

# fact sheet



## HUMAN RIGHTS

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## Australian Constitutional Reform: *Aboriginal and Torres*

### *Strait Islander Peoples Recognition Bill*

This document has been prepared to support Aboriginal peoples' consideration of the Australian Constitution and current proposals for its reform.

**Please Note:** While all care has been taken in the preparation of this document, it should not be seen as a substitute for independent consideration of the issues and/or legal advice on this subject. The information in this Information Sheet is current as of January 2012.

#### **Changing the Australian Constitution through referendum**

In December 2010, the Australian Government announced the formation of an Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples to consult throughout 2011 and deliver a report on possible options for constitutional change likely to be supported at a referendum of the Australian people. The Commonwealth Government chose to undertake symbolic recognition similar to that already implemented in other Australian States.

#### **Aboriginal and Torres Strait Islander Recognition Act 2012 (Cth)**

On the 27 November 2012, the Government introduced the *Aboriginal and Torres Strait Islander Recognition Act 2012* ('Act of

Recognition') into the Parliament. A Joint Parliamentary Committee considered the Bill and reported on 31 January 2013, recommending the Bill pass.

The Act of Recognition is an important part of the move towards Constitutional Recognition for Aboriginal and Torres Strait Islander Peoples.

The Bill recognises Aboriginal and Torres Strait Islander peoples as Australia's First People and declares the Government's commitment to obtain broad national support for constitutional recognition within two years of the Bill's passage through Parliament.

Section 3 of the Act of Recognition provides statutory recognition that the continent of Australia was previously occupied by Aboriginal and Torres Strait Islander peoples and acknowledges the continuing relationship Aboriginal peoples have with their traditional lands, respecting their continuing cultures, languages and heritage.

#### **Effects of the 'Act of Recognition'**

The Act does not oblige future parliament to support a referendum as this would be unconstitutional. The preamble to the Act notes however 'that the Parliament is committed to placing before the Australian

people at a referendum a proposal for constitutional recognition of Aboriginal and Torres Strait Islander peoples’.

The Act expresses Parliament’s ‘recognition’ and ‘acknowledgement’ of Aboriginal and Torres Strait Islander peoples.

The Act is an interim measure, and contains a sunset clause limiting its operation to a period of 2 years (s 5) and is up to the discretion and will of the next Parliament to ensure that Constitutional reform is pursued.

### **NSW Aboriginal Land Council’s position on the ‘Act of Recognition’**

It is important that the reform of the Australian Constitution seeks to achieve more than just symbolic outcomes for Aboriginal peoples. While the Bill is a positive step towards Constitutional recognition, it does not clearly set out how the Commonwealth government intends to engage meaningfully with Aboriginal and Torres Strait Islander peoples to determine the best model for change.

The NSW Aboriginal Land Council is supportive of the Act, provided that it leads to substantive Constitutional reform in accordance with the NSW Aboriginal Land Council’s previous recommendations to the Expert Panel.

*See NSWALC Fact Sheet on Constitutional Reform No.2 for previous recommendations made to the Expert Panel at [www.alc.org.au](http://www.alc.org.au)*

To ensure Constitutional Reform is successful, it is important that a commitment to bipartisan support by all political parties is made to recognise Aboriginal and Torres Strait Islander Peoples in the Constitution.

To ensure opportunities are created for to remedy the disproportionate disadvantage

experienced by so many Aboriginal peoples, the New South Wales Aboriginal Land Council strongly advocates for:

- The Australian Government to move forward from its ‘commitment to formally support’ the Declaration on the Rights of Indigenous Peoples, to fully implement these principles into laws, policies and most importantly practical measures.
- The Australian Government must unreservedly ratify and fully implement the International Labour Organisation Convention 169, the Indigenous and Tribal Populations Convention, 1989.

### **Where can I get more information?**

You can get more information by contacting the NSWALC Policy and Research Unit on 02 9689 4444.