

# Appendix 1

## Background

### Expert Panel on Constitutional Recognition of Indigenous Australians

A1.1 As discussed in Chapter 2 of this interim report, following public statements by the Coalition, the Australian Labor Party and the Australian Greens in support of constitutional recognition of Aboriginal and Torres Strait Islander peoples, Prime Minister Julia Gillard appointed an expert panel in December 2010 to consult on the best possible options for a constitutional amendment to be put to a referendum.

A1.2 The Expert Panel on Constitutional Recognition of Indigenous Australians (Expert Panel) was intended to have broad membership across the social and political spectrum, informed by nominations from the public.<sup>1</sup> Led by co-chairs Professor Patrick Dodson and Mr Mark Leibler AC, the Expert Panel conducted over 250 consultations around Australia, with the aim of building public awareness of constitutional recognition.

A1.3 The Expert Panel provided its comprehensive report to government in January 2012, recommending repeal of sections 25 and 51(xxvi) of the Constitution and insertion of new sections 51A, 116A and 127A. The Expert Panel's recommendations are set out in Appendix 2.

### Multi-partisan support

A1.4 As noted by the committee in Chapter 2, strong multi-partisan support for constitutional recognition of Aboriginal and Torres Strait Islander peoples has been in existence for the last four Parliaments.

A1.5 The Prime Minister the Hon Tony Abbott MP expressed his commitment to honour the pledge of previous parliaments to the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution in his 2014 Australia Day address:

We will also begin a national conversation about amending our Constitution to recognise Aboriginal peoples as the first Australians. This should be another unifying moment in the history of our country.<sup>2</sup>

A1.6 The previous Coalition Prime Minister the Hon John Howard OM AO had proposed a 'new Reconciliation' in an address at the Sydney Institute on 11 October 2007. The former Prime Minister proposed a referendum:

...to formally recognise Indigenous Australians in our Constitution—their history as the first inhabitants of our country, their unique heritage of

---

<sup>1</sup> *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 2.

<sup>2</sup> Prime Minister the Hon Tony Abbott MP, 'Australia Day 2014', Media release and speech, 26 January 2014, <http://www.pm.gov.au/media/2014-01-26/australia-day-2014> (accessed 11 July 2014).

culture and languages, and their special (though not separate) place within a reconciled, indivisible nation.<sup>3</sup>

A1.7 Former Prime Minister the Hon Kevin Rudd accepted a statement of intent from over 8000 Aboriginal people in Arnhem Land in 2008, and pledged his support for recognition of Indigenous peoples in the Constitution.<sup>4</sup>

A1.8 In 2010 former Prime Minister the Hon Julia Gillard signed agreements with the Australian Greens, Mr Andrew Wilkie MP and then independent Member of Parliament Mr Rob Oakeshott, committing to a referendum to recognise Aboriginal and Torres Strait Islander peoples in the Constitution during the 43<sup>rd</sup> Parliament or at the following election.<sup>5</sup>

A1.9 The need for bipartisanship is one of the 'five pillars to a successful referendum' discussed by Professor George Williams AO and Mr David Hume, alongside popular ownership, a sound and sensible proposal, comprehensive public education and the distribution of information using a range of media.<sup>6</sup>

### **Activities in the 43<sup>rd</sup> Parliament**

A1.10 The 43<sup>rd</sup> Parliament first appointed a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples on 28 November 2012.

A1.11 The 43<sup>rd</sup> Parliament committed to 'placing before the Australian people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples,' passing the *Aboriginal and Torres Strait Islander Recognition Act 2013* (Recognition Act) on 14 March 2013.<sup>7</sup>

### ***Aboriginal and Torres Strait Islander Recognition Act 2013***

A1.12 The Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (the bill) was introduced into the House of Representatives on 28 November 2012. The bill contained three substantive parts:

- (a) a statement of recognition by the Parliament, on behalf of the people of Australia, of Aboriginal and Torres Strait Islander peoples (clause 3);
- (b) a requirement for the Minister with responsibility for Indigenous Affairs to commence a review of support for a referendum to amend the Constitution within a particular timeframe (clause 4); and

---

3 Prime Minister the Hon John Howard, 'A New Reconciliation', Sydney Institute, 11 October 2007.

4 *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 1.

