-me-unity-expert-panel-report-on-recognising-indigenous-australians-in-the-constitution/>, [accessed 24 October 2014].

- **Insert** a new Section 51A – to recognise Aboriginal and Torres Strait Islander peoples and to preserve the Australian Government's ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples;
- **Insert** a new Section 116A – banning racial discrimination by government; and

The RANZCP supports Recognise's fifth recommendation, with some amendments:

- **Insert** a new Section 127A – recognising Aboriginal and Torres Strait Islander languages were this country's first languages<sup>9</sup>.

The RANZCP celebrates the fact that moves have already been made in Australia to begin to address historic deficiencies in human rights and recognise the value of Aboriginal and Torres Strait Islander communities, however there remains much more to be done. While constitutional recognition will not rectify historical injustices on its own, it does represent an important step towards forging a more constructive and genuine shared national identity.

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<sup>9</sup> Recognise: 2014. 'Recognise what', available at: <http://www.recognise.org.au/recognise-what>, [accessed 1 September 2014].