

# Australian Constitutional Reform: recommendations to the Australian Government

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This document has been prepared to support Aboriginal peoples' consideration of the Australian Constitution and current proposals for its reform.

**Please Note:** While all care has been taken in the preparation of this document, it should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. The information in this Information Sheet is current as of January 2012.

### Australian Constitutional reform 2011-2013

Amending the Australian Constitution to provide recognition of the sovereign First Peoples of Australia and to remove the discriminatory provisions has long remained a key aspiration for many Aboriginal peoples.

As part of the 2010 Federal Australian election campaign, all major political parties committed to reforming the Constitution to recognise the First Australian's in the Australian Constitution. This has followed the amendment of several State Government Constitutions to provide constitutional recognition for their Aboriginal peoples.

### Expert Panel on Constitutional reform

Following on from the Federal Government commitment to a referendum, the Government appointed an Expert Panel to:

- a. Lead a broad national consultation and community engagement programs to seek the views of a wide spectrum of the community;
- b. Work closely with organizations who have existing expertise and engagement in relation to the issue; and
- c. Raise awareness about the importance of Indigenous Constitutional recognition including by identifying and supporting ambassadors who will generate broad public awareness and discussion.

The Expert Panel was directed to report to the Australian Government on the possible options for Constitutional recognition, including the level of support from Aboriginal and Torres Strait Islander peoples and the broader community for a number of options by December 2011. The Panel released its report and recommendations on 19 January 2012.

## Expert Panel's final report and recommendations to the Australian Government

In 19 January 2012 the Expert Panel on Constitutional reform released their final report and recommendations to the Australian Government. The recommendations were:

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 **That section 25 be repealed.**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 **That section 51(xxvi) be repealed.**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:**

**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.

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

- 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:**

- 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.

The Expert Panel also made a series of recommendations relating to the process for reform:

- 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 Australian Government and Opposition have indicated that they will now review the Expert Panel's report and recommendations. It is expected that a referendum will take place at the same time as the general Federal election in 2013.

### **NSW Aboriginal Land Council's position on Australian Constitutional reform**

It is important that the reform of the Australian Constitution seeks to achieve more than just symbolic outcomes for Aboriginal peoples.

The NSW Aboriginal Land Council recommends that the Australian Government move beyond mere symbolic recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution and seeks to at the least:

- I. Provide full constitutional recognition of Aboriginal and Torres Strait Islander peoples as the sovereign First Peoples of Australia.
- II. Remove section 51 (xxvi) of the Constitution, also known as the "race power", and replace this with a power for the Australian Government to make laws with respect to '*matters beneficial to Aboriginal and Torres Strait Islander peoples in that such laws are only enacted for the sole purpose of securing the adequate advancement and the equal enjoyment or exercise of human rights and fundamental freedoms for Aboriginal and Torres Strait Islander peoples*'. This conforms to the accepted international standard for 'special measures' as allowed under the Convention on the *Elimination of All Forms of Racial Discrimination*.

***Like NSWALC, the final report of the Expert Panel recommended the removal of section 51 (xxvi) and the insertion of a new section 51 A.***

- III. Remove in its entirety, section 25 of the Constitution, which anticipates the disqualification of persons of a particular race from voting in state elections.

***Like NSWALC, the final report of the Expert Panel recommended the removal of section 25.***

- IV. Insert a general guarantee of racial equality and a prohibition on racial discrimination into the Constitution.

To provide greater rights protections of Aboriginal peoples of Australia, the Australian Government must move beyond the reform of the Australian Constitution.

To ensure opportunities are created for Aboriginal peoples of Australia to remedy the disproportionate disadvantage experienced by so many Aboriginal peoples, the New South Wales Aboriginal Land Council strongly advocates for:

- The Australian Government to move forward from its 'commitment to formally support' the Declaration on the Rights of Indigenous Peoples, to fully implement these principles into laws, policies and most importantly practical measures.
- The Australian Government must unreservedly ratify and fully implement the International Labour Organisation Convention 169, the Indigenous and Tribal Populations Convention, 1989.

### **Where can I get more information?**

You can get more information by contacting the NSWALC Policy and Research Unit on 02 9689 4444.