

**AMNESTY
INTERNATIONAL**



15 May 2017

Referendum Council
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Dear Referendum Council,

Re: Submission to Consultation on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

Amnesty International welcomes the opportunity to provide input into the discussion on constitutional reform in Australia, including the issue of recognition of Aboriginal and Torres Strait Islander people in the Constitution.

Amnesty International works in partnership with Indigenous organisations, communities and leaders to advocate for Aboriginal and Torres Strait Islander people and children who have had their human rights violated.

As outlined in the Declaration on the Rights of Indigenous Peoples, Indigenous people have the right to self-determination as well as the right to participate in decision-making in matters which affect them - in accordance with the principles of free, prior and informed consent - through their own representatives and in accordance with their own procedures.

Any process to reform Australia's Constitution to benefit Aboriginal and Torres Strait Islander people must be shaped by the views of Aboriginal and Torres Strait Islander people themselves. It is imperative that Government has the free, prior and informed consent of Indigenous Peoples before any constitutional changes are made.

Amnesty International has concerns that the Government's current process on constitutional reform has not been fully inclusive of all Aboriginal and Torres Strait Islander community views. We understand that participants at the regional dialogue meetings were invited in what was perceived as an exclusive process. We also understand that some people who attended those meetings then have an opportunity to attend the Uluru meeting, whereas those not included do not.

We acknowledge this important process for receiving public written submissions, however this may not be an accessible way for all Aboriginal and Torres Strait Islander people to participate. The remainder of this process must be meaningfully consultative and inclusive with all Aboriginal and Torres Strait Islander people and communities, so that the right to participate is upheld. Amnesty International recommends that any final outcome of this process has the free, prior and informed consent of Aboriginal and Torres Strait Islander people, including by meaningfully engaging with Aboriginal and Torres Strait Islander representative national peak bodies.

Regarding to the 'key proposals for reform', please refer our previous submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (**attached**). Amnesty International supports measures which reflect substantive constitutional change, recognising the aspirations of Aboriginal and Torres Strait Islander Peoples and strengthening Australia's legislative frameworks to reflect the principles of international human rights law.

Amnesty International further notes that calls for treaties have become more vocal and gained momentum in recent years, particularly in Victoria, South Australia and the Northern Territory. However, a proposal for an agreement-making provision in the Constitution has not been included as a 'key proposal for reform' in the Council's discussion paper.

Amnesty International recommends that the Government follow the approach outlined in the Redfern Statement (**attached**), by addressing and implementing the recommendations of the Council for Aboriginal Reconciliation, which includes an agreement making framework (treaty) and constitutional reform in consultation with Aboriginal and Torres Strait Islander peoples and communities.

Amnesty International looks forward to the results of the consultations.

Yours sincerely



Tammy Solonec
Indigenous Rights Manager

ELECTION
2016

ABORIGINAL AND TORRES STRAIT
ISLANDER PEAK ORGANISATIONS
UNITE

THURSDAY JUNE 9TH 2016

The Redfern Statement

An urgent call for a more just approach to Aboriginal and Torres Strait Islander Affairs

"Social justice is what faces you in the morning. It is awakening in a house with adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to school where their education not only equips them for employment but reinforces their knowledge and understanding of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity, free from discrimination."

Mick Dodson, Annual Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, 1993.

We are here today, the 9th of June 2016, in Redfern where in 1992 Prime Minister Paul Keating spoke truth about this nation - that the disadvantage faced by First Peoples affects and is the responsibility of all Australians.

We stand here as Aboriginal and Torres Strait Islander peak representative organisations with a deep concern:

that in 2016 First Peoples continue to experience unacceptable disadvantage;

that the challenges confronting Aboriginal and Torres Strait Islander people continue to be isolated to the margins of the national debate;

that Federal Government policies continue to be made for and to, rather than with, Aboriginal and Torres Strait Islander people; and

*that the transformative **opportunities for Government action are yet to be grasped.***

Stand with us to let this statement and call for Government action be heard and acted upon by our nation's leaders.

This statement and call for Government action is led by:

- National Congress of Australia's First Peoples
- First Peoples Disability Network (FPDN)
- National Aboriginal and Torres Strait Islander Legal Services (NATSILS)
- National Aboriginal Community Controlled Health Organisations (NACCHO)
- National Family Violence Prevention Legal Services (FVPLS) Forum
- SNAICC - National Voice for our Children
- Australian Indigenous Doctor's Association (AIDA)
- Congress of Aboriginal and Torres Strait Islander Nurses and Midwives (CATSINaM)
- Indigenous Allied Health Australia
- Jaanimili Aboriginal Services & Development Unit - Communities, NSW & ACT
- National Aboriginal and Torres Strait Islander Health Workers Association (NATSIHWA)
- National Association of Aboriginal and Torres Strait Island Physiotherapists
- NGAOARA - Child and Adolescent Wellbeing
- The Healing Foundation
- The Lowitja Institute
- Victorian Aboriginal Community Controlled Health Organisation (VACCHO)
- Winnunga Nimmityjah Aboriginal Health Service
- Queensland Aboriginal and Torres Strait Islander Child Protection Peak

With overarching support from:

- Close the Gap Steering Committee
- Family Matters Campaign
- National Health Leadership Forum
- The Change the Record Coalition

And broad support from:

- Amnesty International Australia
- ANTaR
- Australian College of Midwives
- Australian College of Nursing
- Australian Council of Social Service
- Australian Healthcare & Hospitals Association
- Australian Medical Association
- Australian Physiotherapy Association
- Berry Street
- Centre for Excellence in Child and Family Welfare

- Commissioner for Aboriginal Children and Young People (VIC) - Andrew Jackomos
- Domestic Violence NSW
- Families Australia
- Federation of Community Legal Centres (VIC)
- Human Rights Law Centre
- Indigenous Eye Health, University of Melbourne
- Law Council of Australia
- Menzies School of Health Research
- National Association of Community Legal Centres
- Oxfam Australia
- PeakCare Queensland Inc.
- Public Health Association of Australia
- Queensland Family and Child Commission
- Reconciliation Australia
- Royal Australian College of General Practitioners
- Save the Children
- Sisters Inside
- Tasmanian Children's Commissioner - Mark Morrissey
- The Fred Hollows Foundation
- The Heart Foundation
- Uniting Communities
- UnitingCare NSW & ACT

A call for urgent Government action

In the past 25 years - a generation in fact - we have had the *Royal Commission into Aboriginal Deaths in Custody*, the *Bringing them home Report* and *Reconciliation: Australia's Challenge: the final report of the Council for Aboriginal Reconciliation*. These reports, and numerous other Coroner and Social Justice Reports, have made over 400 recommendations, most of which have either been partially implemented for short term periods or ignored altogether.

