



**Submission to the Joint Select Committee on Constitutional
Recognition of Aboriginal and Torres Strait Islander peoples.**

June 2014

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Torres Strait Islander Peoples

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About ANTaR

ANTaR is the pre-eminent non-Indigenous national advocacy organisation dedicated specifically to supporting the realisation of Justice, Rights and Respect for Aboriginal and Torres Strait Islander people.

ANTaR's focus is on the education and engagement of non-Indigenous Australians so that the rights and cultures of Aboriginal and Torres Strait Islander people are respected and affirmed across all sections of society.

ANTaR seeks to persuade governments, through advocacy, to show genuine leadership and build cross-party commitment to Aboriginal and Torres Strait Islander policy.

ANTaR works to generate in Australia a moral and legal recognition of, and respect for, the distinctive status of Aboriginal and Torres Strait Islander Australians as First Peoples.

ANTaR is a non-government, not-for-profit, community-based organisation.

ANTaR campaigns nationally on key issues such as constitutional recognition, justice, health equality, community development, native title and other significant issues.

ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997. We have been active in the community campaign for Constitutional Recognition, working to build awareness amongst our supporters and the broader community.

ANTaR believes that it is self evident that Aboriginal and Torres Strait Islander Peoples are entitled to the full realisation of their rights as articulated in relevant human rights treaties, including the *Universal Declaration of Human Rights* and specifically the *United Nations Declaration on the Rights of Indigenous Peoples*.

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Introduction

1. ANTaR welcomes the opportunity to make a submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander people (Joint Select Committee) on steps that can be taken to progress towards a successful referendum.
2. ANTaR is a long-term supporter of constitutional recognition of the Aboriginal and Torres Strait Islander people, and has been strongly engaged in recent moves towards a referendum.
3. Constitutional Recognition of Aboriginal and Torres Strait Islander peoples is one of ANTaR's high priority campaigns. We work closely with Recognise and a coalition of some 50 organisations to help build the community movement in support of constitutional change.
4. ANTaR maintains its support for reform of Australia's Constitution to recognise Australia's First Peoples, remove racially discriminatory provisions and protect future generations from discrimination on the basis of their race, colour or ethnicity. A detailed statement of our position can be found in ANTaR's submission to the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.¹
5. We believe that current multi-party political support and growing widespread public support for constitutional recognition offers an historic opportunity to acknowledge the unique culture and heritage of the First Australians and remove discriminatory provisions that have been used against Aboriginal and Torres Strait Islander people.
6. ANTaR believes that through a carefully managed process that speaks to the aspirations and identity of all Australians, we can achieve support for constitutional recognition that is lasting, meaningful and substantive.

The Expert Panel on Constitutional Recognition of Indigenous Australians

7. We believe that the reform proposals advanced by the Expert Panel offer a sound, robust and reasonable platform to take both the issue and the process of Constitutional Recognition forward.
8. The Panel conducted an extensive consultation program, visiting 85 different communities in remote, regional and metropolitan Australia. It also received more than 3500 submissions and was informed by quantitative and qualitative public opinion research carried out by Newspoll.
9. Based on the extensive consultations, the detailed consideration given to the complex issues before it, and the consensus of a diverse range of Aboriginal and non-Aboriginal Panel members, ANTaR believes that the Expert Panel report and suggested model for reform must provide the foundation for any proposal going forward.

¹ http://antar.org.au/sites/default/files/cr_submission.pdf .

² https://antar.org.au/sites/default/files/submission_to_joint_select_committee_con_rec_roundtable_26.04.1

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10. ANTaR notes that the majority of Aboriginal and Torres Strait Islander people who engaged with the Expert Panel process were concerned about the following three things:
 - I. They wanted meaningful Recognition in the Constitution.
 - II. They wanted discriminatory elements removed.
 - III. They didn't want to be worse off as a result of any change.
11. The Expert Panel's recommendations consider and address each of these concerns. On this basis, ANTaR maintains its support for Constitutional change consistent with the recommendations put forward by the Expert Panel.

Recommendation 1: ANTaR recommends that the Expert Panel report and suggested model provide the foundation of any proposal put forward for a referendum.

Progress towards a referendum

12. ANTaR notes and welcomes the strong multiparty support constitutional recognition has enjoyed, particularly since the 2010 Federal Election.
13. The establishment and conduct of the Expert Panel and the passage of the Act of Recognition through Parliament have provided a strong foundation for taking the next steps towards a referendum.
14. ANTaR emphasises that essential to a successful move towards constitutional recognition is strong multi-party political leadership that ensures broad political support that is maintained in a co-ordinated and disciplined manner.
15. ANTaR commends all parliamentarians engaged in the discussion for their positive commitment to this reform process to date and is encouraged by the constructive nature of the debate.

Recommendation 2: ANTaR recommends that Joint Select Committee processes seek to maintain multi-party support and positive political engagement in its work and the issue more broadly.

