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Pat Anderson AO and Mark Leibler AC
Referendum Council Co-Chairs

By email to: constitutionalrecognition@pmc.gov.au

Dear Co-Chairs

Thank you for the opportunity to have a say on recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution.

Please accept the following input from Civil Liberties Australia. CLA is a national body that works to keep Australia the free and open society it has traditionally been.

In providing this input, we have followed the format of the online submission form available at the Council's website. CLA gives its permission for this submission to be made public as per any standard procedures of the Council.

I would be grateful if you could please acknowledge receipt of this submission.

Do you support recognising Aboriginal and Torres Strait Islander peoples by changing the Constitution or making some other kind of legal change?

Yes

**A statement about the First Peoples of Australia
Should we have a statement that acknowledges the First Peoples of Australia?**

Yes, this should be in the Constitution

Do you have any other comments on a statement about the First Peoples of Australia?

It is twenty-five years since the High Court's decision in the Mabo case which made plain what should have been obvious long before: that there were nations in this land before the arrival of Europeans, those nations had their own systems of law, those laws were never extinguished through treaty or other mechanism, and those systems of law are capable of being recognised and applied to this day. It is no longer tenable for the Constitution, as the fountainhead of our system of law and government, to ignore these facts.

As things stand, Australia has a Constitution that enshrines the position of the monarchy of the United Kingdom, reflecting the heritage and system of government of those who arrived from there over the last two hundred years or so. But, it is silent about the heritage, culture and laws of the Indigenous peoples who have resided across this continent for around 60,000 years. This is no longer appropriate (if it ever was).

**Powers to make laws for Aboriginal and Torres Strait Islander peoples
Should the word 'race' be taken out of the Constitution?**

No

**Should the Australian Parliament keep the power to make special laws for
Aboriginal and Torres Strait Islander peoples?**

Yes

**Do you have any other comments on powers to make laws for Aboriginal and Torres
Strait Islander peoples?**

It should be made clear that these powers can only be exercised by the Parliament to make laws for the BENEFIT of Aboriginal and Torres Strait Islander peoples. It is shocking that the Australian Government could still argue an interpretation of these powers that would allow them to be exercised to the detriment of people based on their race (as it did in the Hindmarsh Island Bridge case).

**Changing the Constitution to stop racial discrimination
Do you think that a guarantee against racial discrimination should go into the
Constitution?**

Yes

**If there is not enough support for a guarantee in the Constitution, what other things
can we do to stop racial discrimination in national laws?**

A guarantee against racial discrimination should form part of a Bill of Rights for Australia. CLA believes the question of 'not enough support' does not arise - all consultations at state and federal levels have shown overwhelming support for such an instrument. As indicated by these consultations and inquiries, such a Bill of Rights need not form part of the Constitution. CLA remains open to other models for enshrining a Bill of Rights in Australia.

**Do you have any other comments on changing the Constitution to stop racial
discrimination?**

No

**An Indigenous voice
Do you think Indigenous people should have a say when Parliament and
government make laws and policies about Indigenous affairs?**

Yes

**Should a new Indigenous group be set up under the Constitution to give advice and
make sure Indigenous people have a voice in political decisions that affect them?**

We have no firm position about the best mechanism for ensuring Indigenous people have a say in decisions that affect them. We look forward to seeing the outcome of consultations on this matter.

Getting rid of section 25

Section 25 of the Constitution contemplates that certain races could be banned from voting in State elections.

Should we delete section 25?

Yes

What would we achieve by getting rid of section 25?

Since the end of apartheid in South Africa, Australia is now the last remaining nation that includes provision for banning people from voting on the basis of their race.

This is worth repeating: Australia is the only country in the world that has a provision like section 25 of the national Constitution.

This should be a matter of great shame for Australia. This section should therefore be deleted.

Is there any point in keeping it?

No. It has been argued by some academics that section 25 may initially have served as a disincentive for states to ban people from voting in state elections on the basis of their race. If it ever achieved that purpose, it does not do so now and no previous enquiry has found this argument to have merit. The section is therefore anachronistic and has no place in a civilised country.

Do you have any other comments?

We urge the Government to move to hold a referendum on these matters as soon as possible. Numerous enquiries and expert committees have now considered this issue and Australia risks losing momentum and frittering away the good will of the many people who have contributed to those processes.

We consider the matter to be urgent, not only as a symbolic demonstration of recognition (that too is very important) but also – for the reasons outlined above - as a practical measure necessary to bring Australia's legal backbone into alignment with reality.

We urge the Opposition, as well as the states and territories, to give their full support to the referendum. Amending the Australian Constitution is not easy and, without full and vocal support by all parties and by all levels of government, a referendum risks the possibility of being rejected. Ideally, a referendum would pass with an overwhelming majority; failure to pass at all would be a severe setback to the process of reconciliation in Australia.

Are you making a submission on behalf of a person (such as yourself) or organisation?

This submission is made on behalf of Civil Liberties Australia.

Yours Truly

Dr Kris Klugman OAM
President

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