



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

CONSTITUTIONAL RECOGNITION OF ABORIGINAL AND  
TORRES STRAIT ISLANDER PEOPLES

**Roundtable discussion**

(Public)

WEDNESDAY, 5 NOVEMBER 2014

THURSDAY ISLAND

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**CONSTITUTIONAL RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER  
PEOPLES**

**Wednesday, 5 November 2014**

**Members in attendance:** Senators McKenzie, Peris, Siewert and Mr Neumann, Mr Wyatt.

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**Committee met at 08:57**

**CHAIR (Mr Wyatt):** I declare open this meeting of the Torres Strait Regional Authority and the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. On behalf of the committee, I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders both past and present. I thank the Torres Strait Regional Authority for welcoming the committee to Thursday Island. We are pleased to be able to meet with you.

The committee has been asked by the Commonwealth parliament to build a secure, strong bipartisan consensus around the timing and wording of the referendum proposals to recognise Aboriginal and Torres Strait Islander people in the Constitution. Today, the committee would like to hear from you, as board members, on steps that can be taken towards recognition, including on the forms of words that should be used and on mechanisms that will build support on your home islands.

In terms of the process, a Hansard Broadcasting officer from the Department of Parliamentary Services is here today to record proceedings. This is primarily to make sure we are able to capture and accurately record today's discussion. It is our intention to use the *Hansard* to produce a summary document of today's discussions that the committee can then make public, should it choose to do so. I need to bring to your attention that parliament has authority to order the production and publications of undisclosed evidence provided to parliamentary committees. You should also note that an individual committee member may refer to such evidence in writing in a dissenting report to the extent necessary to support their dissent. The committee would try to seek your view before doing this.

When you provide information to the committee, you are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage you on account of the evidence given and any such action may be treated by parliament as a contempt. It is also a contempt for you to give false or misleading information. If you make an adverse comment about another individual or organisation, that individual or organisation will be made aware of the comment and given a reasonable opportunity to respond to the committee.

The committee is of the view that we need to focus the nation's attention on the significant change to the Constitution. You may have seen this committee has tabled two reports, an interim report in July and a progress report last week, which I note has been provided to you. Both of these reports are available today. I will walk through the key points made in these two reports and the feedback we have heard at public hearings around Australia. Committee members would then be pleased to hear your views and answer any questions you may have.

The committee's progress report recommends that, to achieve consensus, the two houses of federal parliament should debate the options we put forward. Timing-wise, the committee recommends that a referendum take place at or shortly after the next federal election in 2016.

The committee is required to consider the recommendations of the expert panel on constitutional recognition of Indigenous Australians. The expert panel was an appointed group of Indigenous and community leaders, including Senator Siewert and myself. The expert panel reported to government in 2012 after conducting over 250 consultations. They made five recommendations, including drafting two new sections that the committee considers could be adopted along similar lines. The committee's reporting agrees with the expert panel that section 25 of the Constitution should be removed. Section 25 is widely considered as a racially discriminatory provision within the Constitution. This committee has not been persuaded that the section has ongoing use. This committee agrees with the expert panel that race as a concept is outdated. As well as in section 25, race is referred to in section 51(xxvi) of the Constitution—the Commonwealth's power was to make law with respect to people of any race.

The expert panel recommends that Australian people be given the opportunity to remove both sections and they reported a large amount of public support for those recommendations. This committee agrees that section 51(xxvi) of the Constitution should also be removed so that race as a concept is no longer reflected in the Constitution. The committee does not agree with the expert panel recommendation that a stand-alone section should be inserted into the Constitution to recognise Aboriginal and Torres Strait Islander languages, stating that English is our national language as we did not hear public support for that proposition.

The committee agrees with the expert panel that the Commonwealth should continue to be able to make laws with respect to Aboriginal and Torres Strait Islander people and this means that any referendum that would propose to remove section 51(xxvi) should also propose to replace it with a section that allows the Commonwealth to make laws for the benefit of Aboriginal and Torres Strait Islander people.

The committee's progress report puts forward three options based on legal advice and the views heard so far. They are, firstly, inserting two new sections that would allow the Commonwealth to continue to make laws with respect to Aboriginal and Torres Strait Islander people and to give effect to recognition by including three lines of preambular language and prohibit discrimination on the basis of race. Secondly, inserting one new section that would allow the Commonwealth to continue to make laws with respect to Aboriginal and Torres Strait Islander people and to give effect to recognition. The difference is that this option would prohibit discrimination against Aboriginal and Torres Strait Islander people but not more broadly on the basis of race. In both of these options, the committee would remove the line including the word 'advancement' due to the lack of public support for that language. Thirdly, the minimalist option is redrafting section 51(xxvi) of the Constitution to allow the Commonwealth to make laws with respect to Aboriginal and Torres Strait Islander people, leaving it open to parliament to pass an act of recognition.

In terms of the next step, this month and early next year the committee will hold more public hearings around Australia. I now ask board members present to make any statements or to ask us any questions on the subject of constitutional recognition. Before proceeding to that, Chair, you may wish to say a prayer before we begin proceedings.

**Mr Elu:** Yes, thank you, that is our tradition that we have a prayer before all proceedings. We will be upstanding and I will ask the member for St Pauls to say a prayer.

*A prayer was then spoken—*

**CHAIR:** Mr Chairman, I will hand over to you to make an opening statement and then invite any other member of the Torres Strait Regional Authority to comment.

**Mr Elu:** I would just like to say that Torres Strait has led quite a number of issues in politics in Australia. The most significant, I think, is the Mabo case, which was handed down in 1992. It was a simple case that was put to the High Court that we were here, we had a system, and that must be honoured. That is what the judge found: that we had a system of ownership of land and we had a system of clanship that ruled the management of that land. I think that is what really came to the fore in the judgement that was handed down. The judge actually said, 'You

have proven in the highest court of the land, against all others, you have ownership.' Those are the words that really proved that we were here before terra nullius was put on us. Those are the issues that we always go back to when we talk of Torres Strait politics—whether in white Australia here or even in international UN forums. We state that we are a different people from what is Australia and that we were here when the first Englishman, Bligh, sailed by, and that we have our traditions and our culture, which is based on the Melanesian culture of the south-west Pacific. That is what we come back to.

When this issue started to come to the fore, when constitutional recognition was talked about, we had a few meetings and Tanya Hosch came here and met with the board at the last board meeting, and of course we had phone hook-ups with John Hewson and people like that. We always say that we need to be recognised, because the laws of the land are based on the Constitution. When parliamentarians make decisions they go back to the constitution of what drives the inner workings of our Westminster parliamentary system. So we have to be recognised in there, because we were here before that document was formed, and hence that judgement of the court to say that there was a system that must be recognised, that Mabo proved. That happened before settlement. Those are the arguments that we as Torres Strait Islanders run.

I think you probably all know that we have just won the High Court case of sea claim part A, which has native title extended to the sea. The states argued that it should not be commercial taking, but the High Court have now come and said that there is an ability for them to take it for commercial use or for all purposes, which includes commercial use. Those are the arguments we keep going back to. There is a Constitution, and I think we are arguing against some of the things in there. I do not know whether terra nullius was bound in the Constitution, but there were laws that were made for land, especially in Queensland, that Mabo argued against—I think the Queensland parliament made them—and I think Bjelke-Petersen actually barred him from going back to his own island and that is what really pushed him to take up the Mabo case. So the laws that were made on our land that Mabo fought because he was not allowed to go to his own island—those are the things that we keep going back to, and governments making laws that prohibit us from doing something.

But we have to fight very high-cost battles in courts, going all the way to the High Court, to prove that those laws are not in the spirit of what the Constitution should have provided for us. Like I said, the Mabo case is a classic example, where there was an old decree of a king in England that said: 'If you go and find a new land, do not kill the people; do not change anything; just tax them, but let the system remain. Respect and honour the system of law.' Those are the things we need to have bound in our Constitution to say that any future acts pertaining to Aboriginal people should honour not only the Constitution but what happened before settlement. Of course, like I said to John Hewson's committee, if the Constitution is the birth certificate of this nation, it needs to be fixed to include these statements. I will leave it there. Welcome, Ken, to our part of the world. I know you have been here before, but it is good to see a countryman from what we call the southern island of the Torres Strait, Australia, visit us! Thank you.

