



Secretariat of National Aboriginal and Islander Child Care

Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

Submission

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More Information:

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1.

Dear Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples,

The Secretariat of National Aboriginal and Islander Child Care (**'SNAICC'**) welcomes the opportunity to participate in the conversation on reform of Australia's constitution to properly recognise Aboriginal and Torres Strait Islander peoples.

SNAICC, established as a non-governmental, not-for-profit organisation in 1981, is the national peak body in Australia representing the interests of Aboriginal and Torres Strait Islander children and families. Further information on SNAICC is available online at www.snaicc.asn.au.

SNAICC applauds the consultation process that the Panel has undertaken and urges the Panel to ensure that the voices of Aboriginal and Torres Strait Islander peoples are communicated through powerful recommendations to Government.

SNAICC trusts that the Panel will stand courageously to lead Australia into the future, advocating for substantive constitutional reform that would fundamentally alter the basic premise on which Aboriginal and Torres Strait Islander peoples are recognised in the founding political and legal document of the current Australian nation.

We appreciate the significant responsibility that the Panel has assumed to charter the way ahead and prepare the ground for both political negotiations on the one hand and a national awareness and mobilisation campaign on the other, positive outcomes of which are both necessary for successful constitutional reform. Proactive engagement is the responsibility of all citizens and civil society, and SNAICC would welcome discussions on how we can most effectively contribute to an effective outcome for constitutional reform for Aboriginal and Torres Strait Islander peoples.

This is a critical moment in modern Australian history. Nothing can alter the tragic record of relations between Aboriginal and Torres Strait Islander peoples and the Australian state, a history of dispossession, impoverishment, degradation and institutional violence. This is a legacy which remains strongly with us all today. This legacy is reflected in the Australian constitution, the core document which reflects our values as a nation, and which should entrench recognition and respect for the self-determination of the Aboriginal peoples of the land. We can take steps however now to recognise that this position is abhorrent; that this history has no place in our Australia today; that the traditional owners of the land must not only be recognised, but past wrongs remedied and respect for the human rights of Aboriginal and Torres Strait islanders peoples embedded within the Australian political, legal, social, economic and cultural landscape. Constitutional reform can mark a new era for relations of respect and equality.

SNAICC refers to the Discussion Paper produced by the Panel, dated May 2011, and provides the following comments on amendment of the Australian Constitution. We note that these are general comments: the specific provisions advocated should

be the product of comprehensive consultation with Aboriginal and Torres Strait Islander peoples and careful consideration and drafting.

1. SNAICC firmly believes that substantive, enforceable provisions in the text of the Constitution must accompany any statement of recognition in the preamble. An amendment to the preamble alone would only serve to undermine the position, dignity and movement for recognition and realisation of the human rights of Aboriginal and Torres Strait Islander peoples.
2. SNAICC supports the repeal of section 25 of the Constitution.
3. SNAICC supports the amendment of section 51(xxvi) of the Constitution to eliminate the potential for racial discrimination. While SNAICC does not advocate the best way to achieve this end, SNAICC refers the Panel to Article 1(4) of the *United National Convention on the Elimination of Racial Discrimination (1965) ('CERD')* (to which Australia is a party). SNAICC considers that inclusion of a provision on non-discrimination on the basis of race could be accompanied by a provision comparable to Article 1(4) CERD, which permits temporary special measures which impact a certain race or ethnic group where it is designed to secure the full and equal enjoyment of human rights and fundamental freedoms of such disadvantaged groups. There is a host of international law that can assist in the proper interpretation of this concept to ensure proper application of the provision.
4. SNAICC notes that a non-derogation clause that confirms that any guarantee of rights and freedoms in the Constitution should not be construed so as to derogate from any Aboriginal, agreement-based or other rights or freedoms that pertain to the Aboriginal and Torres Strait Islander peoples, is an important inclusion in the Constitution.
5. SNAICC agrees with the Tasmanian Aboriginal Centre Inc. that the changes to ss.51(xxvi) and 25 are incidental,¹ but believes that these changes are a necessary part of the constitutional reform process. A cluster of amendments presented in a simple package and with a clear message to Parliament and to the Australian people could encompass recognition in the preamble, removal of discriminatory provisions and recognition of the special position of Aboriginal and Torres Strait Islander peoples as the original peoples of the land. Of central significance here is the political relationship between Aboriginal and Torres Strait Islander peoples and the Australian state.
6. The right to self-determination is an overriding and fundamental right of Aboriginal and Torres Strait Islander peoples. It is the core recognition that we have the right to live according to our values and beliefs and to therefore exercise choice over how our lives are governed, and our economic, social

¹ Open Letter from Michael Mansell, Tasmanian Aboriginal Centre Inc. to President, Law Council of Australia, 15 November 2010.

and cultural development. Inclusion of this right in the Australian Constitution reflects recognition of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of this land.

The right to self-determination is recognised in Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples (2007)*, which reflects international law to which Australia is bound, as set out in the core international conventions, *the International Covenant on Civil and Political Rights (1966)* (Article 1(1)) and *the International Covenant on Economic, Social and Cultural Rights (1966)* (Article 1(1)) (which form part of what is termed ‘the International Bill of Human Rights’).

Article 3 of the Declaration provides that “*Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*”

7. SNAICC considers that the *United Nations Declaration on the Rights of Indigenous Peoples (2007)* should be drawn on to reflect the collective rights of Aboriginal and Torres Strait Islander peoples. A statement on these principles could form the substance of the statement of recognition in the preamble to the Constitution. The provisions of the Constitution should also clearly provide that Aboriginal and Torres Strait Peoples are the Indigenous peoples to the land of the Australian state, and have a right to self-determination. This must be an actionable and enforceable provision.

Inclusion of the right to self-determination in the constitution would greatly assist the tireless efforts of diverse organisations, institutions, individuals and movements around Australia working to advance recognition and support for all fundamental human rights of Aboriginal and Torres Strait Islander peoples contained within the Declaration.

8. The right of self-determination is the canvass from which Aboriginal and Torres Strait Islander peoples can ensure the sustenance and strength of our culture, our languages, our social and economic well-being, and our ongoing connection to our land. It is the premise from which our political rights as a people can finally be held to account. In this regard, SNAICC considers an agreement making provision for the Australian Government to enter into specific agreements with Aboriginal and Torres Strait Islander representative bodies must accompany the right to self-determination in the Constitution. This may provide a concrete and explicit path to reset the relationship between Aboriginal and Torres Strait Islander peoples.
9. Finally, SNAICC recognises the challenges ahead in obtaining bi-partisan support for constitutional reform and a successful referendum for constitutional change. A major campaign to engage the Australian population is critical to success. This must be meticulously and strategically thought through, planned and rolled out to provide a clear and simple message that the majority of Australians across the country will support.

Timing of the referendum is also a matter of major concern and SNAICC urges for consideration of a referendum to be held separately from a Federal election. This is a paramount moment in the history of the Australian state that deserves an opportunity for success. It must not be allowed to be lost in the frays of politics.

Please don't hesitate to contact SNAICC if you have any questions or comments, or if SNAICC can assist in any way.

Yours sincerely,

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SNAICC