



Joint Select Committee on Constitutional Recognition
Relating to Aboriginal and Torres Strait Islander Peoples
PO Box 6021
Parliament House
Canberra ACT 2600
emailed to jscrcr@aph.gov.au

Dear Committee Members

Submission: Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples

On behalf of the National Health Leadership Forum (NHLF), I am providing this submission to the Joint Select Committee to inform your deliberations and report on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. The NHLF would welcome a further opportunity to expand on the issues noted in this submission and other pertinent matters with the Joint Committee.

The NHLF is the national representative health forum for Aboriginal and Torres Strait Islander peak bodies. Since being established in 2011, the NHLF has become an influential collective of Aboriginal and Torres Strait Islander peak health bodies who have provided advice and negotiated with successive Australian governments on Aboriginal and Torres Strait Islander health and wellbeing.

NHLF members are also among the leading member organisations of the Close the Gap Campaign Steering Committee. A list of our member organisations is included at the end of this submission.

The NHLF believes the Joint Committee through its Resolution of Appointment has been empowered to address the issue of Constitution Recognition for Aboriginal and Torres Strait Islander Peoples in a material sense. For example, Paragraph 1b. of the Resolution of Appointment states that in conducting the inquiry the committee:

“examine the methods by which Aboriginal and Torres Strait Islander Peoples are currently consulted and engaged on policy and legislation which affects them, and consider if, and how, self-determination can be advanced, in a way that leads to greater local decision making, economic advancement and improved social outcomes”.

The NHLF encourages members of the Joint Select Committee to pay particular regard to the impact your work could have in improving the health and wellbeing of Aboriginal and Torres Strait Islander people, and in so doing providing the basis for fair and equitable outcomes for all Australian citizens under the Constitution. Some commentators may argue that as a document the Australian Constitution does not specifically diminish or favour any person’s or group of persons’ rights. However, the terms set out in the Resolution of Appointment for the Joint Select Committee clearly indicate an expectation that the Inquiry not be limited to a legalistic examination of the interpretation of the Constitution but include consideration of mechanisms to improve social and economic outcomes for Aboriginal and Torres Strait Islander Australians supported by the Constitution.



The Inquiry must be centrally concerned with and be framed around addressing the chronic disadvantage which continues to be experienced by Aboriginal and Torres Strait Islander people.

To date the Constitution and how it has been applied in relation to the rights and needs of Aboriginal and Torres Strait Islander Australians has not been adequate to ensure comparable treatment and opportunities with the non-Indigenous Australian population. The overwhelming evidence of this disadvantage is not in dispute; it continues to be reported, with far too little progress being made in many key areas of health and wellbeing and the related factors (social determinants) that contribute to that situationⁱ.

The NHLF believes that lack of recognition in the Constitution for Aboriginal and Torres Strait Islander people as the First Peoples of this country, contributes to Australian laws and their application continuing to adversely discriminate on the basis of 'race'. In practice, the Constitution and Australian laws have not enabled the equal enjoyment and participation of Aboriginal and Torres Strait Islander people in important social and economic aspects of life. Despite the efforts of governments at all levels and over many decades Aboriginal and Torres Strait Islander people's participation in meaningful decision-making processes on policies and legislation that affect their lives has not been adequate to avert the dramatically higher incidence and risk of them experiencing (for example):

- lives that are on average 10 years shorter than those of non-Indigenous Australians;
- chronic disease at rates 2-3 times that of non-Indigenous Australians;
- much higher rates of unemployment –and employment rates of around 46.6% compared with 72% for the non-Indigenous population;
- 10 times the rate of Out of Home Care; and
- Imprisonment rates that are 13 times higher than for the non-Indigenous population, and even higher for young people.

The deficit in health and life expectancy of Aboriginal and Torres Strait Islander peoples clearly illustrates inequality in the application and impact of Australian laws and policy settings. These issues are not inherently intractable. For instance, much of the disease burden suffered by Aboriginal and Torres Strait Islander peoples could be avoided or reduced through education and appropriate opportunities to access preventive careⁱⁱ. It should be a fundamental right for Aboriginal and Torres Strait Islander people to have access to culturally safe and responsive health services in their communities. These should be guided by safe and robust policies founded on strengths-based frameworks. This approach would not only contribute to the health and wellbeing of Aboriginal and Torres Strait Islander people, but strengthen the positive participation rates and social and economic circumstances of the national as a whole. Constitutional recognition would underpin these frameworks.

Aboriginal and Torres Strait Islander people have expressed time and time again, the need to eliminate the unconscious bias that obstructs their equal access to health, economic opportunities, education and all other resources associated with self-determination and healthy sustainable outcomes. Institutional racism and the multi-generational experiences of trauma and dislocation continue to have real impacts on the lives of many Aboriginal and Torres Strait Islander peopleⁱⁱⁱ. This inhibits widespread improvements in health and wellbeing. These factors must be considered by the Joint Select Committee given its mandate.