**CHAIR:** Chair, we often say that your islands are the northern part of Australia, just as you say ours is the southern part! The point that you make in respect of Mabo is a very valid one. It took to the High Court a position and the court then found that in fact terra nullius did not prevail. Of the three options that the committee have considered on the voices of Aboriginal and Torres Strait Islander people, recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander Peoples is not inconsistent with Mabo, acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with traditional lands and waters and respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples are captured in two of the options. Then there is a third option. The committee would be interested in your views on those three options. It is on page 9 of this document, before chapter 1. As I indicated, there is no dispute from anywhere about recommendation 2. With recommendation 1, what we believe as a committee is that parliamentarians of this nation need to take leadership, and that is why we have recommended that both chambers of the Australian parliament, on the same day, debate the options, so that the members of the Australian parliament can become involved in putting forward their views and thoughts in respect of each of the options that we have proposed. Recommendation 2 is straightforward—that is, the repealing of section 25. Recommendation 3 is that there was not support for section 127A, which made English the official language of this country, along with the recognition of Aboriginal languages. The recommendation is section 51(xxvi), and then there are three options underneath that. I would be interested in your views. If you have questions for us as well, then again we would welcome that from anybody within the room.

**Mr Elu:** Like I said, we had a meeting with Tanya Hosch when she was here, and we had some recommendations come forward from that meeting. I will read them now. One is to remove section 25, as I think you said. Two is to acknowledge the words of the first peoples to be included in the Constitution. In the body of

the Constitution is option 1. In the statement of introduction to the Constitution is option 2. Three is to replace section 51 with a new section 51A; section 116A, anti racial discrimination clause needs to be included; new section 127A, to recognise Aboriginal and Torres Strait Islander languages while English is Australian national language.

We are going through a schooling system now to include Torres Strait Islander languages in our curriculum up here. We have always said here that the language you dream and think in should be your first language, and most of the people up here still speak a Torres Strait language as their first language. The young people are now starting to dilute that with the pidgin that we use here, which includes a mixture of both our languages, English and of course American slang from the TV. But we are trying to get it back into our schooling, into the curriculum of the state school system—that language is taught in our schools. Of course we now recognise three languages in this region. One is our dialect. Second is English, and third is the pidgin—we call it Kriol.

The principles that should be achieved are recognition of the Aboriginal and Torres Strait Islander people and dealing with racial discrimination in the current Constitution. So we put that into our meeting minutes so that will be ratified or passed at the next meeting and it will become part of our response to government on this. We have talked to a few government people about this and we always tell them about these things that we pass.

**CHAIR:** Thank you. I would like to introduce Senator Nova Peris.

**Senator PERIS:** Thank you. I am a Senator for the Northern Territory. I have been working with Ken as the deputy chair of this committee for quite some time now and with colleagues here on the committee. It has been fantastic to be able to get out and speak to people at the grassroots level. What you are reiterating today is what we have constantly heard: it needs to be substantive change and it needs to address racial discrimination. We are here to listen to your views because then we come back and we are able to put it all into reports that we can table in parliament. We have done that successfully so far, with two reports being tabled. It is important to hear your views.

**Mr Elu:** Thank you. I welcome you to our part of the world. It is probably the same climate, but with a bit of different scenery. And welcome to Torres Strait. It was remiss of me not to introduce the people at the table. I am Joseph Elu, the chairman. To my right is Wayne See Kee, CEO of TSRA; to his right is Kenny Bedford, who is the member for Darnley, and executive member in the fisheries portfolio; to my left is one of our elder statesmen, Mr John Abednego; and to his left is Mr Aven Noah from Mer, where Mabo was born, and he is the deputy chair of TSRA. Of course the other board members are here too.

**CHAIR:** Mr Neumann, do you have any questions?

**Mr NEUMANN:** I do. We are very informal here, so we call each other by our first, Christian or given name. I am Shayne. Do you mind if I call you by your first names?

**Mr Elu:** My first name is Joseph.

**Mr NEUMANN:** Joseph, I was very interested in how you linked Eddie Mabo's experience in his life to the need for a prohibition against racial discrimination in the Constitution. In all our committee meetings all over the country, we have not heard it said so well. Can you expand a bit on that, because I thought that was a very good point you made.

**Mr Elu:** I don't know if you watched Eddie's documentary, but I think he said it well there himself; he said that he just wanted to return home to see his sick father. And the government stopped him on the basis that they had a reserve status on his land so they could control who goes and comes on that land. So that was where his argument started. Like I said, it was a simple argument that said: 'My father is on that land. I saw his father on that land. And the stories of their fathers on that land. So nothing has changed, when the white man came when the missionaries first came. So there must be a system that could be recognised or should be recognised'—by the Queensland government back then. That was the argument he was having. The administrator here on TI stopped him from coming and, when he did come, they got the police to actually try and stop him from going to Murray Island from TI. Hence this thing is not only him but it is racially bound by the land management. It was Bjelke-Petersen in power then. That is where the court case started. He took it to the Federal Court here in Queensland, I think. They overturned it. They took it to the High Court. And there was his legal team, lawyer Keon-Cohen and all those other ones.

But then they said, 'Let's expand this to include other Murray Islanders', and that is when it became 'Mabo and others'. So people like Sam Passi, Dave Passi, James Rice—and all of them—joined. That expanded the claim to the clan system, to say: 'We respect Mabo's land. They respect our land. And that is how the clan system goes on'. Actually the evidence that was given was how that land was passed from generation to generation. That is where

the system came in. The judge said that there was a system of ownership that existed before settlement, and that must be respected and honoured.

**Mr NEUMANN:** That is interesting because option 1 that we talked about in our progress report—I think you have copies of it—does provide in section 116A that 'the Commonwealth or a state or territory shall not discriminate on the grounds of race, colour or ethnic or national origin'. You mentioned Bjelke-Petersen and the laws back in the 1960s, 1970s and 1980s. That prohibition that you talked about, the need for it, would of course have an impact on the state laws, a constitutional prohibition; but option 2, which you can find on page 8, only binds the Commonwealth government in terms of a prohibition against racial discrimination. So, if you are talking about the need to protect against discriminatory laws at a state level, option 2 will not do it for you; option 1 will, because it mentions the states and territories and not just the Commonwealth. I thought that was very interesting. The point that you made was a really terrific point. I have had my commentary as well as my question, Mr Chairman.

**CHAIR:** It is noted, Mr Neumann. Are there any other questions at the moment?

**Senator SIEWERT:** I would like to go to the committee's progress report and continue on from where Shayne was. It seems to me that our option 1 best suits your option 1. We have recommended against the language option because, I think it is fair to say, around Australia most people do not like the language option. So my first question is, extending on from what you said earlier about your option A, is am I right in understanding that our option A would be your preferred option?

**Mr Elu:** I think that is what we agreed to with Tania Hosch in our books now, that we agree to those options as put by the recognition team, which is I think the same option that is in here.

**Senator SIEWERT:** Our option A is virtually the same as the expert panel, other than the language component, because we have recommended against the language component. Is that right? My assumption is right? What is your response to us—I think I know the answer but it will be good to get it on record—recommending against 127A?

**Mr Bedford:** I welcome the committee. Thank you very much for visiting. My question is: if people are resisting that language component, what is the reason for that? How does that risk the model being accepted widely?

**Senator SIEWERT:** That is a really good question. I think a lot of the pushback on the way the expert panel worded 127A is that people do not like the concept of saying English is our national language. They have a problem with that.

**CHAIR:** They saw it as the official language.

**Senator SIEWERT:** They saw it as the official language and people did not like the way it was worded. They specifically did not like that. It is not about language being recognised, per se. It is about the wording of 127A. People are saying they would prefer there is a recognition of language and to see that beefed up rather than a separate component. I would definitely say it is not the fact that we have suggested recognising language. It is about the wording.

