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Joint Select Committee on Constitutional Recognition  
of Aboriginal & Torres Strait Islander Peoples  
SG. 64  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
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Dear Committee

***Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012***

1. Australian Lawyers for Human Rights (**ALHR**) is pleased to provide this submission to the Committee. ALHR supports this Bill because it contributes to the process of greater recognition of Aboriginal and Torres Strait Islander peoples in Australia. However, ALHR wishes to emphasise some of the significant progress that still needs to occur. ALHR believes that it is important that the Committee also notes these aspects in its report. These points are expanded below.
2. ALHR notes key parts of the Bill are drawn from the recommendations of the *Expert Panel on Constitutional Recognition* which reported in January 2012. In particular, the statements of recognition and acknowledgement in clause 3 of the Bill are identical to the Panel's suggested wording for a future referendum for inclusion in the Constitution. However, there is a notable omission in clause 3 of the Bill. This concerns the acknowledgement contained in the Panel's recommendation of 'the need to secure the advancement of Aboriginal and Torres Strait Islander Peoples'. The Panel undertook extensive community consultation in preparing its report, including obtaining the views of many Aboriginal and Torres Strait Islander people and communities around Australia. Accordingly, findings in that report should be given substantial weight, consistent with the international human rights standards which emphasise the

importance of Indigenous involvement and participation. This includes, in particular, the Panel's recommendation about recognition, acknowledgement and respect.<sup>1</sup> ALHR, therefore, supports the inclusion of this clause in the Bill. However, ALHR suggests that the clause be amended to reflect exactly what was recommended by the Panel including the acknowledgment of the need to secure the advancement of Aboriginal and Torres Strait Islander Peoples.

3. Obviously, the significant longer term issue is what happens after the passage of this Bill into law. In particular, the question of a referendum arises for consideration and decision. We note the Explanatory Memorandum (**EM**) accompanying the Bill specifically states the Bill 'is not intended to be a substitute for constitutional recognition ... [and] does not restrict the scope of future issues for debate in regards to constitutional recognition of Aboriginal and Torres Strait Islander peoples'. This is an important point and we note similar statements were made in the Bill's second reading speech.<sup>2</sup> This will assist in avoiding any misunderstandings arising, if and when the Bill becomes a statute, that the new Act is evidence of any parliamentary intention opposing the concept of a future referendum. ALHR suggests the Committee's report should also emphasise that the Bill is not a substitution for any future referendum.
4. ALHR understands the need for community awareness-raising before any potential referendum, as noted by the Expert Panel and also the EM for this Bill. Such a process should not, however, be used as an opportunity for political parties to gain electoral support through promises without having to make any decisions. We note that over a year will have passed from the Expert Panel's report to Government, before this Committee will report. We also note that the Bill's structure provides for a further review to report in another year (after the next Commonwealth election). We ask the Committee's report, and each Committee member, to urge all political parties to progress this matter quickly and ensure it receives the necessary resourcing and attention.
5. There is one further issue of the EM which ALHR also wishes to raise: resourcing. We realise the Committee's attention will rightly be on the wording of the Bill. However, the question of how the Bill's provisions will be put into practice is also important. The EM also states the Bill 'has no financial impact'. There are two aspects of this which the Committee should investigate with Government:
  - (a) how will the recognition and acknowledgement statements in clause 3 be disseminated throughout Government and the wider community?
  - (b) where are the resources for the review, required by clause 4 of the Bill?

The Committee should enquire of the Government concerning the financial implications of each of these. Perhaps, both areas will simply be included within various agencies' existing operations and, therefore, effectively be funded from general consolidated revenue. However, the Government should be asked what arrangements various agencies would have in place to practically implement this Bill if it were passed.

6. ALHR made a submission to the Panel in 2011, a copy of which is **attached**. This details the various human rights standards and issues relevant to this matter.

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<sup>1</sup> *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, Report of the Expert Panel, Recommendation 1, p133.

<sup>2</sup> The Hon J Macklin (Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform), 28 November 2012, *Hansard* p 13653.

7. If you require further information about ALHR: the organisation was established in 1993. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national membership of almost 2500 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia. The work and recent activities of ALHR is available at our website (details on first page).
8. If you have any questions regarding this submission, please contact John Southalan, who is one of ALHR's National Committee.

Best regards,

**Stephen Keim SC**  
**President**  
**Australian Lawyers for Human Rights**