5 *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. 1.

6 George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia*, UNSW Press, 2010.

7 *Aboriginal and Torres Strait Islander Recognition Act 2013* (Commonwealth), preamble.

- (c) a sunset clause, which provides that the Act should expire two years after enactment (clause 5).

A1.13 The bill and the committee were intended to build community awareness and support for constitutional change and momentum towards a successful referendum. The Explanatory Memorandum stated that:

This Bill reflects an intention to pursue meaningful change to the Constitution that echoes the hopes and aspirations of Aboriginal and Torres Strait Islander peoples and unites the nation. It is one part of the ongoing conversation that needs to happen in the lead up to constitutional change. In particular, the Bill will enable all Australians to become familiar with formal recognition of Aboriginal and Torres Strait Islander peoples ahead of constitutional change.<sup>8</sup>

***The former committee's inquiry into the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012***

A1.14 The former Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples was required by its establishing resolution to inquire into the bill, and a goal of its inquiry was to secure strong multi-partisan parliamentary support for its passage.<sup>9</sup> In 2013, Prime Minister Gillard, the Opposition Leader the Hon Tony Abbott MP and Leader of the Australian Greens Senator Christine Milne all supported Indigenous constitutional recognition in speeches during the debate on the bill.<sup>10</sup>

A1.15 The committee tabled its report on 30 January 2013, with a recommendation that the bill be passed.<sup>11</sup> The bill was passed with the unanimous support of both houses of Parliament in March 2013, and received royal assent on 27 March 2013.<sup>12</sup>

A1.16 The committee in the 43<sup>rd</sup> Parliament indicated its support for the report of the Expert Panel:

The committee acknowledges and shares the Expert Panel's view that the removal of racial discrimination from the Constitution is an important component of constitutional recognition of Aboriginal and Torres Strait Islander peoples.

The committee agrees that the work of the Expert Panel provides a solid foundation for the process of constitutional reform.<sup>13</sup>

---

8 Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, *Explanatory Memorandum*, 28 November 2012, p. 4.

9 House of Representatives, *Hansard*, 27 November 2012, p. 13497.

10 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, pp 1–2.

11 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait, Islander Peoples, *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*, January 2013, p. 22.

12 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, p. 1.

A1.17 The former committee was satisfied that the mechanisms currently in place provided a good approach for moving toward a referendum<sup>14</sup> and identified a number of areas that could be considered further, including:

- racial discrimination;
- inclusion of the word 'advancement' in the proposal for constitutional change;
- the wording of the statement of recognition in the Constitution; and
- concerns about Australia's referendum machinery identified by the House Standing Committee on Legal and Constitutional Affairs in its 2009 report on the *Referendum (Machinery Provisions) Act 1984*.<sup>15</sup>

A1.18 Some of the above matters were addressed in the former committee's June 2013 progress report (discussed below). However, in that report the committee indicated that further consideration of these matters may be appropriate during the 44<sup>th</sup> Parliament.<sup>16</sup>

### ***Progress report in June 2013***

A1.19 The former Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples tabled a progress report in June 2013 with a summary of the committee's consideration of the recommendations made by the Expert Panel.

A1.20 The former committee's progress report 'emphasises the strong bipartisan support that already exists and urges the next Chair of the committee to leverage this support to ensure a successful referendum takes place during the next Parliament.'<sup>17</sup>

A1.21 The progress report recorded the outcomes of a round table discussion held in Redfern, New South Wales on 30 April 2013. The former committee received four submissions and nine people attended the round table discussion.

A1.22 The need for engagement with Aboriginal and Torres Strait Islander peoples was an important theme at the roundtable and the committee welcomed the

---

13 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait, Islander Peoples, *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*, January 2013, pp 9, 12.

14 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*, January 2013, p. 16.

15 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*, January 2013, pp 9, 11, 22.

16 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, p. 7.

17 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, p. 28.

enthusiasm and activism of younger Aboriginal and Torres Strait Islander people.<sup>18</sup> The committee noted that it would be unlikely to be able to achieve the same level of engagement as the Expert Panel.