**Mr NEUMANN:** One of the things in subsection 2 of that proposed section 127A—

**Senator PERIS:** Which page?

**Mr NEUMANN:** You will find it at the top of page 16. I pick up Rachel's point about English being the national language. What would the implications be for signage in other languages? For example, you have signs down here on the beach about crocodiles. Also, while in subsection 2 there is an attempt to elevate Aboriginal and Torres Strait Islander languages, in my view it is downplaying them by saying they are part of our heritage. Joseph has just given evidence before this committee that for many people in the Torres Strait islands their Indigenous language is the first language they use. It is their primary language. That is not part of our heritage, thank you very much; it is part of our modernity. It is part of your lived experience today. To say it is part of our heritage is very nice, but it does not reflect the reality of people's lived experience. It is an attempt to elevate, but in fact it is really diminishing. That is why in our options 1 and 2 the word 'language' goes in the preamble so that you do not ignore the importance of language but you do not diminish it either as I think it is diminished in the proposed subsection 2 of 127A.

**Senator SIEWERT:** That is the overwhelming feedback we have had as we have been travelling around.

**CHAIR:** Other cultural groups and ethnicities have said the same—it diminishes their language, be it Greek, French or whatever. There are a number of Australians who do not recognise this section either. They see problems with it.

**Mr Noah:** It is true that we do not want to diminish our language, because our language is connected to our laws. Particularly at Murray Island we have Malo as our god. The law of Malo says how we should respect each other. That language connects to the law. The law tells us how to utilise our land to the extent of the boundary and within the sea boundary as well. If you take that language out, you are going to take out that particular message that has been interpreted in language for us for many decades. So language is very important.

**Mr NEUMANN:** That is why in the preamble to section 51, regardless of whether it is option 1 or 2, it mentions respecting the continuing cultures and languages. It is about respecting their languages. I think subsection 2 section of 127A does not respect language; it actually diminishes language. Whereas we would put in that mention, making sure language, culture and heritage is respected.

**Mr Noah:** Our language plays an important part in the dissemination of information. For government policies that relate to the lifestyle of Indigenous people, you can use these languages to your advantage to influence those communities about how they go forward with government policies.

**Mr NEUMANN:** They are not history; they are contemporary.

**CHAIR:** Yes, they are contemporary.

**Mr See Kee:** Good morning and welcome. I pay my respects to the traditional owners on whose land we are meeting and also traditional owners in the room. I have a question here on recommendation 5, option 3. Does option 1 give the kind of coverage that option 3 is proposing to do as well?

**CHAIR:** Option 3 is minimalist.

**Mr NEUMANN:** Option 3 really rewrites subsection 51(xxvi) of the Constitution. There is no protection against racial discrimination. There is no recognising, acknowledging or respecting Indigenous language, cultural heritage or continuing relationships. None of that is included. It is a really minimalist change. We have received during our public hearings very little support for this option, certainly from the Aboriginal and Torres Strait Island people we have spoken to. I can hardly think of one who has said we should support option 3.

**CHAIR:** Even in the hearings in Queensland there was not support for a minimalist approach. The head of tourism made some very strong statements about the importance of recognition not only of the existence of the peoples but of all of the cultural elements that form the different groups within Australia, because he saw the rich heritage being recognised, retained and sustained. So there is a commitment beyond just Aboriginal and Torres Strait Islander peoples. There is commitment within broader Australian society to the recognition, respect and acknowledgement.

**Mr Abednego:** Welcome to this part of Australia. I want to acknowledge the traditional people of the land where we speak from this morning. I want to make a comment. Looking at the scenario of Australia as a whole, especially Aboriginal and Torres Strait Island people, we always seem to be catching up, trying to respond, trying to demonstrate our existence. Going back to the referendum days when there was a good response from the community in 1967, I think that is some sort of indicator to us that we can work together—Aboriginal and Torres Strait Island people and the other sectors in Australia. That is a good indicator for us. It was a response from the World War II time and there was strong support for that. I think there was 90 per cent plus for that referendum to go through, and this is something for us for today.

We need to look at Aboriginal and Torres Strait Island people and others as equal partners to move forward. We kind of got subsumed because of others who have, I suppose, bigger, richer attributes in themselves. We are common people but we need to have that equal partnership with whoever. That is how we can get a good outcome in the community. We look today and there is always fighting and stuff. The stats tell us, whether it is health or justice—all those areas—we are always trying to catch up. But, if we can look at an equal partnership, we could enjoy what others enjoy in Australia.

**CHAIR:** Joseph, one of the things I want to ask is: what do you believe and what do Torres Strait Islander people believe would be the result of this being accepted and recognition being incorporated into the Constitution? What would it mean to the Torres Strait Island region?

**Mr Elu:** I think, like John said, that we seem to be always catching up in the statistics on health—all of that. I think it is recognition by the birth certificate of the nation that we existed, we exist and we will exist so the young people coming through will then believe that they could aspire to be parliamentarians, prime ministers, all of that type of thing, so that we truly become ingrained in the system of Queensland, Australia, the Westminster system of governance. I think, like you see around the world, and probably to our north here, in New Guinea, they are trying to get a constitution that does not really take in the tribal clanship system that existed here before, trying to make the Westminster system work in those places. In Australia, because we are a minority—Torres Strait Islanders say we are a minority within the minority of the Indigenous population—we need to have a visibility in

the community. I can tell you that some of the new migrants coming to Australia do not even know that we were here.

What I said to John Hewson's committee is that, if we keep holding back on this recognition, then the Australian population will change. It will move away from Anglo-Saxon heritage to more Asian or a much wider population that is coming to Australia now. If you look at the immigration stats, you see that more people are coming from Asia and other places than Europe, so that population will change. I think I said that it is the British Crown that we have to convince who took over this land; we became a part of the British colony, the British Empire, before we became Australia, a separate country, and that is when the Constitution was developed. All of these things happened without recognising not only Aboriginal and Torres Strait Islanders' existence but their laws and customs and languages.

As Mr Noah Aven said, our systems are based on language, on clanship, on tradition; we cannot forgo one of those systems and say, 'We will now run Malo law by English.' It is unforeseeable. You cannot do that. Our traditions are based on those factors and even the land and all that, and now we are talking about tidal rise and climate change. If we lose islands to climate change or tidal rise, part of history and culture will go with them. Those are the things that are at the forefront of our minds—all our systems and things are based on land and sea. We need to be recognised as a people that exist.

I do not know other countries' constitutions, but it is this country that was colonised by others, and we need to recognise that other countries have their treaties or compacts—Canada and New Zealand. America has a system where the President stood up and recognised the Indian people, the aboriginal Americans, in parliament and Congress—it is there. But in Australia we just had 'Sorry'.

**CHAIR:** On that point, there are a number of countries throughout the world that have now recognised or are in the process of recognising within their constitution first nations people, as they term them. But the opposite of that is what happens if it fails? If we fail on this referendum, what do you see as the consequences?

**Mr Elu:** I think from our experience failure is always there. We have failed in many things, but we do not go away; we keep on progressing. We moved to more cultural independence and now we are calling for more autonomy. Governments come and governments go. They promise us this, they promise us that, but we are still going to call for it. This generation will die and the next one will still come calling for it. I think it is our right that we should be self-governed. The UN Declaration on the Rights of Indigenous Peoples says that. So it is coming. But we will always persevere. If this fails, you can bet your bottom dollar we will be there knocking on parliament's door to try and do it again. I said that one author termed these islands the 'forgotten isles'. But we will always persevere.