In the last 25 years we have seen eight Federal election cycles come and go, with seven Prime Ministers, seven Ministers for Indigenous Affairs, countless policies, policy changes, funding promises and funding cuts - all for the most marginalised people in Australia.

For the last quarter century, then, we've seen seminal reports which have repeatedly emphasised that our people need to have a genuine say in our own lives and decisions that affect our peoples and communities. This, known as self-determination, is the key to closing the gap in outcomes for the First Peoples of these lands and waters.

All of these reports call for better resourcing of Aboriginal and Torres Strait Islander organisations and services for Aboriginal and Torres Strait Islander communities.

All of these reports call for real reconciliation based on facing the truths of the past and creating a just and mature relationship between the non-Indigenous Australian community and the First Peoples.

The next Federal Government will take on the same responsibility to right this nation's past injustices as the last eight Federal Governments have had. The next Government of Australia will take power with our First Peoples facing the same struggles as they were in 1992. But this next Federal Government also has an unprecedented nation-building opportunity to meaningfully address Aboriginal and Torres Strait Islander disadvantage. They have the mandate to act. We therefore call on the next Federal Government to:

- Commit to resource Aboriginal and Torres Strait Islander led-solutions, by:
 - Restoring, over the forward estimates, the \$534 million cut from the Indigenous Affairs portfolio in the 2014 Budget to invest in priority areas outlined in this statement; and
 - Reforming the *Indigenous Advancement Strategy* and other Federal funding programs with greater emphasis on service/need mapping (through better engagement) and local Aboriginal and Torres Strait Islander organisations as preferred providers.
- Commit to better engagement with Aboriginal and Torres Strait Islander peoples through their representative national peaks, by:
 - Funding the National Congress of Australia's First Peoples (Congress) and all relevant Aboriginal and Torres Strait Islander peak organisations and forums; and
 - Convening regular high level ministerial and departmental meetings and forums with the Congress and the relevant peak organisations and forums.
- Recommit to Closing the Gap in this generation, by and in partnership with COAG and Aboriginal and Torres Strait Islander people:
 - Setting targets and developing evidence-based, prevention and early intervention oriented national strategies which will drive activity and outcomes addressing:
 - family violence (with a focus on women and children);
 - incarceration and access to justice;
 - child safety and wellbeing, and the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care; and
 - increasing Aboriginal and Torres Strait Islander access to disability services;

- Secure national funding agreements between the Commonwealth and States and Territories (like the former National Partnership Agreements), which emphasise accountability to Aboriginal and Torres Strait Islander peoples and drive the implementation of national strategies.
- Commit to working with Aboriginal and Torres Strait Islander leaders to establish a Department of Aboriginal and Torres Strait Islander Affairs in the future, that:
 - Is managed and run by senior Aboriginal and Torres Strait Islander public servants;
 - Brings together the policy and service delivery components of Aboriginal and Torres Strait Islander affairs and ensures a central department of expertise.
 - Strengthens the engagement for governments and the broader public service with Aboriginal and Torres Strait Islander people in the management of their own services.
- Commit to addressing the unfinished business of reconciliation, by:
 - Addressing and implementing the recommendations of the Council for Aboriginal Reconciliation, which includes an agreement making framework (treaty) and constitutional reform in consultation with Aboriginal and Torres Strait Islander peoples and communities.

The health and wellbeing of Aboriginal and Torres Strait Islander peoples cannot be considered at the margins.

It is time that Aboriginal and Torres Strait Islander voices are heard and respected, and that the following plans for action in relation to meaningful engagement, health, justice, preventing violence, early childhood and disability, are acted upon as a matter of national priority and urgency.

National Representation for Aboriginal and Torres Strait Islander Peoples

It is critical that Australia's First Peoples are properly represented at the national level to ensure meaningful engagement with Government, industry and the non-government sectors to advance the priorities of our people.

Since 2010, the National Congress of Australia's First Peoples (Congress) has gone some way to fill the gap in national representation since the demise of the Aboriginal and Torres Strait Islander Commission in 2005.

However, there remain too many gaps in adequate national level representation for Aboriginal and Torres Strait Islander people - particularly for employment and education. Without Congress or equivalent national bodies where Aboriginal and Torres Strait Islander leaders are supported to engage with Government it will be difficult for the next Federal Parliament to meet the multi-partisan priority and commitment to work 'with' Aboriginal and Torres Strait Islander people.

We call on the next Federal Government to commit to:

1. Restoration of funding to the National Congress of Australia's First Peoples

The National Congress of Australia's First Peoples (Congress) was established in 2010 to be the representative voice of Aboriginal and Torres Strait Islander peoples and to advocate for positive change. The decision to defund Congress, just as it is beginning to emerge as a unifying element among Aboriginal and Torres Strait Islander groups, is a mistake.

Without support, Congress' ability to do its job of representing Aboriginal and Torres Strait Islander interests is severely compromised. Congress must be supported to provide a mechanism to engage with our people, develop policy, and advocate to Government.

Congress should be supported to reach sustainability and independence as soon as possible.

2. A national Aboriginal and Torres Strait Islander representative body for Education

Although there are many good quality Aboriginal and Torres Strait Islander organisations, and strong leaders, working at the State and local level in the education sector, there is currently no national body to promote and engage in education policy for Australia's First Peoples.

The education sector is fragmented across early childhood, primary and secondary education, vocational education and training, and higher education, with each of state and territory having public, catholic and private school systems. In the absence of a single national education voice for Aboriginal and Torres Strait Islander people, Congress has been active in coordinating and promoting unity across these sectors. Congress has consulted widely with its members, educators and organisations, many of which have a long history of working in this area.

We call on the next Federal Government to establish a national body that can call for policies support Aboriginal and Torres Strait Islander students and communities across all of these educational systems.

3. A national Aboriginal and Torres Strait Islander representative body for Employment

Meaningful Engagement

The highly disadvantaged employment and income status of Aboriginal and Torres Strait Islander peoples is well documented. While we appreciate attempts at advancing opportunities for Aboriginal and Torres Strait Islander peoples, the many issues around employment require a unified and expert voice.