A1.23 The relationship between the committee's work and the Expert Panel's recommendations was discussed at the round table, and its *Progress Report* noted:

There was broad agreement from roundtable participants that the Expert Panel's work should serve as the foundation for the committee's consideration of a proposal to put to the Australian people in a referendum, but that its recommendations should not necessarily be seen as 'set in stone.' At the same time, roundtable participants argued that the committee should not seek to re-do the Expert Panel's work, and to the extent that any proposal it recommends departs from the Expert Panel's recommendations, the committee should consult further with Aboriginal and Torres Strait Islander peoples.<sup>19</sup>

A1.24 The former committee indicated that the Expert Panel's four principles to guide the assessment of proposals for constitutional recognition were appropriate to its task,<sup>20</sup> namely, that a proposal should:

- 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.<sup>21</sup>

A1.25 The former committee described the work of the Expert Panel as a 'strong foundation' for its work. The committee expressed a view that 'some of the Expert Panel's recommendations require further consideration, and as a result of this may need to be refined.'<sup>22</sup> The committee indicated that if its recommendations departed in form or substance from the Expert Panel's recommendations, it would consult further with Aboriginal and Torres Strait Islander peoples and their representative organisations.<sup>23</sup>

---

18 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, p. 11.

19 *Ibid*, p. 5.

20 *Ibid*, p. 9.

21 *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*, January 2012, p. xi.

22 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, p. 7.

23 Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Progress Report*, June 2013, pp 5, 7.

### **Committee's work in 44<sup>th</sup> Parliament**

A1.26 In considering draft wording on constitutional recognition and other matters related to its work, the committee has met with a range of advisers. The committee has held private briefings on:

- 21 February 2014 at the National Centre for Indigenous Excellence in Redfern, New South Wales;
- 21 March 2014 at University of New South Wales in Kensington, New South Wales; and
- 19 May 2014 at the University of Sydney in Camperdown, New South Wales.

A1.27 The committee has received private briefings from RECOGNISE, RECOGNISE THIS and the National Congress of Australia's First Peoples.

#### ***The role of the states and territories***

A1.28 Securing the support for a referendum proposal from the state and territory governments was a goal of the former committee. This committee will seek the views of state and territory governments and note the results of this consultation in their next report.

A1.29 The committee notes the states that have so far recognised Aboriginal and Torres Strait Islander peoples in their constitution acts:<sup>24</sup>

- Victoria (2004);
- Queensland (2010);
- New South Wales (2010); and
- South Australia (2013).

#### **Commonwealth policy activity**

A1.30 The committee is advised that the Attorney-General's Department has coordinating responsibility for Indigenous constitutional recognition within government.

A1.31 The Department of Prime Minister and Cabinet has specific responsibility for the Review under the Recognition Act. The Department of the Prime Minister and Cabinet administers the government's funding to Reconciliation Australia. On 13 February 2013, Prime Minister Gillard announced \$10 million funding to

---

24 Changes to state constitutions generally require a bill to pass through both houses of Parliament (in Queensland, the single house). Unlike at the Commonwealth level, there is no need for a referendum.

---

Reconciliation Australia to continue to build public awareness and community support for change.<sup>25</sup> Reconciliation Australia seeks:

- an Australia that recognises and respects the special place, culture, rights and contribution of Aboriginal and Torres Strait Islander peoples; where
- good relationships between First Australians and other Australians become the foundation for local strength and success; and
- enhancement of national wellbeing.<sup>26</sup>

A1.32 The committee has continued to engage with the RECOGNISE movement, governed by the Board of Reconciliation Australia.<sup>27</sup> One of the key strategies of the RECOGNISE movement is the Journey to Recognition which is designed to build momentum to recognise Aboriginal and Torres Strait Islanders in the Constitution.<sup>28</sup>

---

25 Department of Prime Minister and Cabinet, *Act of recognition passes the Senate*, 14 March 2013, <http://www.indigenous.gov.au/act-of-recognition-passes-the-senate/> (accessed 11 July 2014).

26 Reconciliation Australia, *About Us*, <http://www.reconciliation.org.au/home/about-us>, (accessed 30 October 2013).

27 RECOGNISE, *About RECOGNISE and Journey to Recognition*, <http://www.recognise.org.au/about> and <http://www.recognise.org.au/thejourney>, (accessed 11 July 2014).

28 RECOGNISE, *Journey to Recognition*, <http://www.recognise.org.au/thejourney>, (accessed 11 July 2014).

