

Submission on Behalf of Caritas Australia to the Referendum Council.

Caritas Australia is the International Aid and Development agency of the Catholic Church. We have walked in solidarity with Aboriginal and Torres Strait Islander peoples for over forty years, with a designated 'First Australians Program' since 2007. Our First Australians Program is funded entirely by donations from the Australian public along with valued contributions from a small number of Trusts and Foundations.

Our approach to partnership with Aboriginal and Torres Strait Islander peoples is built upon the principles of Catholic Social Teaching, and notably the principle of subsidiarity, which requires that those affected directly by decisions are empowered to make them and deliver associated programs and projects.

Towards the end of 2016 a group of 12 organisations, including Aboriginal Carbon Fund, Caritas Australia, Centacare Wilcannia-Forbes, Djilpin Arts Aboriginal Corporation, Jesuit Social Services, Kinchela Boys Home Aboriginal Corporation, National Aboriginal Torres Strait Islander Catholic Council, Red Dust Healing, Redfern Jarjum College, Tjanpi Desert Weavers, Unity of First Peoples Australia, and Western Desert Nganampa Walytja Palyantjaku Tjutaku Aboriginal Corporation formalised our position in a 'Joint Statement on Subsidiarity'.

This submission arises out of the Joint Statement on Subsidiarity and supports the submission made by NATSICC to the Referendum Council. It reflects our view that practical, substantive changes must be made to the body of the Constitution in addition to achieving symbolic recognition.

Do we Support a Statement to Acknowledge the First Peoples of Australia?

Yes, providing no legal disclaimer is attached to the statement.

A Statement of recognition should be included in the Constitution that should refer to matters such as:

- the history of continuous occupation by Aboriginal and Torres Strait Islander peoples
- their unique status as the original owners and occupiers of Australia
- colonisation by Britain and its impacts for Aboriginal and Torres Strait Islander peoples
- the maintenance of Aboriginal and Torres Strait Islander culture and languages and identity.

Caritas Australia is aware that Indigenous people have now been recognised in the Constitutions of every State in Australia. However, this recognition has always been accompanied by a clause disclaiming any legal significance for the change. We are opposed to the inclusion of such a disclaimer and believe it would send the wrong message and undermine the significance and value of the Australian people voting at a National Referendum to acknowledge and recognise Aboriginal and Torres Strait Islander peoples.

The Acknowledgement in no way should undermine future Treaty negotiations on State or Commonwealth levels.

Do we Support a change to the Section 51 powers to make laws that discriminate based on race?

Yes

The Constitution should ensure that the Commonwealth can exercise its National responsibilities and legislate effectively for Aboriginal and Torres Strait Islander peoples. Laws emanating from Section 51 should not be based upon the notion of race, however historically this power has only been used in to pass laws in respect to Aboriginal and Torres Strait Islander peoples. We argue that race is the wrong concept upon which to base any Commonwealth laws.

The race power, therefore, should be rewritten as a power to make beneficial laws with particular respect to Aboriginal and Torres Strait Islander peoples.

The risk if this change is made on its own is that the Commonwealth could still make laws which discriminate against Indigenous people. Therefore, it is recommended that such a be made in combination with a non-discrimination clause with respect to race.

Do we Support the inclusion of a prohibition against Racial-Discrimination in the Constitution?

Yes

It is overdue to create a prohibition against racial discrimination within the Constitution. The Australian Constitution was drafted at a time when politicians thought racial discrimination was an acceptable policy. Aboriginal and Torres Strait Islander peoples across Australia have suffered injustice more than anyone else because of racially discriminatory laws passed by the Commonwealth and State Governments. For example, most were denied the right to vote at Commonwealth elections until 1962. After 1975, the Racial Discrimination Act made a difference but it was suspended by the Commonwealth Parliament when enacting the Northern Territory Emergency Response. There is nothing in the Constitution to prevent this happening again.

Racial discrimination is unacceptable and it is reasonable to refer to it as illegal in our Constitution. A clause should be inserted in the Australian Constitution which says that no Commonwealth, State or Territory law or Government action can discriminate on the basis of race.

Do we Support a new provision to establish and protect an Indigenous 'voice' to Parliament'?

Yes

Caritas Australia supports the inclusion of a power to create and protect a representative Indigenous voice to Parliament only if the process is founded upon the principle of subsidiarity. Mechanisms such as robust consultation and genuine engagement with communities are non-negotiable in the process. The resulting body should be genuinely representative of the diversity of the contemporary Aboriginal and Torres Strait Islander community, including the Stolen Generations.

Importantly, the inclusion of this provision should not be at the expense of the provision that will prohibit racial discrimination which is critical to the survival of Aboriginal and Torres Strait Islander peoples.



Do we Support the removal of Section 25?

Yes

Caritas Australia supports the removal of Section 25. This Section is a legacy from the era of the White Australia policy and it should be removed as part of the package of changes necessary to finally eliminate racially discriminatory provisions from the Constitution.

Any other Comments?

Caritas Australia also recognises the significant momentum that the consultations of the Referendum Council around Australia have reignited for a Treaty or Treaties. It is clear that Constitutional Recognition is only meaningful to the majority of Aboriginal and Torres Strait Islander peoples in the context of more substantive changes that enable greater power in decision-making that effects them. The recommendations arising from our First Peoples over decades appear clear that these substantive changes should include:

- Increased representation in Parliament
- Compensation along with Truth and Reconciliation processes related to abuses of the past
- Negotiation of agreements to protect distinct rights of Indigenous Peoples, for example rights to self-Government, maintenance and revival of culture and languages, and greater powers in determinations over use of traditional lands and seas.
- Creating a power to negotiate treaties and to ensure that the rights and interests are protected needs to be considered now.

Like others, Caritas Australia also supports the creation of an agreement-making power with Aboriginal and Torres Strait Islander peoples by developing a new part to section 105 of the Constitution. This would give more symbolic recognition. However, as indicated in the Joint Statement on Subsidiarity, developing formal agreements with Aboriginal and Torres Strait Islander peoples that describe how partnerships are to be achieved in decision making is an important way to commit to this vital principle. A new section 105B of the Constitution could authorise the Commonwealth, States and Territories to enter into agreements with Aboriginal and Torres Strait Islander peoples, and to give the agreements Constitutional force to bind all the parties.

Finally, as others have argued, the Constitution should have a provision that recognises the right of Aboriginal and Torres Strait Islander peoples to maintain and practice their culture, languages and identity. Further the changes should foster and encourage communities to continue these cornerstone facets of culture. This should reflect the terms of the UN Declaration on the Rights of Indigenous Peoples and the clause should also require action by Governments to protect cultures and languages and to make sure that laws and policies of the Commonwealth do not undermine them.