**Mr Nona:** In the case of Grandad Koiki, when he did take up the challenge to go before the courts for recognition, it was based on his father and his fathers before and his ancestors owning that particular block of land. They knew that the system that they had in place was that they had superior laws. There was no other law; it was only Malo law that governed. And it governed them in a sense that they were people who belonged to those islands, especially Mer and elsewhere. So it was because of that, of growing up with his father and because his father had said to him many times 'The land is yours, nobody owns that land', that he took that challenge as an individual to go towards that recognition. And that recognition has been highlighted in the High Court, that gave him and Meriam people the right to have the enjoyment of their land. And it is that system of laws that we had before, the superior, and then all of a sudden there are other laws that came. It diminished their concept of their laws within the islands.

Torres Strait Islanders, we are a minority within a minority, and that is why, when we fight or struggle, especially in land and sea, it is about that recognition. Because once upon a time we were the formidable warriors; we defended our homeland from the invading canoes from Papua New Guinea and elsewhere. We were in control. And it is that recognition that can be highlighted in this committee's information that it is gathering around Australia, and should be there for our—where do we fit as a nation of people? We will not go away. We have to be recognised as Australia's other Indigenous people.

**Mr Elu:** Mr Chairman: the committee was John Anderson's and not John Hewson's.

**CHAIR:** I was going to pick up on that later.

**Mr Bedford:** I want to go back, Ken, to your point about the report, the possibility of the referendum failing and to go back and acknowledge the work of this committee—the two reports as well as the expert panel. It seems that there are risks around the referendum, particularly with timing and an endorsement from governments of those reports. There has not been much feedback on those reports that have gone to all governments. Do you have any feedback for us about an indication of the governments' response to those models that have been tabled and

the issue about timing? That seems to be very important in terms of the success or not of the referendum. Can you shed any light on that?

**CHAIR:** The Prime Minister, and I know that he has been having discussions with the Leader of the Opposition, has said that he is committed to an amendment to the Constitution that has substance. He has also indicated that he does not want a minimalist approach, because if we are true to the nationhood of this country, then we have to give substance to the recognition of Aboriginal and Torres Strait Islander people. There is a view that he holds that 2017 is the date that he has in his mind at this point in time to go to a referendum. It coincides with the anniversary of the 1967 referendum. But having had a discussion with him, I think that his mind is open.

John Anderson's committee also said that there is a generosity amongst Australians to recognise Aboriginal and Torres Strait Islander people. What they want to know is what the set of words are that they will be committing to. RECOGNISE, who have also reported to this committee, say public trending of support for recognition is quite favourable, but there is a chunk of people—about 40 per cent—who are saying, 'But we'll wait until we see the words, then we'll make up our minds'. And there is a rusted on nine per cent, roughly, that will vote no regardless. Our issue is making sure that we get all of the states on side, and that means the Attorneys-General, because they are often the group that defend state rights against Commonwealth reforms or Commonwealth changes. Indications from the WA government, and in particular the premier there, are that he is strongly committed to supporting recognition. There have been a couple of other jurisdictions who say they support recognition, but we have further work to do with those.

In terms of the parliament, I cannot speak for the Labor Party or the Greens but I know there is now a growing sentiment, particularly after Garma, among people who were doubtful about recognition; they have now come to me and said, 'How do I help with recognition once you finalise the report?' So there has been a turning of some people who I thought might have been a challenge in getting through our party the commitment to change and to recognise Aboriginal and Torres Strait Islander people in the Constitution. So that is refreshing.

But I think we also have to be mindful of public awareness, and George Williams and other constitutional lawyers have said to us, 'You need a good public awareness campaign to bring in all Australians, not just Aboriginal and Torres Strait Islander people and those who support us but also even the hard-headed Australians who don't have an understanding of the extent of what is being asked.' We have to convince them to walk with us and support us on the day, because we want to try and have the same result we had for the 1967 referendum in terms of support at that high level from both states and territories and from the Australian population. I am optimistic.

It is now for us to refine the set of words that really goes to what we are hearing from people, but there are three points we have to consider always: the first is that it has to be technically and legally sound, the second is that it has to be supported by Aboriginal and Torres Strait Islander people and the third is that it has to be supported by the wider Australian population. Those are the three critical measures that we have to hold against whatever it is.

Some of us have got positions where we would like the optimal outcome. There is not, on this committee, support for the minimalist approach. Certainly, the committee sits between a couple of points, but what has been good about the committee is that we talk in depth about the issues when we meet but we also reflect what is being said to us in the public hearings and we will remind each other that, out of a sequence of meetings, 'These issues were raised,' and we then come to a point of agreement. It has been a very cohesive group in wanting to make sure that we get the wording right but that we get recognition through and that we have all Australians walk with us.

**Mr Bedford:** Can I then reiterate what we said to Tanya and Tim, the co-directors of RECOGNISE, when they met the board recently, and that was to ensure that Torres Strait Islanders, particularly in this part of the state, are consulted and that the awareness-raising reaches the most remote communities in our region, as well as Torres Strait Islanders who live on the mainland, as part of that process and that it is resourced adequately to meet Torres Strait Islander needs. In the vast remote area that we cover, it is not the same as in some other parts of Australia in terms of getting messages out and raising the awareness of communities.

**CHAIR:** We had that issue raised with us in Shepparton, Victoria. We had it raised with us in the top end of the Kimberley, where communities were saying: 'RECOGNISE have been here, have highlighted the importance of this, but we now want information on the ground so we can sit down and talk about it within our communities and within sub-areas of our communities where a particular family group live. We want them to be equally informed.' In the Kimberley they suggested local awareness committees, similar to what ANTaR did in terms of reconciliation, where they empowered people at the local level to keep their communities informed but also to keep all Australians informed. That is certainly the model we are hearing about, and it would not be inconsistent for the islands here to have the same arrangement.

**Senator SIEWERT:** We mentioned that there have been different views on the timing. Do you have any view or views, if you have different views, on the timing of a referendum?

**Mr Elu:** We said that at the next election would be too quick—there is one coming up, I think, in two years time. We need more information, especially to our people, and it is going to trickle down very slowly. The bush wire has slowed down since bloody iPhones came in, so our information does not get out as fast now! These young people are connecting more quickly than we older people do.

We need to talk about this with our communities, because when the 1967 referendum happened that was very widely talked about. There were not iPhones then but people were informed. But this is not getting out, so I think we will put this through our systems. When we have public meetings out in those communities now we will talk about this to our people; and thank you for giving us these booklets. I had not seen this book until you gave me one this morning. This type of information needs to flow up here, and we as the federal government agency in Torres Strait will help disseminate this information. The biggest thing, I think, is getting it to voting-age kids now, because this is going to affect them more than it will affect us old timers.

**CHAIR:** I think you make an important point, that this committee may have to write to every organisation with the recommended options and with a point at which they can then go to the website and download the full report—so at least we get that awareness happening. You are right about social media. Our young people can get stuff out there quickly, but people my age take a lot longer. I need the written paper.

**Mr Bedford:** I think timing is important in terms of the momentum of the campaign. Again, having a model that everyone agrees to is one thing, and also some commitment from government about that timing, because there are risks with referendums from the history that the expert panel have talked about. Part of that is around elections and how they affect referendums. Ken mentioned how the Recognise campaign has been to some communities. The walk has not come to Torres Strait yet; we have only just had recent engagement with Recognise directors. The point is that there seems to be a risk if we prolong it beyond the next election. Also, history has shown that asking people to go to the polls a number of times can greatly affect the outcome of that referendum, so there seem to be a lot of good reasons to have it coincide with the next federal election, given that WA has an election sometime around there as well and you need a majority of states for that successful result.

**Senator SIEWERT:** It has to have that double approval.

**Mr Bedford:** To me, having one less election or referendum, asking people to go to the polls maybe for some people it is three times in a year, but also there are the huge costs associated with running a national referendum. In support of the chair, there are some really important issues we need to discuss, but for me personally it seems to be to time it with the next federal election would be ideal. I am also on the board of Reconciliation Australia, and some of the discussions have come from that.

