

# Recommendations

## Recommendation 1

2.32 The committee recommends that each House of Parliament set aside a full day of sitting to debate concurrently the recommendations of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, with a view to achieving near-unanimous support for and build momentum towards a referendum to recognise Aboriginal and Torres Strait Islander peoples.

## Recommendation 2

2.40 The committee recommends that the referendum on constitutional recognition be held when it has the highest chance of success.

## Recommendation 3

3.19 The committee recommends that section 25 of the Constitution be repealed.

## Recommendation 4

3.20 The committee recommends the repeal of section 51(xxvi) and the retention of a persons power so that the Commonwealth government may legislate for Aboriginal and Torres Strait Islander peoples as per the 1967 referendum result.

## Recommendation 5

4.88 The committee recommends that the three options, which would retain the persons power, set out as proposed new sections 60A, 80A and 51A & 116A, be considered for referendum.

4.89 The first option the committee recommends for consideration is its amended proposed new section 51A, and proposed new section 116A, reported as option 1 in the committee's Progress Report:

### **51A Recognition of Aboriginal and Torres Strait Islander Peoples**

**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;

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.

### **116A Prohibition of racial discrimination**

(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;

4.90 The committee considers that this proposal:

- is legally and technically sound;
- retains a persons power as per the 1967 referendum result;
- contains a special measures provision;
- limits the constitutional capacity of the Commonwealth, states and territories to discriminate;
- offers a protection for all Australians;
- is a broad option;
- had the overwhelming support of Aboriginal and Torres Strait Islander peoples and non-Aboriginal and Torres Strait Islander peoples during the inquiry; and
- accords with the recommendation of the Expert Panel.

4.91 The second option was proposed by Mr Henry Burmester AO QC, Professor Megan Davis and Mr Glenn Ferguson after their consultation process:

## **CHAPTER IIIA**

### **Aboriginal and Torres Strait Islander Peoples**

#### **Section 80A**

(1) **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 and heritage of Aboriginal and Torres Strait Islander peoples;

**Acknowledging** that Aboriginal and Torres Strait Islander languages are the original Australian languages and a part of our national heritage;

the Parliament shall, subject to this Constitution, have power to make laws with respect to Aboriginal and Torres Strait Islander peoples, but so as not to discriminate against them.

(2) This section provides the sole power for the Commonwealth to make special laws for Aboriginal and Torres Strait Islander peoples.

4.92 The committee considers that this proposal:

- is legally and technically sound;
- retains a persons power as per the 1967 referendum result;
- is clear in meaning;
- limits the capacity of the Commonwealth only with regard to discrimination, so states and territories are not affected by constitutional change;
- is a narrow option; and
- offers constitutional protection from racial discrimination for Aboriginal and Torres Strait Islander peoples.

4.93 The third option which would retain the persons power is the proposal from the Public Law and Policy Research Unit at the University of Adelaide:

#### **60A Recognition of Aboriginal and Torres Strait Islander Peoples**

**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 and heritage of Aboriginal and Torres Strait Islander peoples;

**Acknowledging** that Aboriginal and Torres Strait Islander languages are the original Australian languages and a part of our national heritage;

(1) 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.

(2) A law of the Commonwealth, a State or a Territory must not discriminate adversely against Aboriginal and Torres Strait Islander peoples.

4.94 The committee considers that this proposal:

- is legally and technically sound;
- retains a persons power as per the 1967 referendum result;
- is clear in meaning;
- is both a narrow and a broad option;
- limits the 'adverse discrimination' provision to Aboriginal and Torres Strait Islander peoples; and
- limits the capacity of the Commonwealth, states and territories constitutionally to discriminate.

### **Recommendation 6**

6.18 The committee recommends that the *Human Rights (Parliamentary Scrutiny) Act 2011* be amended to include the United Nations Declaration on the Rights of Indigenous Peoples in the list of international instruments which comprise the definition of human rights under the Act.

### **Recommendation 7**

8.49 The committee recommends that the government hold constitutional conventions as a mechanism for building support for a referendum and engaging a broad cross-section of the community while focussing the debate.

### **Recommendation 8**

8.50 The committee further recommends that conventions made up of Aboriginal and Torres Strait Islander delegates be held, with a certain number of those delegates then selected to participate in national conventions.

### **Recommendation 9**

9.32 The committee recommends that a referendum be held on the matter of recognising Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

### **Recommendation 10**

9.33 The committee recommends that a parliamentary process be established to oversight progress towards a successful referendum.