



OXFAM

Australia

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

***Inquiry into Aboriginal and Torres Strait Islander Peoples
Recognition Bill***

1. Introduction

1. Oxfam Australia (Oxfam) welcomes the opportunity to make a submission to the Joint Select Committee *Inquiry into Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012* on Constitutional Recognition of Aboriginal and Torres Strait Islander People.
2. Oxfam has previously welcomed the intention to introduce an Aboriginal and Torres Strait Islander Recognition Bill as a step on the pathway to a referendum on Constitutional recognition of Aboriginal and Torres Strait Islander people.
3. Oxfam notes that maintaining political support for constitutional recognition is critical if a referendum is to succeed.
4. Oxfam has for many years called for constitutional recognition of Aboriginal and Torres Strait Islander people, including addressing the discriminatory provisions in the Constitution.
5. Oxfam believes that while the Australian Constitution has served most Australians well, it has not served Aboriginal and Torres Strait Islander peoples well.
6. Oxfam is firmly of the view that the nations' founding document and pre-eminent source of law should recognise Aboriginal and Torres Strait Islander peoples – the First Australians.
7. Oxfam supports the recommendations contained in the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (Panel) Final Report.¹

2. Summary of Recommendations

- Recommendation 1:** That the Bill clearly demonstrate the Parliament's resolve to take action to ensure a referendum on constitutional recognition of Aboriginal and Torres Strait Islander people is held in the next electoral cycle.
- Recommendation 2:** That the Bill make clear the steps Parliament will take to maintain momentum and build support for constitutional recognition.
- Recommendation 3:** That the Bill is accompanied by appropriate funding to mobilise and draw on the capacity of Aboriginal and Torres Strait Islander representative organisations.
- Recommendation 4:** That the Bill is time bound and sets out a clear link to a referendum.

¹ *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (January 2012)

- Recommendation 5:** That the Bill's final content, and the manner of its passage through Parliament does not compromise multi-party support for a referendum.
- Recommendation 6:** That should the Bill not attract multiparty support, consideration should be given to an alternative demonstration of the Parliament's support for constitutional recognition, such as a formal motion. Aboriginal and Torres Strait Islander peoples and their representative organisations should be consulted to ascertain their views as to the form and content of this support.
- Recommendation 7:** That the content of the Bill reflects the recommendations of the Panel. To the extent that the Bill differs from the recommendations of the Panel, Aboriginal and Torres Strait Islander peoples and their representative organisations should be consulted to ascertain their views as to the form and content of this support.

3. About Oxfam Australia

8. Oxfam Australia is an independent, not-for-profit, secular international development agency. We are a member of Oxfam International, a global confederation of 15 Oxfam affiliates that work together to fight poverty and injustice in almost 100 countries around the world.
9. Oxfam Australia has worked with local communities around the world to combat poverty and injustice for over 50 years. Our organisation undertakes long-term development projects, provides emergency response during disaster and conflict, and conducts campaigning and advocacy for policy and practice changes which promote human rights and justice. We support over 400 long-term development projects in 30 countries across Africa, Asia, the Pacific and Indigenous Australia.
10. Oxfam adopts a rights-based approach to community development. This approach focuses on the full achievement of the rights of human beings and looks at the drivers of inequality, poverty and conflict, rather than focusing on an immediate needs analysis alone. Oxfam's experience is that a rights-based approach has the potential to have a far greater impact within various levels of society because it uncovers and proposes solutions to multi-levelled barriers.
11. Significantly, rights-based approaches are no less 'practical' than other approaches and they look holistically at both rights and responsibilities.
12. Oxfam Australia has supported opportunities for Aboriginal and Torres Strait Islander peoples to exercise their rights to basic social services, sustainable livelihoods, a strong voice and cultural diversity, for more nearly 40 years.

4. A Bill to drive the process towards a successful referendum

15. Constitutional recognition of Aboriginal and Torres Strait Islander people has been supported by all major political parties since 1999. In the 2010 Election the Gillard Government committed to hold a referendum within the 43rd parliamentary term.

16. The Panel recommended that prior to holding a referendum, the Government should consult with the Opposition, the Greens and independent members of Parliament and that the referendum should only proceed when it is likely to be supported by all major political parties.²
15. The Act of Recognition Bill along with the Committee must ensure this cross party political support is maintained and strengthened.
- 16. Oxfam recommends that the Bill clearly demonstrate the Parliament's resolve to take action to ensure a referendum on constitutional recognition of Aboriginal and Torres Strait Islander people is held in the next electoral cycle.**
17. The Panel recommended that a referendum should be proceeded by a properly resourced public education and awareness program and that the Government should take steps to maintain the momentum for recognition.³
18. Oxfam believes that strong political leadership will be required to build support for constitutional recognition. Efforts to build such support should not be left to civil society alone.
19. The Panel further recommended that 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, Aboriginal and Torres Strait Islander peoples and their representative organisations should be consulted to ascertain their views.⁴
20. Consistent with the UN Declaration on the Rights of Indigenous Peoples, Oxfam believes that there must be full participation of Aboriginal and Torres Strait Islander people in the public education and awareness process.
- 21. Oxfam recommends that the Bill make clear the steps Parliament will take to maintain momentum and build support for constitutional recognition.**
- 22. Oxfam recommends that the Bill be accompanied by appropriate funding to mobilise and draw on the capacity of Aboriginal and Torres Strait Islander representative organisations.**
23. Oxfam has welcomed the introduction of the Bill as a step on the path to a referendum for constitutional recognition. We do not consider the Bill an end in itself or a standalone gesture but rather a means to strengthening support and taking clear steps towards a referendum.
- 24. Oxfam recommends that the Bill is time bound and sets out a clear link to a referendum.**
25. Oxfam notes that no referendum for constitutional change in Australia has succeeded without multi-party support.⁵ The Bill and work of the Joint Select Committee should serve to maintain and strengthen such support.

² *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (January 2012)

³ *Ibid*

⁴ *Ibid*

⁵ George Williams and David Hume, *People Power: The History and Future of the Referendum in Australia* (University of New South Wales Press, 2010)

26. Oxfam recommends that the Bill's final content, and the manner of its passage through Parliament does not compromise multi-party support for a referendum.
27. Oxfam recommends that should the Bill not attract multiparty support, consideration should be given to an alternative demonstration of the Parliament's support for constitutional recognition, such as a formal motion. Aboriginal and Torres Strait Islander peoples and their representative organisations should be consulted to ascertain their views as to the form and content of this support.
28. Oxfam believes that it would be perverse to hold a referendum on constitutional recognition of Aboriginal and Torres Strait Islander people with proposals that are not supported by Aboriginal and Torres Strait Islander people. It would also run counter to rights to self determination and participation articulated in the *UN Declaration on the Rights of Indigenous Peoples*.
29. In relation to the work of the Committee, Oxfam suggests that it ensure strong engagement with Aboriginal and Torres Strait Islander representatives. The National Congress of Australia's First Peoples and other Aboriginal or Torres Strait Islander representatives should be permitted to act in an official advisory capacity to the Joint Select Committee.
30. Oxfam notes that, in conducting the national conversation from which it made its recommendations, the Panel conducted over 250 consultations and received 3500 submissions.⁶
31. Oxfam recommends that the content of the Bill reflects the recommendations of the Expert Panel. To the extent that the Bill differs from the recommendations of the Panel, Aboriginal and Torres Strait Islander peoples and their representative organisations should be consulted to ascertain their views.

⁶ *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (January 2012)