

Redfern Legal Centre



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Attention: The Expert Panel On Indigenous Constitutional Recognition

Please find attached our policy submission to the Expert Panel on Indigenous Constitutional Recognition in response to the discussion paper, 'A National Conversation about Aboriginal and Torres Strait Islander Constitutional Recognition'.

We would welcome the opportunity to meet with you to further discuss our submission.

Yours faithfully,

Redfern Legal Centre

Joanna Shulman
Chief Executive Officer

Redfern Legal Centre



*SUBMISSION TO THE
PANEL ON INDIGENOUS CONSTITUTIONAL RECOGNITION
FOLLOWING A COMMUNITY CONSULTATION*

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Redfern Legal Centre



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1. Introduction: Redfern Legal Centre

Established in 1977, Redfern Legal Centre (“RLC”) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area. RLC has a particular focus on human rights and social justice.

Our specialist areas of work are domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct casework, deliver community legal education, organise consultations and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC’s work with Aboriginal and Torres Strait Islander clients

RLC has a priority access policy for ATSI clients. The policy recognises the historic issues for Aboriginal and Torres Strait Islander communities in accessing justice. As a result of this policy, Aboriginal and Torres Strait Islander clients can, in most instances, be referred to the solicitor on duty if they drop-in to the service.

In 2010, we provided legal services to some 3000 individuals from Redfern and surrounding areas, approximately 200 of whom identified as Aboriginal or Torres Strait Islander. Sydney Women’s Domestic Violence Court Advocacy Service, which is auspiced by RLC, assisted female clients who identified as Aboriginal and Torres Strait Islander with 869 service events in 2010; these service events involved providing information, advocacy and referrals in domestic violence proceedings.

3. Community consultation in Redfern about Aboriginal and Torres Strait Islander recognition in the Australian Constitution

On 15 September 2011, Redfern Legal Centre participated in a community consultation in Redfern about Aboriginal and Torres Strait Islander recognition in the Australian Constitution. The consultation was organized by Redfern Legal Centre in partnership with the Metropolitan Local Aboriginal Land Council, Mudgin-gal Aboriginal Women’s Corporation and Wirringa Baiya Aboriginal Women’s Legal Centre. The Indigenous Law Centre at the University of NSW presented on the topic of Australia’s current Constitution and how to change it; the Gilbert + Tobin Centre for Public Law at the University of NSW presented options for changing the Constitution to recognise Indigenous people; and Mudgin-gal Aboriginal Women’s Corporation presented a personal view on the proposed Constitutional changes.

The opportunity was welcomed by those in attendance. The aim was to provide a forum for discussion and to inform one another of possible options, opportunities and concerns. It is hoped that the event itself will assist in further submissions and contributions through forums run by the Expert Panel on Indigenous Constitutional Recognition (“the Expert Panel”) and submissions subject to the views noted below about timing and practicalities of involvement.

The following submissions are based on our observations of the opinions and viewpoints expressed by Aboriginal and Torres Strait Islander people who attended the consultation. Redfern Legal Centre does not seek to recommend a position on any particular option at this stage considering that this should be driven by the views of the Aboriginal and Torres Strait Islander community.

In summary, Aboriginal and Torres Strait Islander attendees who are involved with Constitutional, legal or political issues on a day-to-day basis displayed significant knowledge about the options for Constitutional reform, but held differing opinions on whether and what kind of Constitutional change should be pursued. There were approximately 4 attendees who fell into this category.

Both the non-Aboriginal participants and other Aboriginal and Torres Strait Islander attendees – members of the local Redfern community and representatives of Aboriginal community organisations – were generally unaware of the options for Constitutional reform. There was also a degree of confusion and concern over the possible effects of Constitutional reform. There was, however, a general feeling that opportunities for Constitutional reform should be seized and that any changes should be substantive and not just include a symbolic recognition of Aboriginal and Torres Strait Islander people as the first people of Australia.

a) Attendance

Approximately 35 people attended the consultation. Of these, approximately 20-25 were Aboriginal and Torres Strait Islander people. The remaining 10-15 people were non-contributing observers from Redfern Legal Centre, the Indigenous Law Centre, Gilbert + Tobin Lawyers' pro bono practice and community legal centres.

The small number of Aboriginal and Torres Strait Islander attendees was a cause for concern given that the consultation took place in Redfern, where there is a large Aboriginal and Torres Strait Islander population and strong Aboriginal and Torres Strait Islander identification, just two weeks before the closing date for submissions to the Expert Panel. The low attendance was seen by attendees as a sign that the community was not sufficiently alerted to the issues.

