



**National Office**  
4 Campion Street  
Deakin ACT 2600  
T 02 6259 0431  
E [natoffice@acl.org.au](mailto:natoffice@acl.org.au)  
ABN 40 075 120 517

05 May 2017

Referendum Council  
Department of the Prime Minister and Cabinet  
PO Box 6500  
Canberra ACT 2600

## About the Australian Christian Lobby

The Australian Christian Lobby's (ACL) vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 80,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

## A long history of support for Constitutional Recognition

ACL has a long history of supporting Constitutional Recognition of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander peoples were the first inhabitants of this land and their culture reaches back thousands of years prior to European settlement. The tensions and, at times, animosity that existed between European settlers and indigenous people is an unfortunate part of our history. ACL believes that Constitutional Recognition is an important step towards the reconciliation of Aboriginal and Torres Strait Islander peoples with all other Australians.

The failure to recognise indigenous people in our nation's founding document is a wrong that should be righted. While this alone won't close the gap on indigenous disadvantage, it will be another positive symbolic step on the path to reconciliation and should be supported by all Australians.

ACL has played a constructive role in the national debate about recognition in the Commonwealth Constitution.

- In 2011, ACL provided a submission to the Expert Panel on Constitutional Recognition of Indigenous Australians in support of an amendment to acknowledge Aboriginal and Torres Strait Islander peoples in the preamble of the Constitution.
- In 2012, ACL provided a submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples in support of the passage of the *Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012*.

- In 2015, ACL provided a submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples on steps that can be taken to progress towards a successful referendum on Indigenous Constitutional Recognition. In this submission, ACL supported the recognition of indigenous peoples in the Constitution.
- More recently, ACL's managing director Lyle Shelton contributed a chapter to Melbourne University Press's book *The Forgotten People* (2016).
- ACL has also supported recognition of Tasmanian Aboriginal People in the Tasmanian Constitution by providing submissions to two consultative processes in 2015 and 2016.

Where ACL's position on various questions has evolved, this will be set out in our submission.

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

Whilst ACL has previously advocated for a statement to be inserted into the Preamble to the *Commonwealth of Australia Constitution Act 1900* (Constitution Act), we acknowledge that there may be challenges with this approach and are open to different options with regard to the instrument by which a First Peoples statement should be achieved.

If the statement is by way of a referendum to recognise Indigenous people in the Australian Constitution then it should be kept as simple as possible to maximise the likelihood of success.

Whatever the mechanism, the text should be simple, straightforward, and clear. It should achieve the single aim of recognising Aboriginal and Torres Strait Islanders without inserting rights-type provisions.

## A statement about the First Peoples of Australia

### Should we have a statement that acknowledges the First Peoples of Australia?

Yes. It is right and just that Aboriginal and Torres Strait Islander peoples be recognised as the First Peoples of Australia.

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

It is essential that the proposed wording is clarified as being of a symbolic nature rather than creating additional rights under law. ACL does not support the addition of new content establishing new rights into the body of the Constitution. The creation of rights open to interpretation by the courts is unlikely to gain support by a majority of people in a majority of states. In contrast, a simple question aimed at acknowledging the First Peoples of Australia is likely to find widespread community support.

## Powers to make laws for Aboriginal and Torres Strait Islander peoples

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

Whilst it does not appear that there are any serious suggestions that the Race Power should be removed altogether (as this would affect laws around Native Title and may hamper Commonwealth's

ability to work for the advancement of indigenous peoples), ACL recommends caution with respect to proposing any change whatsoever to section 51(xxvi).

The more widely supported proposal to replace the Race Power with a power limited to Aboriginal and Torres Strait Islander peoples may prove too challenging to take to a Referendum. It would be a shame if this was to derail the campaign to recognise indigenous Australians.

## Changing the Constitution to stop racial discrimination

### Do you think that a guarantee against racial discrimination should go into the Constitution?

No.

In 1944 and 1988 Constitutional referenda proposing the adoption of a Constitutional Bill of Rights were voted down. In 2008, the National Human Rights Consultation Committee (NHRCC) was established by then Attorney-General Robert McClelland to examine the idea of enacting a statutory bill of rights. Despite receiving more than 40,000 submissions, unpopularity and widespread opposition meant the Committee's recommendation to implement a bill of rights was abandoned.

The legislation of human rights has the effect of enlarging the power of unelected judges on questions of public policy which have ordinarily been resolved by democratically elected parliaments in the Australian tradition. This is a significant and wide-ranging policy question to be answered in a more appropriate inquiry.

The proposal for Constitutional Recognition should achieve the single aim of recognising Aboriginal and Torres Strait Islanders without inserting rights-type provisions. Referenda have a very low success rate in Australia and the addition of controversy over race based anti-discrimination provisions will certainly derail the campaign's aim to recognise indigenous Australians.

### 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?

We do not recommend a proposal to legislate more rights or to implement a Human Rights Act.

The *Racial Discrimination Act 1975* already exists to provide laws in the pursuit of upholding the Civil and Political right to non-discrimination. The right to non-discrimination is one of many rights and freedoms at international law, to be subject to careful and reasonable limits and balance. It should be noted that Australian law and practise increasingly fails to reflect this reality by adopting those limits. Those rights that stand to suffer due to this implementation failure are mainly fundamental freedoms such as speech, expression, association, religion, etc. Additional and more severe non-discrimination laws would only increase the ballooning of the non-discrimination discourse at the expense of fundamental rights.

## Getting rid of section 25

### Should we delete section 25?

ACL recommends that section 25 be repealed through a referendum.

This section anticipated some states disqualifying particular ethnic groups or “races” from voting in state elections. Any state which did so would be punished by not allowing that group to be counted in that state, reducing that state’s representation in federal parliament. Although such a consideration may have been deemed necessary at the time, it is certainly unnecessary in the present day.

ACL’s position on this issue has developed since 2011, when caution was recommended over removing the section. Since then it has become clear to ACL that this section is outdated. In the words of one witness at the Committee hearings in September 2014, Section 25 is a “vestige of racial concepts and practices that have no place in contemporary Australia”.<sup>1</sup> This was the position adopted in ACL’s 2015 submission to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples and remains our position today.



**Lyle Shelton**  
**Managing Director**  
**Australian Christian Lobby**

---

<sup>1</sup> Mr Peter Quinlan, Committee Hansard (September 10, 2014), Evidence to Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, p 8.