Beyond skills training, mentoring and targeted employment services to enhance the job readiness of Aboriginal and Torres Strait Islander peoples, concerted effort needs to be directed to creating jobs that are suitable and meaningful for our people. This is of particular concern in remote areas, where mainstream commercial and labour market opportunities are limited. In urban and rural areas, Aboriginal and Torres Strait Islander people are faced with issues of racism and discrimination in the workplace.

The next Federal Government should establish and fund a national representative body of Aboriginal and Torres Strait Islander leaders to drive employment and economic solutions for our people, in order to:

- Work with our communities to develop their own strategies for economic development, and promote community participation and management;
- Promote strategies to create Aboriginal and Torres Strait Islander-friendly workplaces; and
- Work with Government to design welfare policy that encourages, rather than coerces, Aboriginal and Torres Strait Islander peoples into employment.

4. A national Aboriginal and Torres Strait Islander representative body for Housing

Federal and State Government policies concerning Aboriginal and Torres Strait Islander housing is currently disjointed, wasteful and failing. For example, Aboriginal and Torres Strait Islander people in urban and regional markets face many barriers in accessing and securing safe and affordable housing, including discrimination and poverty.

The next Federal Parliament should support the development of a national representative body of Aboriginal and Torres Strait Islander leaders who can focus on housing security for Aboriginal and Torres Strait Islander peoples, and:

- Advocate for the ongoing support for remote communities to prevent community closures;
- Work with communities to develop a national Aboriginal and Torres Strait Islander housing strategy, with the aim of improving the housing outcomes for our people across all forms of housing tenure; and
- Provide culturally appropriate rental, mortgage and financial literacy advice.

First Peoples Health Priorities

Closing the Gap in health equality between Aboriginal and Torres Strait Islander people and non-Indigenous Australians is an agreed national priority. The recognised necessity and urgency to close the gap must be backed by meaningful action.

All parties contesting the 2016 Federal Election must place Aboriginal and Torres Strait Islander affairs at the heart of their election platforms, recognising the health equality as our national priority.

Despite the regular upheaval of major policy changes, significant budget cuts and changes to Government in the short election cycles at all levels, we have still managed to see some encouraging improvements in Aboriginal and Torres Strait Islander health outcomes. But much remains to be achieved and as we move into the next phase of Closing the Gap, enhanced program and funding support will be required.

We appeal to all political parties to recommit to Closing the Gap and to concentrate efforts in the priority areas in order to meet our goal of achieving health equality in this generation.

We call on the next Federal Government to commit to:

1. Restoration of funding

The 2014 Federal Budget was a disaster for Aboriginal and Torres Strait Islander people. This is not an area where austerity measures will help alleviate the disparity in health outcomes for Australia's First Peoples.

The current funding for Aboriginal health services is inequitable. Funding must be related to population or health need, indexed for growth in service demand or inflation, and needs to be put on a rational, equitable basis to support the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan (2013-2023).

2. Fund the Implementation Plan for the National Aboriginal and Torres Strait Islander Health Plan (2013-2023)

Future Budgets must adequately resource the Implementation Plan's application and operation. As a multi-partisan supported program, the Implementation Plan is essential for driving progress towards the provision of the best possible outcomes from investment in health and related services.

3. Make Aboriginal Community Controlled Services (ACCHS) the preferred providers

ACCHS should be considered the 'preferred providers' for health services for Aboriginal and Torres Strait Islander people. Where there is no existing ACCHS in place, capacity should be built within existing ACCHS to extend their services to the identified areas of need. This could include training and capacity development of existing services to consider the Institute of Urban Indigenous Health strategy to self-fund new services. Where it is appropriate for mainstream providers to deliver a service, they should be looking to partner with ACCHS to better reach the communities in need.

4. Create guidelines for Primary Health Networks

The next Federal Government should ensure that the Primary Health Networks (PHNs) engage with ACCHS and Indigenous health experts to ensure the best primary health care is delivered in a culturally safe manner. There should be mandated formal agreements between PHNs and ACCHS to ensure Aboriginal and Torres Strait Islander leadership.

5. Resume indexation of the Medicare rebate, to relieve profound pressure on ACCHS

The pausing of the Medicare rebate has adversely and disproportionately affected Aboriginal and Torres Strait Islander people and their ability to afford and access the required medical care. The incoming Federal Government should immediately resume indexation of Medicare to relieve the profound pressure on ACCHS.

6. Reform of the Indigenous Advancement Strategy

The issues with the Indigenous Advancement Strategy (IAS) are well known. The recent Senate Finance and Public Administration Committee Report into the tendering processes highlighted significant problems with the IAS programme from application and tendering to grant selection and rollout.

The next Federal Government must fix the IAS as an immediate priority and restore the funding that has been stripped from key services through the flawed tendering process.

7. Fund an Implementation Plan for the National Aboriginal and Torres Strait Islander Suicide Prevention Strategy

The National Aboriginal and Torres Strait Islander Suicide Prevention Strategy encompasses Aboriginal and Torres Strait Islander peoples' holistic view of mental health, as well as physical, cultural and spiritual health, and has an early intervention focus that works to build strong communities through more community-focused and integrated approaches to suicide prevention.

The Strategy requires a considered Implementation Plan with Government support to genuinely engage with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies to develop local, culturally appropriate strategies to identify and respond to those most at risk within our communities.

8. Develop a long-term National Aboriginal and Torres Strait Islander Social Determinants of Health Strategy

The siloed approach to strategy and planning for the issues that Aboriginal and Torres Strait Islander people face is a barrier to improvement. Whilst absolutely critical to closing the gap, the social determinants of health and wellbeing – from housing, education, employment and community support – are not adequately or comprehensively addressed.

The next Federal Government must prioritise the development of a National Aboriginal and Torres Strait Islander Social Determinants of Health Strategy that takes a broader, holistic look at the elements to health and wellbeing for Australia's First Peoples. The Strategy must be developed in partnership with Aboriginal and Torres Strait Islander people through their peak organisations.

Access to justice for Aboriginal and Torres Strait Islander people

The state of access to justice for Aboriginal and Torres Strait Islander people and their over-representation in the criminal justice system is a national crisis. Since 2004 there has been a 95 per cent increase in the number of Aboriginal and Torres Strait Islander people in custody. In addition to the estimated \$3.4 billion that governments spend annually in keeping people in jail, there are also well-established downstream consequences of imprisonment, which effects future employment prospects, families and communities. These have inestimable social and economic costs for the broader community and act only to increase the risk of recidivism.

