



14 January 2013

Senator Crossin
Chair
Joint Select Committee on Constitutional Recognition
of Aboriginal and Torres Strait Islander Peoples
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Chair

Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012

As the Aboriginal and Torres Strait Islander Social Justice Commissioner, I have a statutory function to monitor issues affecting the human rights of Aboriginal and Torres Strait Islander peoples in accordance with the *Australian Human Rights Commission Act 1986* (Cth).

I welcome the creation of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples as an important step in ensuring multi-party support and maintaining momentum towards a referendum for constitutional recognition of Aboriginal and Torres Strait Islander peoples.

As a former ex-officio member of the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples, I appreciate the opportunity to contribute to the Committee's Inquiry into the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (Recognition Bill).

I acknowledge the creation of the Committee and the tabling of the Recognition Bill as a demonstration of the ongoing commitment and good faith on the part of the Parliament to maintain momentum towards a referendum.

Critical to my support of the Recognition Bill is that it must not be used as a substitute for, or distract from, a referendum on constitutional recognition. It also must not compromise multi-party support for a referendum.

I make the following comments regarding the Recognition Bill:

1. In efforts to appropriately provide recognition, the preamble does not address or acknowledge the effects of dispossession and colonisation experienced by Aboriginal and Torres Strait Islander peoples. As such, it would be appropriate to expand the preamble to reflect such acknowledgment as contained in the objects of the *Aboriginal and Torres Strait Islander Act 2005* (Cth) set out at section 3; or the preamble of the *Native Title Act 1993* (Cth).
2. The Bill does not appropriately reflect the intent of removing those provisions enabling discrimination on the basis of race (for example section 25) from the Constitution.

3. An additional paragraph should be added to section 3 as subsection 3(4) that links the recognition with the broader Aboriginal and Torres Strait Islander policy agenda of *Closing the Gap*. It should reflect the commitment of the Parliament to close the gap in life expectancy and equal life chances for Aboriginal and Torres Strait Islander peoples. This would also be a further expression of multi-party support by the Parliament to the *Close the Gap Statement of Intent* first signed in March 2008.
4. The acknowledgement of the work of the Expert Panel and the requirement that the Panel's work be taken into account when considering proposals is welcomed. However the Expert Panel's work and recommendations should be given greater prominence. The Expert Panel's recommendations were developed over 14 months with over 250 consultations with experts and members of the community. The Expert Panel's recommendations should form the basis for any reforms. Therefore, subsection 4(2)(b) should read:

consider proposals for constitutional change to recognise Aboriginal and Torres Strait Islander peoples based on the Expert Panel's recommendations and the work of Reconciliation Australia.

5. I am of the view that section 5 of the Bill should also be expanded to reflect key recommendations outlined in the Expert Panel's Report regarding the process for the referendum. In particular, recommendation (g) should be incorporated. It reads:

If the government decides to put to referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples other than the proposals recommended by the Panel, it should consult further with Aboriginal and Torres Strait Islander peoples and their representative organisations to ascertain their views in relation to any such alternative proposal.

Involvement of Aboriginal and Torres Strait Islander peoples in all stages of the process, including this Inquiry into the Recognition Bill and also the subsequent activities of the Committee, must be ensured. Close working relationships must be developed with Aboriginal and Torres Strait Islander organisations, such as National Congress of Australia's First Peoples. Where possible these relationships should be formalised.

6. In order to ensure that the Bill is not misconstrued as a replacement for constitutional recognition, it must be accompanied by an announcement detailing the next steps of the Parliament, including the work of the Committee, in moving towards a referendum. This announcement would be an essential step in maintaining momentum and building support for constitutional recognition.
7. The Statement of Compatibility with human rights could also be strengthened by reference to how the Bill will assist the Australian Government comply with international human rights obligations. For example, Article 15 of the *United Nations Declaration on the Rights of Indigenous Peoples* outlines the rights of Indigenous peoples to have our dignity and diversity of cultures respected. It imposes obligations on States to take action in conjunction with Indigenous peoples to combat prejudice and to promote tolerance, understanding and good relations. Constitutional recognition, and the Recognition Bill as a step towards constitutional recognition, can help achieve this.
8. Aboriginal and Torres Strait Islander **peoples** should be used consistently throughout the Bill. For example, subsection 4(2)(b) refers to people rather than peoples.

I encourage you to continue to engage with Aboriginal and Torres Strait Islander peoples on these developments, and am available to discuss my comments with you further should you wish.

Yours sincerely

Mick Gooda
**Aboriginal and Torres Strait Islander
Social Justice Commissioner**