



NEW SOUTH WALES  
RECONCILIATION  
COUNCIL

# Submission

To the Senate Inquiry into the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012



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## About the NSW Reconciliation Council

The New South Wales Reconciliation Council (NSWRC) is the peak representative body for Reconciliation in NSW. The NSWRC is made up of both Indigenous and non-Indigenous Australians, working through a range of groups and organisations, to promote united communities and address the 'unfinished business' of Reconciliation. This means coming together to promote recognition of rights, economic independence and social justice for Aboriginal and Torres Strait Islander people.

The reconciliation movement is a peoples' movement, led by Indigenous and non-Indigenous people at the community level, and aimed at increasing mutual (cross cultural) understanding through the promotion of equitable and just communities, which acknowledges and respects Aboriginal and Torres Strait Islander peoples, cultures and values. Aboriginal and Torres Strait Islander Constitutional recognition is central to this process. The absence of proper recognition and respect has a vital impact on Aboriginal and Torres Strait Islander people's socio-economic status, health, culture and well-being. What is more, Australia can not be truly reconciled without acknowledging the First Peoples of Australia; their unique histories, cultures (customs, practices, perspectives, values, beliefs), connections to their lands and waters, and the injustices they have suffered.

**Achieving Indigenous Constitutional recognition is a task for all Australians, from all backgrounds, at all levels of society. In recognising Aboriginal and Torres Strait Islander people, we are building an authentic national identity which encompasses a shared past and creates a united future.**

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## Introduction

This submission will consider the terms of the *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*, in particular its importance in setting up a process to work towards Constitutional Recognition of Aboriginal and Torres Strait Islander people. While the NSWRC welcomes the Bill as an important step in this direction, it is important to emphasise the need for a more meaningful form of recognition entrenched in the Constitution; strong bipartisan political leadership to guide a successful referendum campaign; sustained government support for grassroots awareness campaigns; and continued and genuine engagement with Aboriginal and Torres Strait Islander communities, representing a range of perspectives. Changing the Australian Constitution to recognise and acknowledge Aboriginal and Torres Strait Islander people in a meaningful and respectful way moves us all further along the road to Reconciliation. It contributes to healing past injustices and to building an authentic reflection of our national identity.

The NSWRC supports the recommendations made by the Expert Panel, including:

- ▶ The repeal of Section 25
- ▶ The repeal of Section 51 (xxvi) 'The Race Power'
- ▶ The insertion of a new 'Section 51A' to recognise Aboriginal and Torres Strait Islander people
- ▶ The insertion of a new 'Section 116A' to prohibit racial discrimination
- ▶ The insertion of a new 'Section 127A' to recognise Aboriginal and Torres Strait Islander languages

## The Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (The Bill)

As emphasised by both the Expert Panel on Constitutional recognition of Aboriginal and Torres Strait Islander Australians (the Expert Panel) and the Minister for Families, Housing, Community Services and Indigenous Affairs, Jenny Macklin, the referendum for Constitutional recognition of Aboriginal and Torres Strait Islander people should only proceed when it is likely to have the support of all major political parties, a majority of State governments, and when the general public is properly informed and educated about the importance of such recognition.

The NSWRC recognises that such support is not yet strong enough and therefore welcomes the Senate Inquiry into the *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012* as a formal legislative mechanism capable of setting up a process to work towards Constitutional change. Moreover, the NSWRC commends the Parliament for the inclusion of a two-year sunset clause, which will prevent the legislation becoming a substitute for a referendum. The expiration of the Act in two years time will provide the impetus for Parliament to maintain momentum towards a successful referendum.

While the Bill does not provide adequate recognition of Aboriginal and Torres Strait Islander Australians, it is significant in so far as it is an indication that Government intends to hold a referendum to recognise Aboriginal

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and Torres Strait Islander people in the Constitution, and it sets up the groundwork for a process by which such recognition may be achieved.

## Meaningful Recognition

The NSWRC welcomes federal legislative recognition of Aboriginal and Torres Strait Islander people, and appreciates that the extent of recognition laid out in Section 1(3) of this Bill is not final. However, it is necessary to emphasise the need for a much broader form of recognition to be enshrined in the Constitution. Section 1(3) of the Bill creates a sound base on which we can build substantive recognition, acknowledging:

- (1) that Australia was ‘first occupied by Aboriginal and Torres Strait Islander peoples’;
- (2) the ‘continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional land and waters’ and;
- (3) ‘the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples’.

Importantly though, there is no recognition of the unique status of Aboriginal and Torres Strait Islander Australians as the *original custodians* of this land. Moreover, since Australia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the NSWRC believes that in recognising Aboriginal and Torres Strait Islander people, Australia’s Constitution should evoke the fundamental principles contained in the UNDRIP. These include:

- ▶ *Recognising the urgent need to respect and promote the inherent rights of Indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources*
- ▶ *Encouraging States to comply with and effectively implement all their obligations as they apply to Indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,*
- ▶ *Recognising and reaffirming that Indigenous individuals are entitled without discrimination to all human rights recognised in international law, and that Indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,*
- ▶ *Recognizing that the situation of Indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.*<sup>1</sup>

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<sup>1</sup> General Assembly of the United Nations (UNGA), 2007. United Nations Declaration on the Rights of Indigenous People. New York: General Assembly of the United Nations: Available: <http://www.un.org/esa/socdev/unpfii/en/drip.html> [19 December 2012], Preamble.

