



St Vincent de Paul Society
NATIONAL COUNCIL *good works*

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Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples
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Submission to the Inquiry into Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012

Background

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 148 countries around the world. In Australia, we operate in every state and territory, with more than 50,000 members and volunteers committed to our work of social assistance and social justice. The National Council is charged with representing the Society on a national basis. The Society is accountable to the people in our community who are marginalised by structures of exclusion and injustice.

In addition to working with Aboriginal and Torres Strait Islander (ATSI) Peoples in the Society's wide range of general projects for excluded and marginalised Australians, the Society is also engaged in some projects that are specific to Aboriginal and Torres Strait Islander Peoples, and is proud to stand in solidarity with ATSI Peoples in its national advocacy positions¹ and to listen to and learn from the First Peoples of this land.

¹ For example, Stronger Futures submission (vinnies.org.au/files/NAT/SocialJustice/2012/Submission-social-security-amendment-Bill-final.pdf); Dr John Falzon, presentation on income insecurity (vinnies.org.au/files/Income%20Insecurity.pdf); Dr John Falzon, presentation on consultation (vinnies.org.au/files/NAT/MediaReleases/2012/The%20Cunning%20of%20consultation%202.pdf); submission on Constitutional recognition to YouMeUnity (2011) (youmeunity.org.au/have-your-say/submissions).

On 3 December 2012, the Committee Secretary invited the Society to make a submission to the Committee's Inquiry into the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 (Cth) (**the Bill**). The Society welcomes the opportunity to contribute to this submission.

General

The St Vincent de Paul Society shares a vision of an Australia in which Aboriginal and Torres Strait Islander perspectives, languages, philosophies and cultures penetrate the marrow of our institutions, our organisations, our communities and the lives of all Australians.

We principally support recognition of the first Australians in our founding document of law and government. As such, we support this Bill in its setting a framework for a review of support for a referendum, leading to ultimate Constitutional recognition.²

We also strongly support Item 3 of the Bill, which provides recognition of the first occupation of the continent by Aboriginal and Torres Strait Islander Peoples, acknowledges their continuing relationship with the land and waters, and acknowledges and respects their continuing cultures, languages and heritages.

Clause 5

If passed into law, the sunset provision states that the Act will cease to have effect 2 years after it comes into force.³

The Explanatory Memorandum states that the reason for providing a sunset clause is to ensure "that legislative recognition of Aboriginal and Torres Strait Islander peoples does not become entrenched at the expense of progress towards the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution." Minister Macklin elaborated in the Bill's Second Reading Speech that "[t]he sunset provision will provide an impetus for a future parliament to reassess how the campaign for change is travelling, and the appropriate timing for a successful referendum."⁴

First, if the intention of Clause 5 is to prevent legislative entrenchment at the expense of Constitutional reform, and to provide an impetus for a future parliament to reassess Constitutional reform, then this is not reflected in the Note to Clause 5, which simply states:

The 2 year sunset period in this section will provide Parliament and the Australian people with a date by which to consider further the readiness of Australians to approve a referendum to amend the Constitution to recognise Aboriginal and Torres Strait Islander peoples.

Secondly, it is not clear to us how the sunset provision will best ensure that parliament will reconsider the issue, or ensure that legislative entrenchment will not supplant Constitutional reform. In fact, it seems to create a risk that – unless the review gains significant attention and publicity – there will be nothing keeping this important issue in the parliament's mind at all, and at the end of 2 years the recognition could simply lapse without any significant progress being made.

² The Bill, Clause 4.

³ The Bill, Clause 5.

⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 28 November 2012, 13653, (Jenny Macklin).

On the other hand, even if the review does gain some positive publicity and attention, according to the terms of Clause 4 there may only be a five and a half month period between the review being tabled and the Act ceasing to have effect. Thus it still seems reasonably likely that the Act and recognition would lapse before any referendum could take place,⁵ and again leaves open the possibility that the issue could fall off the political radar at a later point.

Instead of a sunset provision we propose that if no referendum to amend the Constitution to recognise Aboriginal and Torres Strait Islander Peoples has taken place at the end of a certain period (say, 2 or 3 years) after the commencement of the Act, then the Minister must cause another review to be undertaken, in the same terms as Clause 4. This will ensure that the issue definitely remains on the political landscape past the 2-year period.

It is axiomatic that justice delayed is justice denied. The absence of Constitutional recognition of the First Peoples of Australia is a grave injustice. In many ways this absence is emblematic of the host of structural and historical injustices that the First Peoples have been, and continue to be, subjected to. While Constitutional recognition will not erase these many forms of injustice it is a matter of deep sadness and shame for us as a nation that we are faced with this further delay in taking this important step in our national journey of recognising the historical truth and honouring the First Peoples.

Dr John Falzon
Chief Executive Officer

⁵ This is the case unless a referendum could be organised within five and a half months, which seems highly unlikely given the inevitable debate surrounding wording, and the Constitutional requirement of a minimum 2-month waiting period between the Bill proposing the amendment and the actual referendum (s 128, *Australian Constitution*).