**Senator SIEWERT:** You have had the same sort of discussions there too, I presume.

**Mr Bedford:** Yes.

**Mr Elu:** Mr Chair, we have some comments from the floor.

**Mr Lui:** My name is Kiwat Lui and I am the member for St Pauls. I am interested in this matter and especially the 1967 referendum, because I believe that at that time we Indigenous people were not allowed to vote. But now, because of the generation shift, I think that timing is now in our favour. Indigenous issues have been heard throughout the land. I do not know if the 1967 referendum has been taken out of the Constitution, but probably what we are building on is to get more recognition from what has been happening since 1967. Now, because of the generation shift, the younger generation is coming through. The mindset has also changed. It is probably something that people up here are more aware of—of what is actually happening. Previously, the whole generation did not have any say in the laws that were passed or whatever. Now, because of the education that the younger ones have gone through, they probably have more understanding of the issues involved.

I personally believe that we have some leverage to actually make that change to be recognised as the first people of the nation. When I read section 25, I thought about our rights to vote and at that time I do not think we voted. But now we all can vote. Because of the interaction within marriages and between friends, it goes out to the wider community and that will also enable us to make it. I believe anyway that if we all have one heart, we will get there. Once you start doubting that we will never make it then we will never make it. As the Indigenous nation, if we believe that we can achieve our goals in this, I think we will. Thank you.

**CHAIR:** I think there is a strong belief amongst the Indigenous population across Australia that we can get there. There is also a strong belief that recognition is important within the Constitution. There are those who have been raising the issues of sovereignty and treaty. But we have said that, based on the advice we have from constitutional lawyers, that aspiration for the groups that want treaties or sovereignty will not be diminished by

being recognised in the Constitution. Each constitutional lawyer that we have met with has been consistent with that legal advice.

Depending on the states and territories at the time of the 1967 referendum, some states did allow and had on their books the voting rights for Aboriginal people, but my understanding is that it was not consistent across the nation. The other thing that we need to bear in mind is that each state and territory had different acts of state and territory parliaments that had restrictions on Aboriginal people. For example, in Western Australia we had the remnants of 1905 act, which was quite strong up until about 1972 when the last vestige of that act diminished. So there were other factors coming into play, but the referenda saw Australia's commitment to reform and change quite significant.

I believe that we can achieve the same this time, that the majority of Australians, particularly the young ones I have met, have a strong sense of social justice and want to right what has been seen as wrong and to recognise Aboriginal and Torres Strait Islander people. I think the younger members of all of our communities will be very strong in that stance. There will be some pockets that will oppose it, but in terms of delegations and visits to my office, there is a reflection that there is a strong commitment.

The other thing that is important is we have to get every Aboriginal and Torres Strait Islander person on the roll, so that when we have the referendum vote they are there as voters and they take part in a historic moment in this nation's history. That is up to us as the older ones in our communities to encourage those who are not on the rolls to get on them roll. That will enable them to be quite strong in support. Then we have to do the same as we did last time: have churches, unions, organisations and Rotary clubs, all of them, commit to wanting to support the change. I think that we will get that because already the indications are: 'Tell us when you are ready. We will harness the people within our organisations.' So there is that growing momentum.

**Senator SIEWERT:** I wanted to go back to the issue of 127A, if language is not in separately, are you comfortable then with it being in as long as the preamble words essentially remain there? We are calling it 'preamble words' but they are not the preamble to the Constitution; they are in the body of the Constitution, because you said you prefer them in the body of the Constitution. Do you think the way that language is addressed will meet your needs? It is not a stumbling block for your support for constitutional recognition if it is not in a separate clause, I suppose, is what I am asking?

**Mr Elu:** I think that is what we are saying there. We will always use our language as our first language whether it is recognised in the Constitution or not.

**Senator SIEWERT:** I understand that.

**Mr Elu:** But if you do put it in, it will not be the straw that broke the camel's back.

**Senator SIEWERT:** That is what I am getting at. Okay. As long as it is recognised in that preamble bit?

**Mr Elu:** That is what I said here before: the language you think and you dream in is what your first language is, whether the Constitution allows for that it really does not matter.

**Senator SIEWERT:** Yes. Okay.

**Senator PERIS:** I have a question and a statement. Earlier on you were saying that with Aboriginal and Torres Strait Islander people we are always paying catch-up. In 1967 it was being allowed to vote. But that also showed that we can work together. With the three options that we do have here, if you look at option 2, where it is just specific for Aboriginal and Torres Strait Islander peoples alone with the recognition, and there are subsections 1 and 2; option 3 is limited. I guess where I am going is, with option 1, that section 116A, the prohibition of racial discrimination, it is inclusive of everyone and not just Aboriginal and Torres Strait Islander peoples. It talks about not being able to discriminate on race, colour, national origin or your ethnic background. I guess what you are saying is that Australia is a very multicultural country. It has had its doors open and its borders are open to everyone. Am I right in saying that, say if we went with this option, it would be known that Aboriginal people pursued a referendum that brought other peoples, their livelihood, their culture, their ethnicity, their background to be protected because it was Aboriginal people who lead the way in terms of this referendum? You are always talking about what we want to enjoy is what others can also enjoy. At the moment that says a lot that we are just wanting to be recognised but at the same time we are saying it is wrong to discriminate for all people in this country. I guess we are a minority group—Aboriginal and Torres Strait Islander people. We cannot do this by ourselves. So something that is appealing to the wider community, to bring people on this journey, to get them to the polls and to say, 'We should not be discriminated against too.' Is it fair to say that that is what you are trying to say—a fair option and a fair deal. We are looking at something that could be successful. We do know that discrimination does exist with Aboriginal and Torres Strait Islander people, hence getting the expense of

getting a successful referendum up—getting people to give up Saturday watching the footy to the polling booths just to vote for Aboriginal and Torres Strait Islander people.

**Mr Elu:** As was said before, the catch-up bit—since the '67 referendum then ATSIC came along and we were talking about federal parliament making laws. ATSIC stepped in and started providing housing and health infrastructure and all of that. It was really catch-up time in infrastructure. But like you say, racism is there. I believe it will always be there no matter what we do—whether we put it in the Constitution or not. There are some people who cannot help but be racist. I think what we need to do is put it in the Constitution so that governments can make laws for it and that there is retribution after if you are caught doing this. But I think the biggest push now is the social reaction to racism. There was the old fellow who was abused on the bus in Sydney and the social media went berserk, telling those two young girls that what they did to that old fellow on the bus was 'un-Australian', it was 'unethical' and it was 'in today's world that can't be—blah, blah, blah.'

As I said with the language thing, whether it is in the Constitution or not people will do that. The catch up bit is that if we do it and it helps all Australia that is very good. Here in the Torres Strait you will notice that we are the majority race, so there is very little racism against us, but I think we do racism with other people, which is not right too. I will tell you a story. When we were at school we had two little blonde girls with ponytails. They were the only two Europeans in our class and all the Torres Strait Islanders saw that those little girls got hell, that is not saying it was right. Those two little girls are now grown women and probably have issues with black people. That is not to say it was right on our part, but it is what we are talking about. It happens in society and it will happen, but we need to put something in place that by law and in the Constitution that recognition that racism should not be tolerated in any shape or form. If we can lead that through this process we will be happy to do that.

**Mr Abednego:** The Constitution is a powerful tool to use, but it has to be used to suit us. Whether it is the Aboriginal and Torres Strait Islander community or the white community, it has to be used to serve us. That is something even when we talk specifically about Aboriginal and Torres Strait Islander people. It is the influence that the Constitution has to get good outcomes in the community in the grassroots community for Aboriginal and Torres Strait Islander people. That is the important part. I hear a lot about recognition, but what does that mean to the community people sitting at home? What is the outcome of that word recognition? That has to trickle down to all relevant legislation. Whether it is state, territory or whatever, it has to trickle down. There has to be a uniform approach, in a sense. It is very important that we get it right.

**Mr Noah:** It is about identifying about Australia being a democratic country. We identify those individuals, whether they be Aboriginal and Torres Strait Islander people—the first peoples of this country—or not and we also identify multiculturalism: those people who have come and call themselves Australians carry with them their own cultures, their own religion. It is based on that particular word of these are the people that we want to connect with them, because they should not be criticised on the basis of their race. When war breaks out and we in Australia are at war everyone, whether they are Aboriginal or Torres Strait Islander people or other people who have come here, stands under the one banner of the flag of this country as a democracy and we fight for the country.