A number of reports have identified that the provision of adequate and accessible legal services for Aboriginal and Torres Strait Islander people in the areas of civil and family law will assist in reducing the level of over-representation in the justice system. Despite this, the Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the Aboriginal Family Violence Prevention Legal Services (FVPLS), have faced repeated cuts to their funding which only hampers their ability to assist Aboriginal and Torres Strait Islander communities.

If the gap between Aboriginal and Torres Strait Islander peoples and their fellow Australians accessing justice is ever to be properly addressed, the starting point has to be a genuine engagement by all levels of Government with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies.

We call on the next Federal Government to commit to:

1. Adopt justice targets as part of the Close the Gap framework

Currently the Safer Communities Building Block of the COAG Closing the Gap Strategy is the only area that is not accompanied by any specific targets. This is a clear gap in the failure to acknowledge the root causes of imprisonment and violence rates, including social determinants such as poverty and socio-economic disadvantage.

2. Adequately fund Aboriginal and Torres Strait Islander Community Controlled front-line legal services

This should include immediately reversing planned funding cuts to ATSILS funding, due to come into effect in 2017, and investing in FVPLS to create funding certainty, and:

- Immediately injecting \$18.58 million into the Indigenous Legal Assistance Program per annum, and providing appropriate funding for FVPLS to urgently address unmet civil and family law needs of Aboriginal and Torres Strait Islander peoples;
- Supporting policy functions within peak Aboriginal and Torres Strait Islander organisations to allow Community Controlled Organisations with front-line service delivery expertise to inform policy development; and
- Committing to the development of an evidenced-based long term funding model for the ATSILS, FVPLS and the broader legal assistance sector to ensure funding is targeted at meeting the unmet legal needs of Aboriginal and Torres Strait Islander peoples.

3. Adopt the recommendations of the Change the Record Coalition's Blueprint for Change

This includes a commitment to supporting the development of community controlled justice reinvestment initiatives that can allow Aboriginal and Torres Strait Islander led solutions to dramatically turn around justice outcomes.

4. Commit to implementing wrap-around service delivery models that seek to address and prevent the issues that underlie the legal problems facing women, children and families

This should include a focus on the provision of social workers, housing support workers, financial counsellors, youth justice workers, and Aboriginal and Torres Strait Islander support workers, and:

- Prisoner Through Care programs in each state and territory to address the urgent need for culturally appropriate services to assist Aboriginal and Torres Strait Islander people re-entering the community after a period in custody; and
- Immediate strategies to address the imprisonment of Aboriginal and Torres Strait Islander youths, women and those with cognitive and psychiatric disabilities.

5. Reform the Indigenous Advancement Strategy (IAS) program

The IAS must place greater emphasis on listening and responding to the needs and concerns of Aboriginal and Torres Strait Islander communities, including the development of a separate (non-competitive) round for funding Aboriginal and Torres Strait Islander Community Controlled Organisations

6. Prioritise the implementation of the recommendations from the Royal Commission into Aboriginal Deaths in Custody Report

In 1991 the time of the Royal Commission into Aboriginal Deaths in Custody, Aboriginal and Torres Strait Islander people were 7 times more likely to be in prison, that figure in 2016 is now 13 times more likely.

7. Urgently reform laws that have a disproportionate impact on Aboriginal and Torres Strait Islander communities

Harsher sentences and laws that strip judges of their ability to make the 'sentence fit the crime' such as mandatory sentencing and strict bail/parole laws need to be changed. Evidence-based sentencing and justice policy will contribute to reducing over-representation.

8. Develop in partnership with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies a truly cooperative intergovernmental framework

A national intergovernmental framework should set down long, medium and short-term objectives and strategies to achieve them. This will strengthen the responsibility and accountability for Indigenous justice issues between different levels of Government.

9. Engage Aboriginal and Torres Strait Islander communities, their organisations and representative bodies to achieve Indigenous participation in, and equal access to, alternatives to imprisonment

Aboriginal and Torres Strait Islander communities, their organisations and representative bodies are best placed to develop and implement culturally appropriate services that have the support of the community. This could include, for example, developing culturally appropriate diversion options instead of custodial sentences, except where the offender is a risk to the community.

10. Ratify the Optional Protocol to the Convention against Torture (OPCAT)

The ratification of OPCAT would, amongst other things, ensure that places of detention at the state, territory and federal level meet appropriate standards, in line with international best practice.

11. Implement the United Nations Declaration on the Rights of Indigenous Peoples

A framework should be developed to implement and raise awareness about the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in consultation with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies.

12. A national/intergovernmental agency to identify a national justice data set for collection by all State and Territory Governments

This agency should include Aboriginal and Torres Strait Islander oversight, and act to co-ordinate a comprehensive, current and consistent national approach to data collection and policy development relating to Aboriginal and Torres Strait Islander imprisonment and violence rates.

- 13. Adequately fund the National Aboriginal and Torres Strait Islander Legal Services program as the national peak representative body for the ATSILS.**

Preventing violence against Aboriginal and Torres Strait Islander women and children

Violence against Aboriginal and Torres Strait Islander women and children devastates communities and destroys families. In comparison with other women, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised from family violence and 10 times more likely to be killed as a result of violent assault.

Aboriginal and Torres Strait Islander people live with inter-generational experiences of dispossession and trauma, and continue to experience overt and institutional racism every day. It is important to recognise the complex and often interrelated causes of violence in communities and to support community solutions to reduce the instances and impacts of violence where it arises.

Through casework with Aboriginal and Torres Strait Islander victims/survivors, Family Violence Prevention Legal Services (FVPLS) and Aboriginal and Torres Strait Islander Legal Services (ATSILS) see the multi-generational impacts of family violence on a daily basis.

Reducing and eliminating family violence can only be achieved with a commitment to an evidence-based and integrated government approach, undertaken in genuine partnership with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies.

We call on the next Federal Government to commit to:

1. Funding Aboriginal and Torres Strait Islander Community Controlled Organisations to meet need

The Federal Government should:

- Develop an evidence-based assessment of the overall quantum of funding (both Federal and State) for services for Aboriginal and Torres Strait Islander victim/survivors of family violence to meet need;
- Calculate legal need amongst Aboriginal and Torres Strait Islander women experiencing violence - in particular in relation to the core legal services of the FVPLS and ATSILS.
- Determine quantum of services required to meet legal need and the cost associated with these services. This would include identifying service gaps to be addressed over time; and
- Invest in early intervention and prevention services with a priority for services that are Aboriginal and Torres Strait Islander community controlled.