The evidence clearly indicates that Aboriginal and Torres Strait Islander disadvantage is a systemic issue, and that addressing it requires a clear, coordinated and systemic response. The need for structural change for Aboriginal and Torres Strait Islander peoples to have a greater say in the legislation and policy that impact us is long overdue. The NHLF is of the view that this structural change can be effectively addressed through the recommendations made in the *Uluru Statement of the Heart* and by the Referendum Council.



After an extensive, indeed unprecedented, process of dialogue in locations across the country, Aboriginal and Torres Strait Islander peoples have spoken clearly. They have articulated a clear need for change, beginning with a First Nations Voice to Parliament to be enshrined in the Constitution of Australia. We assert that better health will be achieved through empowerment, self-determination, connections to culture, and thus control over destiny in ways that are meaningful to Aboriginal and Torres Strait Islander peoples.

The NHLF endorses the *Uluru Statement from the Heart*.

The NHLF endorses priorities identified in the *Uluru Statement from the Heart* – a First Nations Voice enshrined in the Constitution and a Makarrata Commission to supervise a process for agreement-making between governments and First Nations and truth-telling about our history.

Constitutional Recognition and mechanisms that enshrine genuine consultation and engagement present a real opportunity for the Australian Parliament to develop a mechanism that provides for far greater protection for many Australians under the Constitution than has been delivered to date.

Truth-telling and acknowledgment of the past injustices will establish a sound basis for further progress towards health and healing for Aboriginal and Torres Strait Islander peoples. The need for truth-telling for the nation to understand and address past and ongoing trauma is crucial. Agreement-making processes that properly secure safety and opportunity for Aboriginal and Torres Strait Islander peoples is needed.

The NHLF endorses the Referendum Council’s recommendations.

The Referendum Council’s first recommendation for a First Nations Voice to the Commonwealth Parliament is a modest proposal. It will provide a mechanism for Aboriginal and Torres Strait Islander people to formally engage with the business of the national Parliament. Such architecture already exists in other nations and should be a priority for Australia.

All evidence shows that the more power people and communities have over their lives, the better their health. Health organisations have long recognised that the ill health of Australia’s First Peoples is the result of historic social exclusion, economic disadvantage and exclusion from the legal and policy decisions which affect their lives. ^{iv}Health does not exist in a vacuum and the role of social and economic factors in determining health status is well understood. ^vAboriginal and Torres Strait Islander people also experience social exclusion, racism and discrimination and historical, inter-generational effects of the loss of land, culture and language (for example, those affected by the past government policies and practices, such as the Stolen Generations). These factors are known as ‘the social and cultural determinants of health’. There is significant evidence from health research to indicate that being connected to the wider community, having a strong identity and feeling socially supported, all have powerful impacts on health.

A First Nations Voice to Parliament enshrined in the Constitution would empower the efforts of Aboriginal and Torres Strait Islander people to achieve their own vision for healthy lives. It would also enable the health care system to develop better policy and practice to meet the health care and cultural needs of Aboriginal and Torres Strait Islander people and would provide the basis for a better social contract — where both Aboriginal and non-Aboriginal people know they stand on solid and equal ground and can work out shared solutions to both common and unique problems.



The NHLF endorses the Recommendations put forward by the Referendum Council and recommends that the Joint Standing Committee act on the opportunity before them, resist calls to confuse and further stall action on issues that have a material and demonstrably negative daily impact on hundreds of thousands of Australians lives and enable fairer representation of the interests of Australia's people in the national Parliament. The NHLF will continue to work collectively to achieve this end.



Janine Mohamed

Chair, National Health Leadership Forum
CEO, the Congress of Aboriginal and
Torres Strait Islander Nurses and Midwives

The NHLF organisations are:

- Aboriginal and Torres Strait Islander Healing Foundation
- Australian Indigenous Doctors' Association
- Australian Indigenous Psychologists' Association
- Congress of Aboriginal and Torres Strait Islander Nurses and Midwives
- Indigenous Allied Health Australia Inc.
- The Lowitja Institute
- National Aboriginal and Torres Strait Islander Health Workers' Association
- National Aboriginal Community Controlled Health Organisation
- National Aboriginal and Torres Strait Islander Leadership in Mental Health
- National Association of Aboriginal and Torres Strait Islander Physiotherapists
- Torres Strait Regional Authority.

ⁱ See for example: <https://closingthegap.pmc.gov.au/sites/default/files/ctg-report-2018.pdf>;
<https://www.pmc.gov.au/resource-centre/indigenous-affairs/health-performance-framework-2017-report>;
<https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>;
https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf

ⁱⁱ <https://www.aihw.gov.au/reports/burden-of-disease/australian-bod-study-2011-indigenous-australians/formats>

ⁱⁱⁱ NHLF, 2017, *Position Paper on Racism*: <https://www.catsinam.org.au/policy/position-statements>; and Joint Statement (NMBA, CATSINaM, ACM, CAN and ANMF), 2018, *Cultural safety: Nurses and midwives leading the way for safe health care*: <https://www.catsinam.org.au/communications/press-releases-and-joint-statements>

^{iv} See <https://www.lowitja.org.au/recognisehealth/why>

^v Mokak, R. (2015) The link between health and wellbeing and constitutional recognition. In *Medical Journal of Australia*; 203 (1).