**Mr NEUMANN:** Under the Whitlam Labor government the Racial Discrimination Act was passed in this country. It was the first time we had had anything of that nature. In the Hindmarsh Island case, the Ngarrindjeri, the High Court of Australia said that the Commonwealth government has the power to pass laws of a discriminatory nature. Under section 51(xxvi) of the Constitution, which gives the Commonwealth the power to pass laws in relation to Aboriginal and Torres Strait Islander people, the Commonwealth can pass laws that bypass the Racial Discrimination Act. The only group of Australians where the Commonwealth has bypassed and set aside the Racial Discrimination Act has been Aboriginal and Torres Strait Islander peoples. They are the only group of Australians whom that has happened to in the past. We have had a lot of discussion on this issue, and some of the more extreme and right-wing commentators and right-wing people have tried to amend section 18C of the Racial Discrimination Act, which protects against hate speech in this country.

I want to pick up something that John said. Do you think the Constitution could provide not just a guiding direction for the Australian government in passing laws, as you mentioned, John, but also an educative process to inform the Australian public? It is the birthplace of our nation, if I can put it like that, in the sense that 1901 was when the federation of Australia started. Do you think it can have a benefit in that space, that it can inform and direct the Australian public in a way that, say, the American constitution does with them? Kids in the classrooms are taught about it. It is not taught here. I do not ever recall being taught about the Australian Constitution when I was growing up. Do you think that can happen, John?

**Mr Abednego:** The culture has changed in Australia. We have more people from other countries coming in and being accepted here. It is something that we need to accommodate, because we are talking about a

constitution for the future. The work that we are doing now is a change for the future; it is not for now, not for where we have come from, but for the future. We need to incorporate that sort of thinking, that mindset.

**Mr Elu:** I would like to answer that as well. The new Australians coming in now, the migrants, are taught about this. Like you say, we have not been taught about this. Until the 1967 referendum, most of us did not know there was a constitution. Like I said before, we as a Commonwealth agency will now start doing this and get it to the community and into our public meetings and all of that. Like Ken said, we will get the church people involved in this. It goes both ways. We need to be educated about this but we also want to educate the white Australians about our Indigenous culture, traditions and life so that when new Australians come here they know why we want to be recognised in this. That is why I said to the John Anderson committees: if we hold off too long, like Ken here said, the population mix will change greatly. I do not know what the number is now but there are a lot of new Australians coming into Australia every year now. In 10 years our population could multiply by a million. So there is an argument for who gets educated, why and how. So we will do that and we will talk to our community about the Constitution and what it means. Like John said, whether people will talk about it at the breakfast table is something that we need to focus on. Like I said, the constitutional referendum in 1967 got people to talk about this at dinner tables, in homes or wherever, so that the push came from the community rather than from government for a change.

**Mr Bedford:** It absolutely will raise awareness but it is also an opportunity for this country to send a message to the world about respecting Aboriginal and Torres Strait Islander people, as well as signalling a maturity of a nation.

**Mr NEUMANN:** I have a theory that we have had a number of turning points in Australia which have affected Australia's thinking. Aboriginal and Torres Strait Islander people got the right to vote in the early sixties. We have just celebrated 50 years. Remember they had the right to vote in South Australia and in some of the other states, and they lost it when federation took place—absolutely disgraceful. Then we had the 1967 referendum. The Commonwealth had the power to pass laws in relation to Aboriginal and Torres Strait Islander people. Then we had Prime Minister Keating's Redfern speech, in which he acknowledged that we did the murders and brought the diseases. Remember that famous speech? Then we had the Mabo decision, native title, and the apology by Kevin Rudd. I think constitutional recognition can build on that; it is the next step. Do you agree with that?

**Mr Elu:** Yes.

**Mr NEUMANN:** I think it will change the way people think in this country more than people anticipate—just like the 1967 referendum. Australians are now proud of the fact that we did that in 1967. There is a moral and educative aspect, as John talked about. It is a next step and it will have a big impact on the thinking of Australians.

**Mr Stephen:** Chair, I would like to acknowledge the presence here of members and senators and also the traditional owners of the land. I am the member for Ugar (Stephen) Island, one of the smallest islands in the Torres Strait, which has the smallest population on the ground. However, there are thousands of Ugaramle, the traditional name by which we are known, scattered around Australia and intermarried into Australian society. We have settled right across this nation. I congratulate the committee on this initiative to recognise in the Constitution the Aboriginal and Torres Strait Islander people of this nation. I think it is a good thing for us. I support all the comments that have been made here this morning along those lines, which have been really appropriate. In terms of timing, this needs to happen soon—within this term of government, within the term of your election to your positions in the parliament. And all members of the TSRA board have two years left on our terms as well. So I hope we can build a partnership, as members were saying this morning, and get the word out.

A lot of these communities are the same. There are thousands of islanders from the different communities scattered around Australia and we need to target those votes as well as the wider community. We have spoken to Tanya Hosch's group Recognise and invited them back to visit the communities. I do not know if there is an opportunity for members of this joint committee to go into the communities as well. It would be good if you could form a partnership with us and we could come along as well to target those votes in the communities.

In terms of getting the message out, I am struggling to grasp what is going on—what the options are and all that sort of thing—because it is the first time I have seen this document. It would be good if we could have a simplified plain English version that you could circulate on the ground to get the message across. The Torres Strait is itself a multicultural society. A lot of the islands have intermarriage into everywhere around the world—from South-East Asia to America, Europe and everywhere.

I hope the committee can take on board that we make it happen in this term before the election. It is a really good initiative. I do not know if you can elaborate more on where the initiative could come from. I congratulate both sides of the Australian parliament for jumping on board with this and taking it to the next level so that we do put something in the Constitution. Thank you.

**CHAIR:** Let me say that we need to say 'three sides', otherwise Senator Siewert will think that the Greens are being left out!

**Senator PERIS:** It is multiparty.

**CHAIR:** It is multiparty. I have had a discussion with Tanya Hosch, and I have had a discussion with a senior staffer out of the Prime Minister's office, saying exactly what you have said. Our report is for the parliament, so it is worded in the way that it is written, but there is a need for a plain English version to be developed by RECOGNISE, who have been charged with the responsibility of developing that recognition right across Australian society. As a parliamentary committee, when we finish our time with this then our role ceases formally as a committee, but we continue as members to promote what is in our reports. So we do not diminish that effect.

The partnering is absolutely important and is going to be critical if we want this to be successful. It is critical that all of us partner with each other, because that is the only way. But we have to have plain conversations with people on the ground so that they understand what it is that we are saying and asking for. And that is an important point. That will be reflected back to the Prime Minister's office as well—that the resourcing of whoever is charged to go back into the communities is at an adequate level that allows them to do that properly. As Joseph said, conversations have to happen at the dinner table, and they have to happen at social events—around barbecues and wherever—because that is how people's awareness develops.

I want to come back to a couple of points raised over here. One of the things that I have been grappling with from a personal perspective is the prohibition on discrimination, because we have had the Human Rights Commission in Australia for a lengthy period of time and we have also had the Racial Discrimination Act, and, Joseph, you are quite right: it does not matter whether you legislate or have a body that deals with discrimination, and the prohibitions are there—it does not diminish it, and we see some appalling behaviour. But the appalling behaviour, based on the Brotherhood of St Laurence's report and on three or four others I have read in recent times, is predominantly against Indigenous Australians as opposed to many other groups. I do not know what it is within the psyche of some Australians that means that to them we are not worthy of their consideration as peers, but you often see that. The awareness raising that I know that Mick Gooda, Bill Jonas and Tom Calma have undertaken has been substantial, and the human rights commissioner for racial discrimination is trying to do the same, but it has not changed the attitudes of some people, and that is something that we are going to have to give serious thought to in the future as a parliament. Mr Neumann is quite right: it is only for Aboriginal and Torres Strait Islander people that the Racial Discrimination Act has been set aside; it has been set aside for no other group, which I find problematic, personally.