2. A national holistic whole-of-government plan

Clear and unambiguous leadership is required from the Federal Government to address this national crisis. The Federal Government should lead, through COAG, the development of a national, holistic and whole-of-government plan to address violence against Aboriginal and Torres Strait Islander women and children. The plan should include:

- A concrete implementation plan with clear roles, responsibilities and funding allocations;
- Development of a target to reduce violence; and
- The creation of an oversight mechanism to lead the development and ongoing monitoring of the plan. Membership should include relevant Government Departments, Aboriginal and Torres Strait Islander representative bodies and service delivery organisations.

3. Reinstatement of the National Family Violence Prevention Legal Services Program

The Productivity Commission has identified that Family Violence Prevention Legal Services (FVPLS) are uniquely placed to provide legal services and supports to Aboriginal and Torres Strait Islander victim/survivors of family violence. Reinstating the National FVPLS Program with a direct allocation

Preventing Violence

of funding will demonstrate a strong commitment from the Federal Government to the importance of the FVPLS model. The reinstated Program should include:

- A commitment to FVPLS as specialist providers of Aboriginal and Torres Strait Islander family violence legal services;
- Minimum 5-year funding agreements including CPI increases;
- National coverage of holistic FVPLS services commensurate to need within 5 years; and
- Continued ongoing funding for the National Forum to build the capacity of FVPLS units and provide a unified national voice in law reform, and policy and program development.

4. National data collection

The Federal Government should establish a national data body on Aboriginal and Torres Strait Islander family violence and incarceration rates. This should ensure a consistent national approach to data collection to inform policy development.

5. Policy development priorities

The Federal Government should work with and invest in Aboriginal and Torres Strait Islander organisations to undertake further policy development on:

- Addressing barriers for Aboriginal and Torres Strait Islander women to accessing services; and
- Addressing the nexus between being a victim/survivor of family violence, incarceration, and the removal of Aboriginal and Torres Strait Islander children.

Progressing early childhood outcomes through access to quality early childhood education and care

Access to quality early learning services for children experiencing vulnerability is a critical predictor of a child's successful transition to school, and lifelong education and employment outcomes. Yet, while twice as likely to experience developmental vulnerability, Aboriginal and Torres Strait Islander children are half as likely to access early learning as non-Indigenous kids. This needs to urgently change.

Aboriginal and Torres Strait Islander Community Controlled Organisations overcome many of the barriers to service access and offer unique, culturally-centred services that respond to the needs of their communities. International and Australian evidence also shows us that genuine participation and ownership are central for positive outcomes for Aboriginal and Torres Strait Islander children and families.

Research also demonstrates that early childhood services have the greatest impacts for vulnerable families, providing long-term wellbeing, productivity and cost benefits for society. They provide gateways for families to a range of integrated support services and act as the best preventative measure to strengthen families and prevent child abuse and neglect. Increasing both service access and wider supports for children at risk would reduce child removal, particularly given that 44.4 per cent of children in out-of-home care are removed from their families by age four or under.

----- We call on the next Federal Government to commit to:

1. An adequately resourced federal Aboriginal and Torres Strait Islander early childhood education and care program to support our most vulnerable children

If Australia is serious about achieving equality for Aboriginal and Torres Strait Islander peoples, the Government must invest in Aboriginal and Torres Strait Islander leadership and governance of early childhood education and care.

2. At least two full days (20 hours) subsidised access to early childhood education and care for all children, regardless of their parents' circumstances

Early childhood education and care reforms currently underway must redress this issue as a priority to ensure affordable access for all Aboriginal and Torres Strait Islander families.

3. Family Tax Benefit payments

Commit to strengthening family payments for families on low incomes.

4. Early Childhood Education

Make a long-term commitment to subsidise full-time access for Aboriginal and Torres Strait Islander children (0-6 years) so that all families, and particularly the most vulnerable, can afford five days of early childhood education.

5. Invest in the First 1000 Days

Provide adequate investment for the launch of the Australian model of the First 1000 Days, an Indigenous-led, holistic initiative which seeks to provide coordinated, comprehensive intervention to address the needs of Aboriginal and Torres Strait Islander children and their families from (pre-) conception to two years of age.

Ensuring Aboriginal and Torres Strait Islander child safety, wellbeing and cultural identity

When the ground-breaking *Bringing Them Home* report into the Stolen Generations was released in 1997, nearly 20 years ago, mainstream Australia was shocked to learn that Aboriginal and Torres Strait Islander children represented one in every five children living in out-of-home care.

Now, in 2016, they are one in every three. Despite numerous legal and policy frameworks protecting the rights of Indigenous children, the rate of Aboriginal and Torres Strait Islander children in out-of-home care is almost ten times that of other children, and continues to grow. The rate of over-representation has escalated by 65 per cent since the 2008 Apology, with Aboriginal and Torres Strait Islander children currently representing over 35 per cent of all children in out-of-home care in Australia.

This shocking reality is attributed to the widely recognised failure of our early intervention and child protection systems to embrace evidence-based holistic strategies, attuned to the needs of our families. Service system responses remain reactive rather than preventative, with only \$719 million (or just 16.6 per cent of total child protection expenditure) invested in supporting families, compared to \$3.62 billion in child protection and out-of-home care, in the 2014-15 financial year.

For Aboriginal and Torres Strait Islander families, harm to children often has inter-generational causes, linked to the breakdown of culture and community connectedness and identity. Prevention of harm therefore must seek to intervene in inter-generational cycles of harm by healing, strengthening and reconnecting families and communities.

This is a national crisis that needs all of our urgent attention. It requires a national commitment to a holistic, respectful approach to Aboriginal and Torres Strait Islander child safety and wellbeing, in partnership with Aboriginal and Torres Strait Islander and non-Indigenous organisations from across Australia. This crucial issue needs and deserves multi-partisan support at the highest level.

We call on the next Federal Government to commit to:

1. Reduce over-representation of Aboriginal and Torres Strait Islander children in out-of-home care

For Aboriginal and Torres Strait Islander families, harm to children often has inter-generational causes, linked to the breakdown of culture and community connectedness and identity. Prevention of harm therefore must seek to intervene in inter-generational cycles of harm by healing, strengthening and reconnecting families and communities.