There were calls for Aboriginal and Torres Strait Islander people to be more involved in raising awareness within their communities and promoting ownership of the campaign for change. There was concern that if Aboriginal and Torres Strait Islander people did not engage with discussion on Constitutional change, Constitutional change would become another example of government dictating the status of Aboriginal and Torres Strait Islander people within Australian society. It was clear that this consultation was the first time a number of individuals had been given the opportunity to consider the issues relating to Aboriginal and Torres Strait Islander recognition in the Constitution.

b) Desire for stronger recognition

Consultation attendees were in general agreement that Aboriginal and Torres Strait

Islander people are not appropriately recognised or respected by the broader Australian community and that their status as Australia's first people is largely ignored. Aboriginal and Torres Strait Islander attendees viewed the Constitution as "racist" and offensive in the way that it fails to refer to Aboriginal and Torres Strait Islander people as the first people of Australia.

One attendee, a well-respected Aboriginal woman from the local community, put forward the view that "non-mention in the Constitution is akin to institutional *terra nullius*". There was agreement that this problem needs to be addressed, and that there should at least be a statement recognising "the first people" in the Constitution body or preamble.

Some attendees went further, and expressed a view that the preamble was important in setting up the context for a suite of changes acknowledging first people throughout the Constitution. One attendee, an experienced Aboriginal activist, expressed the view that any reform should focus on recognising the sovereignty of Aboriginal and Torres Strait Islander people through a treaty, rather than on recognising Aboriginal and Torres Strait Islander people belatedly in a Constitution designed to exclude them.

c) Desire for substantial change not mere symbolic recognition

Attendees expressed the view that they would not be content with symbolic recognition in the Constitution, but also wanted more substantive change.

Attendees were anxious to know whether changes to the Constitution would help to improve their standard of living, and the prospects of their children and grandchildren. In particular, attendees asked:

"What's Constitutional change going to do about housing and education?"

"How's it going to help the little people?"

"How's it going to help the children?"

There was a strong desire to effect change "on the ground" and in the community, and some scepticism about whether Constitutional change could produce these results. Members of the community indicated that they had lived through a suite of historical measures aimed at reducing Aboriginal and Torres Strait Islander inequity, and in their opinion, these measures had largely failed to improve the lives of Aboriginal and Torres Strait Islander people.

Attendees were, however, open to ideas about removing current discriminatory provisions from the Constitution and inserting the capacity for government to make agreements with Aboriginal and Torres Strait Islander people. These ideas were presented to attendees by Sean Brennan from the Gilbert + Tobin Centre for Public Law.

Generally attendees wanted to remove the capacity for discrimination against

Aboriginal and Torres Strait Islander people on the basis of race, through mechanisms such as the exemption of the *Racial Discrimination Act 1975* (Cth) as part of the Northern Territory intervention, but did not want to undermine the legal basis for laws which support issues such as Aboriginal and Torres Strait Islander land rights. Attendees were conscious of how carefully any changes need to be drafted, so that this balance is preserved. Attendees appeared wary, given that changes affected through the 1967 referendum had unintentionally left open the possibility that government could validly make laws under the races power not just for the benefit, but also to the detriment, of Aboriginal and Torres Strait Islander people. There was encouragement from some senior members of the Aboriginal and Torres Strait Islander community, that in spite of the difficulties with drafting, they should take advantage of the current political situation and seize the rare opportunity for Constitutional change and pursue ambitious reforms.

d) Desire to have more control over the agenda and to be more greatly involved in the debate

As noted above, there was not a high attendance at this consultation from members of the community. The people who did attend felt this was because of a general lack of awareness about the proposed changes, or where there was some awareness, a perception that all that was being proffered was a symbolic mention in the preamble and that was not of interest. At least one individual expressed the view that the consultation process had been rushed and that Aboriginal and Torres Strait Islander people should not be beholden to the government's timeframe, but rather focus on developing their own long-term agenda. The attendee in question believed that at this late stage in the consultation process, Aboriginal and Torres Strait Islander people should be better informed of the benefits and challenges of recognising first people within the Constitution. Acquiring a greater understanding of the issues relating to the Constitutional debate would put Aboriginal and Torres Strait Islander people in a better position to engage in debate and discussion regarding the most appropriate model of change to take to a referendum.

Several community members expressed concerns regarding the autonomy of the Expert Panel leading the consultation process. Some attendees perceived that the Expert Panel was not truly autonomous due to the appointment of panel members by the current Federal Government. There were fears that government involvement was compromising the community consultation process, and that the Expert Panel was obliged to promote the Federal Government's agenda. Community members expressed a view that those Aboriginal and Torres Strait Islander people who understood the Constitutional issues needed to be more involved in advising Aboriginal and Torres Strait Islander people on how their interests could be maximised through Constitutional reform.

4. Conclusion

These submissions point to the fact that the Aboriginal and Torres Strait Islander community (at least in Redfern) has not been adequately engaged in the discussion about Constitutional reform, and that many Aboriginal and Torres Strait Islander

people who did attend think that they need more time to develop a proper understanding of the issues. Members of the Aboriginal and Torres Strait Islander community displayed weariness of government intervention based on past experience. Attendees passionately desire to improve living standards within their communities, and seek greater respect and recognition from government and the wider Australian public.