So this is a debate that has to go on into the future, but how we reflect it in the amendment that will be put to referendum is something that we are going to have to seriously consider, because part of our other challenge as a Commonwealth is the federation of states and territories, and some Attorneys-General will have some very strong views, and there is a convincing element within those.

You have alluded to the Bjelke-Petersen era of government. On the one hand, it was very restrictive in many senses, but, in education and higher education, the greatest number of Aboriginal people ever to receive university degrees came out of Queensland as opposed to any other state or territory.

So there are some conundrums in all of what it is that we talk about and in what we need to move to in the future to consolidate our place of recognition within the Constitution.

**Mr Noah:** Under the review that we are doing, will the Aboriginal and Torres Strait Islander flags be considered in the Constitution as flags representing our nation?

**CHAIR:** They are already recognised officially by the Australian government. They are among the official flags of this country. That is why they are now being flown in schools and on public buildings more frequently than we have ever seen them before. That was a tremendous move.

**Mr NEUMANN:** They are recognised by legislation. There is legislative recognition.

**CHAIR:** I have been to events in countries overseas where they have flown the Indigenous flag for the occasion. So there is that broader recognition, which has been an incredible move forward over the last two decades.

**Mr NEUMANN:** At every NAIDOC day I have ever been to in my electorate or elsewhere that has always been the case. I think it is fantastic. It was not like that when I was a boy. It certainly was not.

**Mr Elu:** In Ipswich?

**Mr NEUMANN:** In Ipswich, yes, and in places like that. It certainly was not. It is fantastic. There are plenty of Aboriginal and Torres Strait Islander people in Ipswich, I can tell you.

**Mr Noah:** It is paving the way for something more meaningful in the Australian Constitution for identifying us as the first people.

**Mr NEUMANN:** Absolutely.

**CHAIR:** Yes. That is why I think Australia is very different compared to 40 years ago. For those of us who are older, what we remember and experienced is very different to what is happening today. I see our young people having greater opportunities than we ever had.

**Mr K Lui:** We would advocate going to Indigenous sportspeople to promote it more in the media.

**CHAIR:** RECOGNISE have taken on a number of senior Aboriginal sportspeople. Adam Goodes comes readily to mind. There are others who have spoken up. I think we will see more and more Australians become part of the RECOGNISE campaign and speaking up. We will certainly see a lot of our people from across every community who play prominent roles stand up and put their name to the need to recognise.

On the other hand, we have other eminent Australians. Tara Moss, who is an author, came and saw me and said, 'Tell me when you want me to lend my voice to RECOGNISE.' Malcolm McCusker, who is the previous Governor of Western Australia, saw me at a function just three days ago and made the same comment—'Tell me when I need to stand up and be counted and saying words around the need to recognise Aboriginal and Torres Strait Islander people.' So we are going to get those people coming forward. But our sportspeople are already starting the process.

**Mr Loban:** I was reading in options 1 and 2 about recognising and acknowledgement. At the top you have, under option 1, you have that we were the first people to occupy this land. Then, in option 2, you have the islander peoples with their traditional lands. What is the difference between those two things?

**CHAIR:** The first part is recognising that Aboriginal and Torres Strait Islander people were here on this continent long before it became known as Australia. That is important. The other is around the relationship that Aboriginal and Torres Strait Islander people still have with their country, their waters and their land. They are separate in that sense because one distinguishes that we as Aboriginal and Torres Strait Islander peoples were here first. 1788 changed that, even though we were trading with neighbours from other countries, depending on location. You certainly would have been trading with Papua New Guinea and the Melanesian groups that live in the region—

**Mr Elu:** And Aboriginal.

**CHAIR:** And Aboriginal people on the mainland. But forget all that just for a minute. The relationship with land and water has continued way past 1788, so that has not altered.

**Mr NEUMANN:** I think it is a constitutional recognition, implicitly, of the Mabo decision. That is my view. I think is an act which did away with the fiction of terra nullius, so it is an acknowledgement in our Constitution that that High Court decision was correct and Eddie Mabo was right. That is my view.

**CHAIR:** Basically I hold the same view. Given you raised that, Joseph, when you were talking about that, I automatically thought of those—all three actually, because that Mabo decision went back to that, particularly the first point.

**Senator PERIS:** It is not just about recognising. Anyone can recognise—look and say, 'There's water out there.' But then actually acknowledging that it is true what we are saying and then we are asking people to respect what they see, what is true and respect it. I think they are three powerful things that lead into—

**Mr Elu:** Like I said, the judges said, 'respect and honour' those rights.

**Senator PERIS:** Yes.

**Mr Loban:** So, on that first question, putting the word 'owners' is no good?

**CHAIR:** Putting the word?

**Mr Loban:** 'Traditional owners of Australia', as for recognising.

**Mr NEUMANN:** Australia did not exist—

**CHAIR:** Australia did not exist.

**Mr NEUMANN:** as a federation, as a country, but the continent and its islands did, and that idea of terra nullius was that there was no-one here. So to acknowledge that people actually occupied the continent and its islands is a really ringing endorsement of the Mabo decision. The wording is specifically geared for that. It is not about traditional owners, because I think that is not as strong as saying it was occupied. These people lived here. This was correct. I think it is stronger than 'traditional owners'. That is the way I interpret it. This is me speaking as a lawyer. It picks up the legal words that were used, which builds on the native title legislation.

**CHAIR:** The other point I was going to make is from a social perspective. I think a couple of you have said this. We have intermarried so often into other groups that, if we just had 'traditional owners', then some of those intermarriages would take away traditional ownership for those who still belong to our people and our country—because they live, we accept them, they are part of our families. This is much more powerful. It means everyone.

**Mr Stephen:** I just want to make a comment on the occupying of the area. There is an anthropologist's report from Professor Haddon back in the 1800s. I think he did some reports on Aboriginal tribes in the tip of Queensland as well. He spent a lot of time on Murray Island, Mabuiag and, I think, Boigu and Saibai on the western side of the Torres Strait, because that is where the main council sat for most of the islands. That is why we have got the island groups today still continuing on, recognising. That report captures a lot of the systems and a lot of the traditional practices prior to contact with Europeans. I do not know if it is worth the committee's while to explore some things in that report. In that report, also it talks about the connection—we have got language for the two mainlands as well—we call them [non-English language not transcribed], the south island, the big land, and the waters in between there. So we have the trading route from the Fly River in Papua New Guinea all the way to the Northern Territory. Double-outrigger canoes built in the Fly River end up Northern Territory and on the east coast. Red ochre from the Northern Territory ends up in the islands of Papua New Guinea and in the Torres Strait Islands. All of that stuff, dating back to prior to colonisation, is also captured in the Haddon report. I just wanted to make that statement for the committee.

**CHAIR:** Thank you for that comment. We heard similar from the Yolngu people. We certainly heard the same from the Kimberley people, because they traded with Indonesians, so you have marriages that have happened between the two countries, as well. So the Top End of Australia certainly had long-established trading routes with different peoples within the area. But more importantly you also had trading through some of the song lines and dreaming lines into southern parts of Australia, where things were traded. There were items that came from here, including ochres, that were shared elsewhere. So there were very powerful linkages at different times in the history of all groups within Australia. Thank you for that.

**Senator PERIS:** I just want to say that with John and Joseph what I am hearing is the importance of discrimination—having it put into the Constitution. If you look at section 116(a), the subsection that Joseph spoke about, if anything should come of it, it should trickle down into legislation, where it says that it does not preclude the making of laws or measures for the purpose of overcoming disadvantage, such as the effects of past discrimination, but to also protect cultures, language or heritage of any group. We have had all of these people come to Australia, but they come with their cultures, with their religion and with their beliefs. If this does not happen it does not stop us being who we are or who you are as Torres Strait Islanders. This enables legislation to protect the connection with the land and the sea, our spiritual beliefs and the story lines that come through. That is where we get people over the line to say that you have come to this country and how you live your life is protected, but, also, as Aboriginal and Torres Strait Islander people, who have been practising this for hundreds of thousands of years, it gives comfort to know that once and for all what we have been doing is finally going to be recognised.

