

RECOGNISING ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN THE CONSTITUTION

Report of the Expert Panel

On the 16th January 2012, the Expert Panel on Constitutional Recognition of Indigenous Australians presented the report of the Expert Panel, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution* to the Hon Julia Gillard MP Prime Minister.

The Panel's task was to report to the Federal Government on the options for constitutional change and approaches to a referendum that would be most likely to obtain widespread support across the Australian community. In the words of the Co-Chairs Patrick Dodson and Mark Leibler, 'it is now for the Government and the Parliament to take the Panel's recommendations forward.'

The following are the Recommendations made by the Expert Panel (1) for changes to the Constitution, and (2) on the process for the referendum.

RECOMMENDATIONS FOR CHANGES TO THE CONSTITUTION

The Panel recommends:

- 1 That section 25 be repealed.
- 2 That section 51(xxvi) be repealed.
- 3 That a new 'section 51A' be inserted, along the following lines:

Section 51A Recognition of Aboriginal and Torres Strait Islander peoples

Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;

Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;

Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;

Acknowledging the need to secure the advancement of Aboriginal and Torres Strait Islander peoples;

the Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.

The Panel further recommends that the repeal of section 51(xxvi) and the insertion of the new 'section 51A' be proposed together.

- 4 That a new 'section 116A' be inserted, along the following lines:

Section 116A Prohibition of racial discrimination

(1) The Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin.

(2) Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group.

5 That a new 'section 127A' be inserted, along the following lines:

Section 127A Recognition of languages

(1) The national language of the Commonwealth of Australia is English.

(2) The Aboriginal and Torres Strait Islander languages are the original Australian languages, a part of our national heritage.

RECOMMENDATIONS ON THE PROCESS FOR THE REFERENDUM

- a. In the interests of simplicity, there should be a single referendum question in relation to the package of proposals on constitutional recognition of Aboriginal and Torres Strait Islander peoples set out in the draft Bill (Chapter 11).
- b. Before making a decision to proceed to a referendum, the Government should consult with the Opposition, the Greens and the independent members of Parliament, and with State and Territory governments and oppositions, in relation to the timing of the referendum and the content of the proposals.
- c. The referendum should only proceed when it is likely to be supported by all major political parties, and a majority of State governments.
- d. The referendum should not be held at the same time as a referendum on constitutional recognition of local government.
- e. Before the referendum is held, there should be a properly resourced public education and awareness program. If necessary, legislative change should occur to allow adequate funding of such a program.
- f. The Government should take steps, including through commitment of adequate financial resources, to maintain the momentum for recognition, including the widespread public support established through the *YouMeUnity* website, and to educate Australians about the Constitution and the importance of constitutional recognition of Aboriginal and Torres Strait Islander peoples. Reconciliation Australia could be involved in this process.
- g. If the Government decides to put to referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples other than the proposals recommended by the Panel, it should consult further with Aboriginal and Torres Strait Islander peoples and their representative organisations to ascertain their views in relation to any such alternative proposal.
- h. Immediately after the Panel's report is presented to the Prime Minister, copies should be made available to the leader of the Opposition, the leader of the Greens, and the independent members of Parliament. The report should be released publicly as soon as practicable after it is presented to the Prime Minister.

The full Report is available online at www.youmeunity.org.au and at www.fahcsia.gov.au.