2. Work with Aboriginal and Torres Strait Islander communities, their organisations and representative bodies to develop a national strategy and target to reduce this over-representation

Numerous reports and inquiries in Australia have consistently confirmed that the lack of robust community governance and meaningful Aboriginal and Torres Strait Islander participation are major contributors to past failures of Government policy. True realisation of the rights of children requires transparency and accountability from Government, and a commitment to prioritising the knowledge of Aboriginal and Torres Strait Islander communities on how to keep our children safe and well.

3. Increase the priority of supporting families to care for children

The priority of supporting families to care for children should be increased under the Indigenous Advancement Strategy, consistent with the National Framework for Protecting Australia's Children 2009-2020.

Addressing disability for Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people with disability are amongst the most marginalised in Australian society. It is estimated that approximately 45 per cent of Aboriginal and Torres Strait Islander people identify as having some form of disability, with 9.1 per cent having severe and profound disability.

Despite the high prevalence of disability, policy attention which is sensitive to the unique circumstances of Aboriginal and Torres Strait Islander people with disability has been negligible. Further, there is currently little investment in research and data to address the gaps in understanding, which presents a significant risk to the implementation of the National Disability Insurance Scheme (NDIS) in Aboriginal and Torres Strait Islander communities.

The First Peoples Disability Network (Australia) is a national organisation established by, for and on behalf of Aboriginal and Torres Strait Islander people, families and communities with lived experience of disability. The Board of Directors is entirely comprised of First Peoples with disability. We are guided by the lived experience of disability in determining the policy priorities which support Aboriginal and Torres Strait Islander people with disability attaining their full potential.

We call on the next Federal Government to commit to:

1. Work to address intersectional discrimination

There is a need to address the unique circumstances which lead to systemic disadvantage for people who are both Aboriginal or Torres Strait Islander and have disability in all Government policies under the Indigenous Advancement Strategy and National Disability Strategy.

2. Equitable access to the NDIS by Aboriginal and Torres Strait Islander people

It is vital that the roll-out of the NDIS includes investment in adequate resources to allow for community-led solutions that understand and respond to the complex social circumstances affecting Aboriginal and Torres Strait Islander people with disability.

3. Establish disability access targets as part of the Closing the Gap framework and the NDIS Quality Assurance and Outcomes framework

The establishment of targets would enable monitoring of the NDIS, to ensure equitable access for Aboriginal and Torres Strait Islander people.

4. Invest in research and development to build an evidence-base of data

Investment in a strong evidence-base would support innovations in the Aboriginal and Torres Strait Islander disability sector and enable effective evaluation of its social impact.

5. Address the imprisonment rates of Aboriginal and Torres Strait Islander people with a cognitive or psychosocial disability

A high number of Aboriginal and Torres Strait Islander people in the prison system have a form of disability. Government should resource a therapeutic model of justice for people with cognitive and psychosocial disability.

6. Fund training and community leadership initiatives

This training would empower regional and remote communities to conduct a self-directed need, capacity and infrastructure analysis of disability supports and solutions.

**AMNESTY
INTERNATIONAL**



Submission to the

**Joint Select Committee on
Constitutional Recognition of Aboriginal
and Torres Strait Islander Peoples**

31 January 2015

Submitted by
Amnesty International Australia

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than seven million supporters in more than 160 countries and over 459,000 supporters in Australia.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission on a referendum to recognise Aboriginal and Torres Strait Islanders Peoples in the Australian Constitution.
- 1.2 We recognise the considerable consultation and research that has already been undertaken on this issue by the Expert Panel on Constitutional Recognition of Indigenous Australians (Expert Panel) and the Joint Select Committee on Constitutional Recognition of Aboriginal Torres Strait Islander Peoples (Joint Select Committee). This submission responds to key proposals put forward in the Expert Panel's 2012 report, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*,¹ and the Joint Select Committee's interim and progress reports in 2014.²
- 1.3 The Australian Constitution in its current form retains discriminatory clauses which are sources of concern to Australian people and inconsistent with international human rights principles. The Australian Constitution must enshrine the rights of all Australian citizens and utilise language to this effect, including the removal of phrases and sections which run counter to this principle. The repeal of problematic "race" provisions from the Constitution and the inclusion of a new section expressly prohibiting discrimination on the basis of race would ensure the universal human right to be free from racial discrimination is enshrined in the Australian Constitution.
- 1.4 The constitutional reform process represents a critical moment for Australia. Recognition of Aboriginal and Torres Strait Islander Peoples as the first peoples of Australia, alongside acknowledgement of continuing Indigenous cultures, languages and connections to land, may represent an opportunity to bring the Australian Constitution into greater alignment with the United Nations Declaration on the Rights of Indigenous Peoples.
- 1.5 Amnesty International notes that a successful referendum on constitutional recognition depends not only on multi-partisan political support but the approval of the majority of the Australian population, and in particular Aboriginal and Torres Strait Islander Peoples. In accordance with the right of Indigenous Peoples to free prior and informed consent, a necessary precursor to a question being put to the Australian population is a high level of support for recognition and for the proposed wording among Aboriginal and Torres Strait Islander people.

Recommendations

- 1.6 Amnesty International recommends that Australia:
 - (1) Repeals sections 25 and 51(xxvi) of the Australian Constitution.
 - (2) Inserts a new section 116A with prohibits discrimination on the basis of race, colour or ethnic or national origin.
 - (3) Maintains a peace, order and good governance power to make laws with respect to Aboriginal and Torres Strait Islander Peoples by inserting a new section 51A into the Constitution which adequately reflects the aspirations of Aboriginal and Torres Strait Islander Peoples and is developed in consultation with them.

¹ Recognise, 'Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel,' http://www.recognise.org.au/wp-content/uploads/shared/uploads/assets/3446_FaHCSIA_ICR_report_text_Bookmarked_PDF_12_Jan_v4.pdf (accessed 3 October 2014).

² Parliament of Australia, 'Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: Interim Report, July 2014,' http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/Interim_Report/~media/Committees/Senate/committee/jscatsi_ctte/interim_report/report.pdf (accessed 3 October 2014); Parliament of Australia, 'Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: Progress Report, October 2014,' http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples/~media/Committees/jscatsi_ctte/progress_report/report.pdf (accessed 29 October 2014).