**Mr Elu:** As Shayne just said, the Mabo case is a classic example, because Mabo won because of his link to the land and how he explained it to the judge, as well as the laws of Malo that are connected to that. That is spirituality that existed before Christianity. Christianity just changed the names of the gods we worshipped. They just said that your God is now called Jesus Christ, rather than Malo. That came in and our people converted very quickly. It is that belief in what we are and who we are that we need protected. Mabo protected that in land, so that native title could be established, and it is now happening all around Australia. In Torres Strait we now have 99.9 per cent of land under native title and probably 95 per cent of the sea under native title. That is why the judge's in the highest court of law stated that you have proven 'against all others'. Those are the three words I go back to. Against all others, you have native title to the land and seas.

Going back to one thing the chair said about sovereignty, Mabo did have sovereignty in the first case he ran, but the lawyers advised him to take it off, because the court could not question its own validity as being a court of the Crown. Those types of things were questioned. I think that what the Senator was saying is that that is what we want to protect, and the discrimination stuff is not to discriminate against Aboriginal people's laws, languages et

cetera, because that forms the basis of a society. It forms the basis of all society, but Mabo proved that it was here before Federation or before settlement or before the first European came. We had it all. It is even said that it is what controlled and built our societies, otherwise all hell could have broken loose, but we had a constitution of sorts that we believed in and lived by.

**Mr Abednego:** One of the things I want to mention is—and Noel touched on this—people coming in from outside. Aboriginal and Torres Strait Islander people have a strong sense of identity. Our totems are important to us with respect to our behaviour. One of my totems is the crocodile. One of the big principles of a crocodile is respect. If one can be encouraged in some way, it will support multicultural society and where we are going with this issue before us. Totem is important for us. We could apply that both ways—like respect, especially that of the crocodile—and use that in the context where we could support each other. That goes beyond Aboriginal and Torres Strait Islander people; it goes to the multicultural society. That is something that is important.

**CHAIR:** Thank you.

**Mr K Lui:** I do not know if there is a religious minister suggesting anything, but I think the Dutch were saying that this is the 'Great South Land of the Holy Spirit'. Can that be part of this somewhere? Instead of Cook, maybe the Dutch—regarding the arrival, when they proclaimed I think in the West that it is the 'Great South Land of the Holy Spirit'. I do not know if that can be part of the recommendation as well.

**CHAIR:** Generally you separate the church from the state. Mr Neumann can elaborate on this, but there is always a separation of power from the church and the state. But, in the preamble of the Constitution, which was a British act, there is reference to God. The legislative act that was passed within the Houses of Commons and Lords that makes reference to that, but that is not part of the brief that we have, so we have not considered that. Mr Neumann might want to add something to that.

**Mr NEUMANN:** Section 116 of the Australian Constitution makes it plain that Australia, when it was formed, was not going to have a national religion. For example, the Queen is both head of state and head of faith, the Anglican faith, the Church of England. So, when Australia was formed, it was clear that we were not going to have a national religion or impose any religious observance or prohibit the free exercise of any religion and there would be no religious test. In other words, if you joined the Public Service, you did not have to be an Anglican, a Catholic or a Baptist or a Presbyterian, for example. One of the few protections in our Constitution in terms of human rights is that freedom of religion, but we have a pretty practical attitude. It is not freedom from religion; it is freedom of religion in Australia. We have a bit of a different attitude to the Americans. We do not mind, for example, taxpayers' dollars being used for what the Americans call parochial schools and we call Catholic or independent Christian schools. We do not mind that, whereas in America they would go mad about it. We do allow, for sample, religious education to be taught in schools once a fortnight or once a week for an hour or so by the local clergyman or clergywoman, but in America they would not allow prayer in schools.

Australia has very pragmatic and practical people on this, but we do not really like the idea of there being a very strong religious tone to our Constitution, if you know what I mean. There is a mention of god early on, but I do not think that, even though about 69 or 70 per cent of Australians say they believe in 'god'—I happen to be a Christian by faith, by the way—we are about getting in our brief doing those sorts of things, imposing some sort of religious aspect to the Constitution. I do not think Australians would accept that, to be honest with you. The Constitution is pretty clear. They are very happy to say matters of faith and worship should be dealt with in the family and at church rather than in the Constitution. We do have prayers before parliament starts, for example.

**Senator PERIS:** If you look at section 51A, the third one says 'Respecting the continuing cultures'. For me, my belief and my god on my country is part of my culture, and I think that could possibly fit in that section that we are respecting the continuing cultures.

**Mr NEUMANN:** It is implicit.

**Senator PERIS:** Yes.

**Mr NEUMANN:** But without an overt statement, as I said, which I do not think Australians would accept.

**CHAIR:** Are there any other comments from members of the Torres Strait Regional Authority or any individuals?

**Mr Abednego:** It would be good to have more sessions like this—coming up to this part of Australia. It is good to sit face-to-face and talk. It is very important because we are equally as important as those down south. We are the same country.

**CHAIR:** That is why it was always high in our thinking to be here as a committee to meet with you and spend the time with you. It is important to have that face-to-face discussion because by sitting together we can ask

questions of each other. That is important in the process, but the next part now is the discussions at the community level. It is like Joseph said: it has to be talked about around the kitchen table. I know that each of you, having had this session, will play a key role in taking some of those messages in, but we recognise and suggest they come and spend time. They really need to visit each island, sit down and have those discussions.

**Mr Noah:** Can I ask a question? Identifying Aboriginal and Torres Strait Islander people in the Constitution is good. What about the acknowledgement to country by our democracy in parliament?

**CHAIR:** Parliament does the acknowledgement to country each morning when the Speaker opens the session of parliament. The Senate does it as well.

**Senator McKENZIE:** We do it every morning—say our prayers and then acknowledgement.

**CHAIR:** Yes. So that has not diminished. In fact, what I find very refreshing is the number of key events now where acknowledgement to country is being undertaken. It has increased.

**Mr Noah:** Good.

**CHAIR:** At a meeting like this we pay respect. There are some meetings where welcome to country is not done, because it is just a mutual joining together for conversations or a meeting that is not as formal, but at a lot of our formal activity we certainly acknowledge traditional elders and country.

**Mr Noah:** Even to the extent of an invitation give to the particular clan or elders to be present to do the formal—

**CHAIR:** Yes. At the opening of parliament there is a formal welcome of country and a smoking ceremony. That happens for every new parliament. State and territory parliaments are doing it as well now, I have noticed, so that recognition is growing. That is why I am optimistic that this referendum will succeed, with the right set of words—because people are already moving towards acknowledging not only our flags but also country. And our own people are doing it more now in terms of respecting each other's country when there are major events held on it. Like if a group of Noongars came here then we would acknowledge each other and pay respect to our respective elders and to the people that are within the meeting.

As there are no further questions, I thank you very much for the privilege of us being here and for the opportunity to have this discussion with you. I will read what is required for the closing of proceedings but then I would ask the TSRA chair for a closing prayer, as is your practice here, and I think that is important. At the close of the meeting, at morning tea, we would like to have a photo with the TSRA committee so that we have a photographic record of us being together and starting a journey together on the islands and with the authority.

That concludes today's proceedings. The committee are required to present a final report on or before 30 June 2015, and we will now be able to consider the views we have heard on Thursday Island. Any further submissions can be made to the committee in writing, and the secretariat can give you the address of the committee's website to do this. I again thank the Torres Strait Regional Authority for hosting us. I also thank the staff from Hansard, Broadcasting and the committee secretariat for their assistance today; and I thank members of the committee for their attendance here today. We will close in prayer.

*A prayer was then spoken—*

**Committee adjourned at 10:52**