



Yamatji Marlpa

ABORIGINAL CORPORATION

Our Ref: GEN033
Office: Perth

4 February 2015

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

By email: jscatsi@aph.gov.au

Dear Committee

**Submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples:
(July 2014) Interim Report and (October) 2014 Progress Report**

Thank you for the chance to provide a submission on the Constitutional Recognition of Aboriginal and Torres Strait Islander (ATSI) Peoples.

Yamatji Marlpa Aboriginal Corporation (YMAC) is the Native Title Representative Body for the Pilbara, and Murchison-Gascoyne (Yamatji), regions of Western Australia. The organisation has a representative area over one million square kilometres and represents over 20 native title claimant groups, each with their own language, culture and traditions.

YMAC is a not-for-profit organisation run by a Board of Directors comprising 12 Traditional Owners; six drawn from the Pilbara region and six from the Yamatji region. YMAC provides a range of services to its members including legal representation throughout the native title claim process and future act negotiations, community and economic development, and natural resource management.

Executive Summary

In YMAC's view, the Joint Select Committee on Constitutional Recognition of Indigenous Australians (Joint Select Committee) has respected the outputs of the Expert Panel on Constitutional Recognition of Indigenous Australians (Expert Panel) and improved upon them.

We have considered the Interim Report, the 2014 Progress Report, and a range of other documents relating to both the current Joint Select Committee and previous Expert Panel.

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As a result, YMAC argues in this submission for:

- the deletion of section 25;
- the deletion of section 51(xxvi), and its replacement (in relation to laws intended for ATSI peoples) with the proposed section 51A set out in the 2014 Progress Report; and
- support for Recommendation 7 of the 2014 Progress Report.

Changing words can improve lives

This current and proposed intensified national conversation has the potential to generate not just symbolic changes, but real benefits to the lives of ATSI peoples. It has long been understood from other comparable countries that constitutional recognition results in better outcomes in employment, health, education and women's wellbeing.

The scope of these potential changes is narrow

YMAC supports the judgement of the Expert Panel in not recommending constitutional reform regarding broader matters such as the sovereignty, treaty-making and a Bill of Rights ATSI peoples, because polling revealed public opposition to them. But YMAC strongly asserts our members' rights to push for any or all of these broader reforms at a later stage.

Failure is not an option

Unlike some previous and potential future constitutional changes, if mismanagement of this process led to a failure to pass any such changes at a referendum, it could be detrimental to the relationship between ATSI peoples and non-Indigenous Australians. As the Joint Select Committee and commentators in this space are all too aware, the opportunities for constitutional change in Australia are few and far between.

Section 25 – if States disqualify certain races from voting

YMAC agrees with the Interim Report's recommendation that section 25 be deleted, in view of the very low chance it would ever be used in future, and overwhelming public support for repeal.

The power to make laws about particular races

The Interim Report correctly notes that while section 51(xxvi) of the Constitution was historically amended to allow the Commonwealth to make special laws 'discriminating in favour' of ATSI Peoples, unfortunately the amended version of the section also permitted the Australian Parliament to 'discriminate against' them on occasion as well.

The Expert Panel found at the beginning of 2012 that 'a large majority supported change' in this area, and YMAC too identifies this situation as deeply problematic. There are, in the Interim Report, a number of persuasive reasons to maintain the capacity of the Australian Parliament to make laws relating to ATSI Peoples at least, and we support that recommended result. Particularly important is the argument that a Federal power to make laws for ATSI Peoples is justified 'because of their unique place in the history of the country and their prior and continuing existence'.

What is the best way to maintain an 'ATSI-only power'?

We acknowledge that the Expert Panel recommended the repeal of section 51(xxvi), with the Australian Parliament's power to make ATSI-related laws to be retained in a specifically worded proposed new section, 51A. YMAC also recognises that some stakeholders, notably the National Congress of Australia's First Peoples, want to maintain support for those 2012 Expert Panel

recommendations during the Joint Select Committee process unless, and until, new broad scale consultation with ATSI Peoples suggests alternative approaches are now preferred.

In our view though, based on the relevant sections in the Interim Report and 2014 Progress Report, YMAC supports Option 2 from the 2014 Progress Report. We see Option 2 as preferable to, but very much in keeping with, the Expert Panel's version of section 51A.

YMAC does not question the need for a prohibition against racial discrimination against ATSI Peoples, but we accept the concerns in the Interim Report, and again in the 2014 Progress Report, that an attempt to introduce a broader, 'all races' prohibition against adverse discrimination would be a major distraction to the 'ATSI-only' aspects of this reform area.

Recognition in a preamble or opening statement

We support the Interim Report in recommending amendments to the body of the Constitution rather than the insertion of an overall preamble to that document.

In particular, YMAC supports the Expert Panel's recommendation that the specific law-making provision relating to ATSI Peoples contain 'its own introductory and explanatory preamble', as has been adopted in boxes 1, 2 and 3 of the Interim Report and therefore factored into our preferred Option 2 from the 2014 Progress Report.

Indigenous languages

YMAC also supports both the Interim Report and 2014 Progress Report in not seeing the need for the Expert Panel's proposed section 127 (entrenching English as the national language for Australia), noting that Indigenous languages are proposed for mention in the recognition statement included as part of Option 2 above.

Other key issues

We are aware of a number of submissions to the current process that express strong concerns that the momentum behind these possible reforms is waning. YMAC agrees with the need for a strong public campaign as soon as the timeline for these reforms is resolved.

In order to avoid disagreement with one of the referendum propositions affecting the success of the other, YMAC further submits that the ballot includes two distinct questions which are not grouped together.

YMAC appreciates the arguments for and against holding the referendum at the same time as a Federal general election (Recommendation 6 of the 2014 Progress Report), and expresses no evidence-based opinion at this time.

Should you have any questions about this submission, please feel free to contact me.

Yours faithfully



SIMON HAWKINS
CHIEF EXECUTIVE OFFICER