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## Strong Political Leadership

Building widespread support for Constitutional recognition is dependant on strong bipartisan political leadership. Increased community education and engagement is essential to the success of a future referendum, as observed by Minister Macklin in her Notice of Motion address to the House of Representatives. However this cannot be achieved without the leadership of recognised political figures. Such public guidance is essential in building grassroots support across diverse local communities. While the ongoing work of Recognise (formerly You me Unity) and other organisations in the social justice sector and reconciliation movement is fundamental, the conversation needs to be a much broader one, encompassing all levels of government as well as non-government organisations and the broader Australian community. This is particularly important in extending the dialogue out to segments of society that are not already politically engaged.

The NSWRC notes that Section 1(4) of the Bill does not *require* the Minister to consider the report produced by the Senate Inquiry. Therefore, strong bipartisan leadership and public pressure will also be vital to ensure proper consideration be given to the report, together with any recommendations offered by a potential Aboriginal and Torres Strait Islander advisory committee, and leading voices in the reconciliation movement.

## Continued Support

Creating and sustaining a far-reaching Constitutional recognition campaign relies on continued government funding for grassroots awareness campaigns. The NSWRC acknowledges the support of the Federal Government to date, but is concerned that such support must be sustained, with funding available at the local level, to enable grassroots groups to run well resourced community education programs and to ensure the success of the referendum campaign. We urge the Government to uphold the Expert Panel's recommendations concerning the process for a referendum:

- (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 You Me Unity website, and to educate Australians about the Constitution and the importance of Constitutional recognition of Aboriginal and Torres Strait Islander peoples.<sup>2</sup>

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<sup>2</sup> You Me Unity (2012) *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*. Canberra: Commonwealth of Australia, p. xix

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## Engagement with Aboriginal and Torres Strait Islander people

The NSWRC believes Aboriginal and Torres Strait Islander people must be consulted at all stages of the process leading to the referendum for Indigenous Constitutional recognition. The Bill suggests a limited extent of further consultation:

- ▶ Section 1(4.2b) states that those undertaking the Review of support for a referendum, in 12 months time, must take into account the work of the Expert Panel and Reconciliation Australia when considering proposals for Constitutional change.
- ▶ Section 1(4.2d) states that those undertaking the review must ‘consider the levels of support for amending the Constitution to recognise Aboriginal and Torres Strait Islander peoples amongst: (i) Aboriginal and Torres Strait Islander peoples.

While it is essential to consider the recommendations of the Expert Panel, who have consulted Aboriginal and Torres Strait Islander people across the country, and the work of those organisations and groups engaging the wider community through the reconciliation movement, the Bill does not explicitly specify that further guidance and participation will be sought from Aboriginal and Torres Strait Islander communities. According to recommendations of the Expert Panel:

*‘if the Government decides to put to referendum a proposal for Constitutional recognition... 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.’<sup>3</sup>*

The NSWRC advocates for the creation of an advisory group whose membership includes (either wholly or in part) representatives of Aboriginal and Torres Strait Islander communities to guide the work of the Joint Select Committee.<sup>4</sup> In making this recommendation, the NSWRC emphasises the need to ensure any advisory group comprises a fair representation of the diverse views and opinions among Aboriginal and Torres Strait Islander people. Key Aboriginal and Torres Strait Islander organisations and figures should be involved, for example the National Congress of Australia’s First Peoples, which is an Independent, member driven, representative Indigenous organisation, and other Aboriginal and Torres Strait Islander peak representative community organisations. The composition of the Expert Panel is an appropriate model to aspire to, as it brought together the minds of a diverse group of Indigenous and non-Indigenous Australians, with wide-ranging views, yet united in the pursuit of a common goal. The Bill should be amended to ensure Aboriginal and Torres Strait Islander people are continually and adequately engaged in the referendum process.

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<sup>3</sup> You Me Unity (2012) p. xix

<sup>4</sup> It was suggested by Minister Macklin in her Notice of Motion address to the House of Representatives that the Senate Committee ‘(d) consider the creation of an advisory group whose members include Aboriginal and Torres Strait Islander people to guide the work of the Committee’. Commonwealth of Australia. *Parliamentary Debates*. House of Representatives. 27 November 2012. 61 (Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs).

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## Conclusion

The introduction of the *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012* and the current multiparty support for Constitutional change represent a strong foundation from which we can work towards Aboriginal and Torres Strait Islander Constitutional recognition. In order to ensure appropriate steps are taken to progress towards a successful referendum, it is essential that the Federal Government develop, in proper consultation with Aboriginal and Torres Strait Islander people, a meaningful form of recognition consistent with the principles expressed in the UNDRIP. It is important that the Bill be amended to better allow for this. Additionally, robust political leadership and continued support for grassroots awareness campaigns is vital to increase and sustain the engagement and education of the broader Australian public. Finally, Aboriginal and Torres Strait Islander peoples from a range of communities, and of diverse perspectives, must be involved at every stage of the process towards a referendum, and appropriate measures ensuring this should be incorporated into the Bill. Increasing public awareness and acknowledging the unique place, history, and cultures of Aboriginal and Torres Strait Islander peoples is a vital part of the reconciliation process. Therefore this Bill, as a step towards substantive Constitutional recognition and the removal of racial discrimination from the Constitution, is a welcome action that can help us build an authentic national identity that encompasses a shared past and creates a united future.

## References

*Aboriginal and Torres Strait Islander People's Recognition Bill 2012* (Cth)

Commonwealth of Australia. *Parliamentary Debates*. House of Representatives. 27 November 2012. 61 (Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs)

General Assembly of the United Nations (UNGA). 2007. United Nations Declaration on the Rights of Indigenous People. New York: General Assembly of the United Nations: Available: <http://www.un.org/esa/socdev/unpfii/en/drip.html> [19 December 2012]

You Me Unity (2012) *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel*. Canberra: Commonwealth of Australia