- (4) Does not proceed with the proposals contained in section 127A which would codify English as the national language of Australia.
- (5) Adequately support and fund diverse public awareness and education efforts in order to ensure a successful referendum outcome is achieved.

2. International Legal Frameworks

- 2.1 International instruments such as the UDHR, the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights (ICCPR) the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), provide the international legal basis for Australia's domestic policy on Indigenous rights.
- 2.2 In the context of constitutional recognition of Indigenous Peoples in Canada and certain European states, the principles contained in these and other conventions have been extensively incorporated into domestic legislation, forming the basis of recognition of Indigenous rights.³
- 2.3 In progressing towards constitutional recognition in Australia, Amnesty International calls on the Australian government to draw upon the principles encoded in these international instruments to ensure the Australian Constitution reflects a language of rights.
- 2.4 Amnesty International holds that amendments to the Australian Constitution must reflect Article 7 of the UDHR, which states:

*"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".*⁴
- 2.5 Constitutional amendments must also be consistent with Australia's obligations to eliminate racial discrimination, as enshrined in ICERD, which states:

*"States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law".*⁵
- 2.6 With specific reference to Indigenous rights, Amnesty International calls on the Australian government to ensure that Article 2 of the Declaration on the Rights of Indigenous Peoples is fully realised in any amendments made to the Australian Constitution:

*"Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity".*⁶
- 2.7 The principle of freedom from discrimination prescribed by these articles must underpin the referendum on constitutional reform. Amnesty International calls on the Australian government to enshrine a language of rights in the Australian Constitution which protects all Australians from race discrimination.

³ Barbara Ann Hocking and Barbara Joyce Hocking, 'Colonialism, Constitutionalism, Costs and Compensation: A Contemporary Comparison of the Legal Rights and Obligations of and towards the Scandinavian Sami and Indigenous Australians', *Nordic Journal of International Law* 68 (1999): 45, accessed January 6, 2015.

⁴ Universal Declaration of Human Rights, United Nations General Assembly, 3rd sess, UN Doc. A/RES/217(III) A (adopted 10 December 1948), art 7[72].

⁵ International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS 195, UN Doc. A/RES/6014 (1966), entered into force 4 January 1969, art 5[3].

⁶ United Nations Declaration on the Rights of Indigenous Peoples, United Nations General Assembly, 61st sess, UN Doc. A/RES/61/295 (adopted 13 September 2007), art 2[3].

3. Enshrining Non-Discrimination

- 3.1 Consistent with the international instruments outlined above in 2.4, 2.5 and 2.6, Amnesty International recommends that the proposed referendum repeals sections 25 and 51(xxvi) of the Constitution, the so-called “race” provisions. This is a necessary measure to ensure that the constitutional amendment process is not undermined by provisions which are discriminatory and a source of concern to Aboriginal and Torres Strait Islander Peoples.

Repeal of section 25

- 3.2 Section 25 of the Australian Constitution pertains to any State law which permits the disqualification of “all persons of any race” from voting in elections. Historically, section 25 was applied to States which disenfranchised individuals on the basis of race, and was intended to act as a punitive measure by lowering representative quotas in Federal parliament.
- 3.3 While section 25 has not been invoked in recent times, an outdated provision that contemplates such a discriminatory exclusion should have no place in the Australian Constitution. The Australian Constitution should not contain provisions which may be invoked to have a detrimental, discriminatory impact on any community.
- 3.4 Amnesty International recommends the repeal of section 25 in its entirety.

Repeal of section 51(xxvi)

- 3.5 Section 51(xxvi) enables the Commonwealth to make laws with respect to the “people of any race, for whom it is deemed necessary to make special laws”. The provision is premised on the outdated notion of race and the discriminatory nature of the language contained in section 51(xxvi) runs counter to the values of modern Australia. Repeal of section 51(xxvi) would reform the Australian Constitution to reflect the principle of freedom from discrimination, providing legislative protection for all Australians.
- 3.6 In supporting the repeal of section 51(xxvi), Amnesty International calls on the Australian government to preserve the peace, order and good governance power encoded in section 51, for the purposes of the advancement of Aboriginal and Torres Strait Islander Peoples. Amnesty International recommends the peace, order and good governance power be incorporated into a proposed new section 51A (see 4.10 below).

Proposed new section 116A

- 3.7 Amnesty International recommends that a new section prohibiting discrimination on the grounds of race, colour or ethnic or national origin be inserted into the Australian Constitution as part of the constitutional recognition process. Amnesty International supports a new section 116A as recommended by the Expert Panel and the progress report of the Joint Select Committee.
- 3.8 The inclusion of a section which prohibits discrimination would further strengthen Australia’s commitment to realising the principles of the UDHR, international human rights treaties and the Declaration on the Rights of Indigenous Peoples. The inclusion of new section 116A would not only represent a demonstrated commitment to Indigenous Peoples’ rights in Australia, but would increase broader human rights protections for all Australian citizens in line with Australia’s international human rights commitments.

4. Recognition of Aboriginal and Torres Strait Islander Peoples

- 4.1 The discussion surrounding constitutional recognition of Aboriginal and Torres Strait Islander Peoples occurs in the broader international context of growing awareness and recognition of Indigenous rights.
- 4.2 The recognition of Indigenous Peoples' status and rights through the mechanism of constitutional reform has occurred in countries as diverse as the United States, Canada, Bolivia, Finland and Sweden. While significant variations exist in the legal, political and historical contexts of each country, as well as in the nature and extent of the constitutional recognition processes undertaken, there is undeniably an international trend towards formal legislative recognition of Indigenous Peoples' rights.

Insertion of new section 51A

- 4.3 Amnesty International supports the constitutional recognition of Aboriginal and Torres Strait Islander Peoples as the first peoples of Australia.
- 4.4 Amnesty International does not support the proposal that constitutional recognition take the form of recognition in the preamble of the Australian Constitution. Rather, Amnesty International recommends that substantive changes be made to the body of the Constitution through the insertion of a new section.
- 4.5 Amnesty International supports the proposal that a new section 51A be inserted into the Australian Constitution. It is imperative that the new section reflect international human rights principles and the aspirations of Aboriginal and Torres Strait Islander communities.

