

15 January 2013



Joint Select Committee on Constitutional Recognition of Aboriginal
and Torres Strait Islander Peoples
SG.64, PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Joint Selection Committee Secretariat

Submission to the inquiry into Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to make a submission on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (the current Bill). PIAC thanks the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples for granting an extension of time in order to enable us to do so.

By way of background, PIAC is an independent, non-profit law and policy organisation. For almost 10 years, PIAC's Indigenous Justice Program has been the focus of its work to promote the rights of, and access to remedies for, Aboriginal and Torres Strait Islander peoples who have suffered harm as a result of discriminatory laws, practices and policies. PIAC receives funding from the law firm, Allens, for its Indigenous Justice Program.

PIAC's work in this area has focused on discriminatory laws that permitted the forced removal of Aboriginal and Torres Strait Islander children from their families and those that deprived Aboriginal people in NSW of their wages and other entitlements. As a result of this work, PIAC is acutely aware of the devastating impact of discriminatory laws on Aboriginal and Torres Strait Islander people and the ongoing intergenerational disadvantage to which this contributes.

Constitutional recognition

PIAC supports reform of the Australian Constitution to recognise Aboriginal and Torres Strait Islander Peoples, as an important step in securing equality and non-discrimination. In its 2011 submission to the Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Australians, PIAC argued for the removal of racially discriminatory provisions of the Constitution and an agreement-making power for First Australian communities.¹

The current Bill

The stated objective, according to the Explanatory Memorandum accompanying the current Bill, is to provide 'an interim step' towards constitutional recognition of Aboriginal and Torres Strait Islander peoples.

¹ PIAC's full submission to the Consultation is available at <http://www.piac.asn.au/publication/2011/10/vote-yes-end-racial-discrimination>.

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As a general proposition, PIAC supports the current Bill – on the basis that is indeed an interim step towards more substantive constitutional recognition of Aboriginal and Torres Strait Islander peoples.

The Explanatory Memorandum states:

The Bill also does not reflect the Expert Panel’s recommendation for a constitutional prohibition of racial discrimination. The Government remains firmly committed to the elimination of racial discrimination.²

In one sense, this omission might be understandable given that the current Bill does not refer directly or in detail to any of the particular recommendations of the Expert Panel. However, a large part of the rationale for reform is that the Australian Constitution currently contains provisions that either overtly discriminate on the ground of race, or allow for the less favourable treatment of Aboriginal and Torres Strait Islander peoples.

With this in mind, PIAC submits that the current Bill should be amended so as to explicitly identify these discriminatory provisions and it should also set out Parliament’s commitment to eradicate such discrimination. In other words, and consistently with the recommendations of the Expert Panel, PIAC submits that the Bill should make clear that the elimination of racial discrimination is central to constitutional recognition of Aboriginal and Torres Strait Islander peoples.

PIAC supports the current Bill as an interim step on the path towards meaningful constitutional recognition and is pleased to see all sides of politics engaging with the process of change. It is vital that cross-party support and commitment be given, maintained and expressed so that the national journey for securing change progresses. If passed, the Bill could help build momentum not only among politicians but also across communities. We note that the Bill has some mechanisms, such as reporting, reviews and the sunset clause, that should foster progress towards the end goal.

PIAC submits that the Government will need to provide greater detail about the timeframe and mechanics of the process set out in broad detail in the current Bill. Such detail, if not set out in the Bill itself, should be provided by the responsible Minister as soon as possible.

In particular, the current Bill provides only very broad information about the role Aboriginal and Torres Strait Islander people will play in the reform process. The Expert Panel and community-based organisations working on the issue have put a lot of effort into community consultation. It is imperative that Indigenous communities are involved in the decision making at all levels of the reform process. The words used in the current Bill – namely, ‘further engagement’ – are relatively opaque. The Government should, therefore, make its intentions in relation to this engagement.

Finally, PIAC supports the acknowledgment expressed towards the ‘important work of the Expert Panel’. Given that the Expert Panel has already undertaken a broad community consultation, the current Bill should be amended to make clear that the reform process will be driven with the Expert Panel’s recommendations as its foundation.

² The Hon Jenny Macklin MP, Minister for Indigenous Affairs, Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 – Explanatory Memorandum.

If you have any questions about this submission, please contact Sarah Bassiuoni (sbassiuoni@piac.asn.au) or myself.

Yours faithfully

A handwritten signature in blue ink that reads "Edward Santow". The signature is written in a cursive style with a large initial 'E' and a long, sweeping tail.

Edward Santow
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