16. ANTaR acknowledges that further discussion and refinement as part of the process of finalising a model is being considered. As outlined in our submission to this Committee during the round table discussions that took place in April 2013, we are aware that there are reservations regarding some aspects of the model recommended by the Expert Panel, specifically the use of the term 'advancement' in the fourth recital of the preamble to its proposed Section 51A.²
17. ANTaR maintains it's support for the Expert Panel assertion that Section 51A should preserve the Australian Government's ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples while removing the ability to pass laws that discriminate on the basis of race.

²https://antar.org.au/sites/default/files/submission_to_joint_select_committee_con_rec_roundtable_26.04.13-1.pdf

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18. In this regard, ANTaR notes that Aboriginal and Torres Strait Islander people are best placed to decide what measures can be considered to be of benefit to them.
19. ANTaR notes that the Joint Select Committee has been considering these and other aspects of the Expert Panel model that may require further refinement.
20. ANTaR reiterates its belief that partnership, negotiation and engagement with Aboriginal and Torres Strait Islander peoples will be essential to the ongoing legitimacy of the process and ensuring the appropriateness of any final model for reform.

Recommendation 3: ANTaR recommends that the Joint Select Committee ensure that in finalising a proposal, it engages strongly with Aboriginal and Torres Strait Islander peoples.

21. ANTaR notes that the Expert Panel recommended a properly resourced public education and awareness program. ANTaR commends the government for supporting the work that is currently being delivered by Recognise and is heartened by the increasing awareness and support from the Australian public for this change.
22. ANTaR believes that greater resourcing of this campaign is now required as we move towards a proposal being finalised for consideration, and then towards a referendum.

Recommendation 4: ANTaR recommends that the Joint Select Committee propose greater resourcing for the public awareness campaign.

Finalising the proposal

23. ANTaR supports the principles agreed to by the Expert Panel in assessing proposals for change and believes that these principles should be maintained in the consideration of any additional options. These principles are that in order to succeed at referendum, any constitutional amendment must:
 - contribute to a more unified and reconciled nation;
 - be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples;
 - be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums; and
 - be technically and legally sound.³
24. With respect to the second principle, ANTaR acknowledges that Aboriginal and Torres Strait Islander Australia is diverse and that whilst this diversity poses engagement challenges, it is essential that a diverse base of community leadership is engaged in the process of finalising a model.
25. ANTaR believes that any proposed model must first and foremost have the support

³ Report of the Expert Panel, Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution, Commonwealth of Australia, January 2012, p.xi.

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of Aboriginal and Torres Strait Islander people.

26. ANTaR believes that a clear and transparent mechanism involving a range of Aboriginal and Torres Strait Islander community leaders would ensure that should any refinements be made to the Expert Panel model, there is genuine engagement with Aboriginal and Torres Strait Islander peoples in the process.
27. ANTaR strongly cautions against delivering a final model or final options as a *fait accompli* without genuine engagement with a diverse base of Aboriginal and Torres Strait Islander community leadership.
28. As was recommended in the Expert Panel Report, ANTaR believes there is a necessity to consult further with Aboriginal and Torres Strait Islander peoples and their representative organisations should the government decide to put forward an option other than that recommended by the Expert Panel.

Recommendation 5: ANTaR recommends that the principles established by the Expert Panel for assessing proposals for change should be maintained in the consideration of any additional options.

Recommendation 6: ANTaR recommends that the Joint Select Committee establish an effective engagement and feedback mechanism for a diverse group of Aboriginal and Torres Strait Islander community leaders to consider any options on the model for reform.

29. ANTaR notes that Aboriginal and Torres Strait Islander People have been calling for meaningful and substantive reform. Essential to the discussion of substantive reform is the inclusion of the proposed 116A Prohibition of Racial Discrimination. ANTaR maintains that this recommendation is an essential element to this reform process.
30. The national representative body for Aboriginal and Torres Strait Islander Peoples, the National Congress of Australia's First Peoples consulted their constituents and reported that their "consultations confirmed that protection from racial discrimination provided tangible and worthy change to the Constitution"⁴

Recommendation 7: ANTaR strongly recommends that any proposal include a prohibition on racial discrimination.

31. With regards to the timing of a referendum on this issue, ANTaR notes that the Act of Recognition is due to expire in February 2015 and is concerned that momentum towards a referendum is not lost.
32. We restate our view that the referendum should take place at a time when it is most likely to succeed following genuine engagement with, and support from, Aboriginal and Torres Strait Islander people, as well as the wider community.

Recommendation 8: ANTaR recommends that should the referendum not take place in 2015 that a target date must be set prior to the expiry of the Act of Recognition. To take advantage of the goodwill and public awareness generated over the last two years, the date should not exceed three years from the expiry of the Act of Recognition.

⁴ <http://nationalcongress.com.au/wp-content/uploads/2014/02/140221CongressStatement-JSC-Briefing.pdf>