Content and wording of new section 51A

- 4.6 Amnesty International identifies two fundamental criteria for the content and wording of proposed new section 51A. They are:
 - i. The use of language which guarantees fundamental protections for Indigenous rights; and,
 - ii. The use of language which has widespread support and acceptance among Aboriginal and Torres Strait Islander Peoples.
- 4.7 Amnesty International recommends that new section 51A recognises Aboriginal and Torres Strait Islander Peoples as the first peoples of Australia; acknowledges the connection of Aboriginal and Torres Strait Islander Peoples to their land and waters; and recognises the cultures, languages and heritage of Aboriginal and Torres Strait Islander Peoples. The inclusion of these tenets will form a constitutional basis for the practical implementation of the Declaration on the Rights of Indigenous Peoples.
- 4.8 Fundamental rights identified in the Declaration are implicit in the inclusion of the above mentioned content of new section 51A. These include rights to distinct political, legal, economic, social and cultural institutions;⁷ cultural traditions and customs;⁸ spiritual and religious traditions;⁹ language and education;¹⁰ as well as land and natural resources.¹¹
- 4.9 In turn, the constitutional recognition of these rights contributes to realisation of Article 15 of the Declaration which states:

⁷ United Nations Declaration on the Rights of Indigenous Peoples, art 5[4].

⁸ Ibid, art 11[5].

⁹ Ibid, art 12[5].

¹⁰ Ibid, art 13—14[5—6].

¹¹ Ibid, art 25—29[7—8].

*“Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information”.*¹²

Peace, Order and Good Governance provisions

- 4.10 Section 51 of the Australian Constitution allows the Australian Parliament to legislate for the peace, order and good governance of the Commonwealth with respect to identified matters. Amnesty International recommends that in repealing section 51(xxvi), the power to make laws for the peace, order and good governance of Aboriginal and Torres Strait Islander Peoples is reinstated under a new section 51A. This would ensure that discriminatory references to “race” are removed from the Constitution while the ability of the Parliament to legislate for the peace, order and good governance of Aboriginal and Torres Strait Islander people is preserved.
- 4.11 Amnesty International recommends that the proposed peace, order and good governance provisions under section 51A must be consistent with the principle of non-discrimination.
- 4.12 In the event that the proposed new section 116A on non-discrimination is not added by constitutional amendment (see 3.7 above), Amnesty International recommends the proposed section 51A be accompanied by a caveat that these powers may not be employed to discriminate against or adversely impact Aboriginal and Torres Strait Islander People.
- 4.13 An existing international precedent for this measure can be seen in section 25 of the Canadian Charter of Rights and Freedoms which is embedded in the Canadian Constitution. Section 25 was inserted into the Charter to explicitly ensure that

*“The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights and freedoms that pertain to the aboriginal peoples of Canada”.*¹³

- 4.14 In taking a similar approach, Australia would be demonstrating a commitment to the rights of Aboriginal and Torres Strait Islander Peoples as being inextricably linked to the principle of non-discrimination.

Proposed new section 127A

- 4.15 Amnesty International does not support the recommendation of the Expert Panel to insert a new section 127A. New section 127A proposes to formally codify English as the national language of Australia, accompanied by recognition of Aboriginal and Torres Strait Islander languages as the original languages of Australia.
- 4.16 Amnesty International holds that the constitutional changes proposed by section 127A fall well outside the objectives of the constitutional recognition process. The codification of English as the national language of Australia is unrelated to constitutional recognition and runs counter to the rights of Indigenous Peoples to their ‘languages ... and their own names for places and people’, as set out in the Declaration on the Rights of Indigenous Peoples.¹⁴
- 4.17 The insertion of new section 127A would detract from the core issue of the Indigenous rights and protection from discrimination.

¹² Ibid, art 15[6].

¹³ Government of Canada, Constitution Act, 1982: Part 1, Section 25, Replaces part of Class 1 of section 91 of the Constitution Act, 1867, which was repealed as set out in subitem 1(3) of the schedule to the Constitution Act, 1982.

¹⁴ United Nations Declaration on the Rights of Indigenous Peoples, art 13[5].

5. Towards a Successful Referendum

- 5.1 Amnesty International recognises that there are a range of perspectives in Australia on the most effective mechanism through which to recognise the rights of Aboriginal and Torres Strait Islander Peoples. Constitutional recognition represents an important initial step towards implementation of Article 38 of the Declaration on the Rights of Indigenous Peoples, which requires that:

“States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.”¹⁵

- 5.2 Amnesty International notes that a successful referendum on constitutional reform depends not only on multi-partisan political support but the approval and consent of the majority of the Australian population, and in particular Aboriginal and Torres Strait Islander people themselves. In accordance with the right of Indigenous Peoples to free prior and informed consent,¹⁶ a necessary precursor to a question being put to the Australian population is a high level of support for recognition and for the proposed wording among Aboriginal and Torres Strait Islander people.
- 5.3 Provided that a sufficient level of support exists among Aboriginal and Torres Strait Islander people, public awareness and education will then be crucial to ensuring the multi-partisan objective of constitutional recognition is achieved.
- 5.4 A successful referendum outcome will require adequate funding for well-resourced public awareness campaigns and community education programs which inform and educate citizens about the nature of the referendum, the high level of support that exists among Aboriginal and Torres Strait Islander people and the importance of constitutional recognition for all Australians.
- 5.5 Amnesty International notes there are a spectrum of views within the Aboriginal and Torres Strait Islander community about the campaign for constitutional recognition – ranging from strong support and engagement to suspicion and even opposition. For this reason, Amnesty International recommends that the Australian Government ensure support and funding for education and awareness raising is provided in an inclusive manner through a variety of initiatives and partners. This is vital in order to enable diverse groups with an interest in constitutional recognition to have a voice.

6. Conclusion

- 6.1 Constitutional recognition is an opportunity for Australia to make tangible progress towards implementation of the Declaration on the Rights of Indigenous Peoples, and to ensure that the Constitution guarantees protection against racial discrimination for all Australians.
- 6.2 Amnesty International supports measures which reflect substantive constitutional change, recognising the aspirations of Aboriginal and Torres Strait Islander Peoples and strengthening Australia’s legislative frameworks to reflect the principles of international human rights law.
- 6.3 Constitutional amendments which reflect a language of rights and which safeguard against discrimination will serve to codify international principles in Australian domestic legislation and promote a culture of human rights for all Australians.

¹⁵ United Nations Declaration on the Rights of Indigenous Peoples, art 38[10].

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples, art 19, UN Committee on the Elimination of Racial Discrimination, “General Recommendation XXIII: Indigenous Peoples” (18 August 1997) A/52/18, annex V, Para 5.