



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

Inquiry into the Aboriginal and Torres Strait Islander Peoples Recognition Bill

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About ANTaR

ANTaR is a national campaigns and advocacy organisation for Justice, Rights and Respect for Australia's First Peoples. Our current national campaigns include:

- Constitutional Recognition and Equality – for Constitutional change to recognise Australia's First Peoples and remove discriminatory elements from our founding document; and
- Justice - for action to reduce imprisonment rates and end deaths in custody.

We also engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities services and infrastructure, health and human rights.

ANTaR has been working with Aboriginal and Torres Strait Islander organisations and leaders on rights and reconciliation issues since 1997. ANTaR is a non-government, not-for-profit, community-based organisation.

Introduction

Thank you for the opportunity to comment on the draft Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012.

ANTaR notes that this inquiry is the first to be conducted by the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples and welcomes multi-party support for the establishment of this Committee. We believe that this Committee can play an important role in building parliamentary and public support for Constitutional change, in partnership with Aboriginal and Torres Strait Islander leaders and organisations.

The draft Act of Recognition has three key features:

1. It expresses Parliamentary recognition of the unique place of Australia's First Peoples as an 'interim step towards recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution'¹;
2. It provides a mechanism for continuing the work of the Expert Panel, through a review and reporting process;
3. It sets a timeframe for advancing towards Constitutional change through inclusion a sunset clause.

ANTaR is clearly focused on the end goal - Constitutional change to recognize Australia's First Peoples and remove all racially discriminatory elements. However, we support passage of an Act of Recognition as a significant opportunity for all Members of Parliament to show their ongoing commitment to recognition. We also believe that passage of the Act represents an opportunity for the Parliament to show political leadership on this issue, build awareness and help ensure strong and informed support in the broader community for Constitutional change.

ANTaR National's general position on Constitutional Recognition

ANTaR National supports 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.²

We believe that the Expert Panel's recommendations relating to the substance and the process of a referendum offer a sound, robust and reasonable platform to take the issue and process forward. We also accept that there is currently not sufficient community awareness and support to ensure a successful referendum within the original timetable.

The priority now must be to achieve cross-party agreement on a timetable and model of reform, negotiated with Aboriginal and Torres Strait Islander leaders, which includes

¹ The Hon Jenny Macklin MP, Minister for Indigenous Affairs, Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 - Explanatory Memorandum.

² http://antar.org.au/sites/default/files/cr_submission.pdf.

substantive elements to deliver real and meaningful change.

Engagement with Aboriginal and Torres Strait Islander peoples

Meaningful and effective engagement with Aboriginal and Torres Strait Islander peoples is essential to ensuring a legitimate process. ANTaR recommends that the Government and the Select Committee partner with Aboriginal and Torres Strait Islander leaders and representative bodies to develop an agreed engagement framework to guide progress towards a referendum.

Ensuring an effective process to achieve a successful referendum

ANTaR believes that in order to succeed, the movement towards a referendum must be popularly owned and community driven. However, we also believe that political leadership and commitment is vital to set the tone of the national debate and ensure support across the parliament. For this reason, ANTaR is concerned to ensure that any mechanism to demonstrate political support for change at this time facilitates cross-partisanship and unity. We therefore welcomed referral of the bill to the Joint Select Committee of Parliament to strengthen multi-partisan support prior to its passage.

To ensure its effect is more than merely symbolic, the draft Act should outline a clear process to generate the required awareness and community support to ensure a successful referendum. While the draft Act includes a sunset clause, under which the Act would cease to have effect after two years, it does not establish a mechanism or outline a process to take place at that point. The way the Act is currently drafted, there is a risk that the issue of Constitutional Recognition could fall off the radar of a future Parliament.

We believe the Act of Recognition should only be introduced and passed if it has the support of Aboriginal and Torres Strait Islander leaders and organisations.

Specific comments on the draft Act of Recognition

ANTaR has a number of comments about the wording in the Preamble and body of the Draft Act.

1. We welcome the statement of commitment by the Parliament to 'placing before the Australian people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander Peoples.' (Preamble)
2. We welcome the acknowledgement of the 'important work of the Expert Panel'. This could be strengthened by the addition of the words 'and believe its recommendations provide a sound platform to progress towards a referendum' or the annexure of the Expert Panel's recommendations to the Act of Recognition.
3. We welcome recognition of the need for 'further engagement with Aboriginal and Torres Strait Islander peoples and other Australians ... to refine proposals for a referendum and build the support necessary for successful constitutional change.' However, we remind the Committee of the strong foundation created by the Expert Panel, and caution against a process that fails to respect and build on those foundations.
4. The commitment to 'building the national consensus' is welcome and ANTaR

supports the review, reporting and sunset provisions, which it is hoped will provide a mechanism to ensure progress towards the goal of constitutional change. The draft Act would benefit from additional details about the proposed process and we recommend that such detail should be contained in the Terms of Reference of this committee. The 'Note' provides some useful clarity about the intended effect of the sunset clause, being to 'provide Parliament and the Australian people with a date by which to further consider the readiness of Australians to approve a referendum to amend the Constitution to recognize Aboriginal and Torres Strait Islander peoples.'

5. ANTaR is concerned that the draft Act fails to mention the need to remove or reform racially discriminatory elements from the Constitution, or to commit Parliament to taking any action to address these issues, using only the general language of 'recognition'. ANTaR would welcome stronger language and a clearer commitment to the substantive reform agenda outlined by the Expert Panel. At a minimum, we are concerned to ensure that no reform options are excluded by wording of the draft Act.
6. ANTaR is concerned by the absence of any reference to the need for continuing efforts to achieve social and economic equality for Aboriginal and Torres Strait Islander peoples. We note the debate and division over the appropriateness of the word 'advancement' but suggest that another form of words, which expresses the same intent, should be included in the draft Act. The need to maintain a Federal Government legislative power to address Aboriginal and Torres Strait Islander disadvantage and uphold pre-existing rights and interests under native title and heritage legislation was an important part of the Expert Panel's proposed package of changes.

Conclusion

Thank you again for the opportunity to comment. We look forward to further conversations with the Government and all members of Parliament to ensure Constitutional Recognition is progressed as a matter of high priority in the national Parliament and that the community campaign has the support and resources required to ensure its success.