

8 June 2018

Joint Select Committee on Constitutional Recognition  
Relating to Aboriginal and Torres Strait Islander Peoples  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email to: [jscctr@aph.gov.au](mailto:jscctr@aph.gov.au)

Dear Committee Secretary

**Re: Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples**

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) welcomes the opportunity to provide feedback to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples.

The RANZCP is the principal organisation representing the medical speciality of psychiatry in Australia and New Zealand and is responsible for training, educating and representing psychiatrists on policy issues. The RANZCP represents more than 4000 qualified psychiatrists in Australia, many of whom have specific interest in this matter. As such, we strongly support the purpose of the reforms and welcome the opportunity to contribute.

The RANZCP is guided on policy matters by a range of expert committees including the Aboriginal and Torres Strait Islander Mental Health Committee (the Committee) which is made up of community members and psychiatrists with direct experience working in Aboriginal and Torres Strait Islander mental health. The Committee has discussed constitutional recognition extensively at various stages along the process, and the RANZCP consults with the Committee as its first priority when responding to submissions and formulating policy documents relevant to this issue.

The RANZCP holds that constitutional recognition is the essential minimal prerequisite for improving the mental health of Aboriginal and Torres Strait Islander communities. As reflected in the *Reconciliation Action Plan 2016–2018*, the RANZCP is committed to promoting diversity and reconciliation in Australia. This includes addressing the inequality of mental health outcomes between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians as well as celebrating the value of Aboriginal and Torres Strait Islander heritage, culture and resilience, and promoting self-determination and empowerment. The RANZCP welcomes the move towards constitutional recognition as an important step forward in this process.

As the peak body representing the field of psychiatry in Australia and New Zealand, the RANZCP has been a public and prominent supporter of constitutional recognition in the mental health sector, and is recognised in the sector as an important proponent of the movement. The RANZCP celebrates the fact that moves are being made in Australia to begin to address inequality and recognise the value of Aboriginal and Torres Strait Islander communities. While constitutional recognition will not rectify historical injustices, it does represent an important step towards forging a more constructive and genuine shared national identity.

If you would like to discuss any of the issues raised in this submission, please contact Rosie Forster, Executive Manager, Practice, Policy and Partnerships via [rosie.forster@ranzcp.org](mailto:rosie.forster@ranzcp.org) or by phone on (03) 9601 4943.

Yours faithfully



Dr Kym Jenkins  
**President**

Ref: 1129o



The Royal  
Australian &  
New Zealand  
College of  
Psychiatrists

## Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples

June 2018

# improving the mental health of communities

# Royal Australian and New Zealand College of Psychiatrists submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples

## About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and as a bi-national college has strong ties with associations in the Asia-Pacific region.

The RANZCP has more than 6000 members including more than 4000 qualified psychiatrists and around 1500 members who are training to qualify as psychiatrists. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey of recovery.

## Introduction

The RANZCP is a prominent supporter of the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. In addition to submissions regarding constitutional recognition to the Referendum Council (2017), the Joint Committee on Constitutional Recognition (2014) and You Me Unity (2011), the RANZCP has produced a number of policy documents to support the psychiatric profession and broader Australian systems to address historical wrongs, support Aboriginal and Torres Strait Islander self-determination, health and wellbeing and work towards a vision of reconciliation and diversity in Australia. These documents include:

- [Reconciliation Action Plan 2016–18](#)
- [Position Statement 50: 'Aboriginal and Torres Strait Islander mental health workers'](#) (2016)
- [Position statement 68: 'Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution'](#) (2015 – currently under review)
- [Position Statement 42: 'Stolen Generations'](#) (2015 – currently under review)
- [Ethical Guideline 11: 'Aboriginal and Torres Strait Islander mental health: Principles and guidelines'](#) (2014 – currently under review)

The RANZCP appreciates the necessity of ensuring broad support among Aboriginal and Torres Strait Islander communities, as well as the broader community, on the proposed changes to the Constitution before a referendum is held. The RANZCP urges the Government to heed the voices of Aboriginal and Torres Strait Islander communities to settle on a set of reforms which can form the basis of a public education campaign in the lead-up to a referendum.

This submission outlines the RANZCP's views about the range of constitutional reforms which have been proposed. The recommendations contained within this submission are based on extensive consultation with the RANZCP Aboriginal and Torres Strait Islander Mental Health Committee which is made up of community members and psychiatrists with direct experience working in Aboriginal and Torres Strait Islander mental health. However, the RANZCP acknowledges the diversity of voices within Aboriginal and Torres Strait Islander communities and recognises the imperative of a set of reforms which have the broad support of Aboriginal and Torres Strait Islander communities across the country.

# Royal Australian and New Zealand College of Psychiatrists submission to the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples

## Constitutional recognition and mental health

As the peak body representing psychiatrists in Australia and New Zealand, the RANZCP is in a unique position to take an evidence-based position on the value of constitutional recognition from a mental health perspective.

Aboriginal and Torres Strait Islander mental health outcomes are of serious concern to the RANZCP. The suicide death rate in the Aboriginal and Torres Strait Islander population is twice that of non-Indigenous Australians while 30% of Aboriginal and Torres Strait Islander adults experience high or very high levels of psychological distress, a rate three times that of the non-Indigenous population (Productivity Commission, 2014). These rates are even higher for Aboriginal and Torres Strait Islander peoples who are imprisoned (Indig et al., 2010). Furthermore, Aboriginal and Torres Strait Islander men and women are, respectively, 2.2 and 1.5 times more likely to be hospitalised for mental health-related conditions (AIHW, 2013) and 5.8 and 3.1 times more likely to die from mental and behavioural disorders (Garvey, 2008). Statistics like these led to the Commonwealth's description of the depth of inequality between Aboriginal and Torres Strait Islander and non-Indigenous mental health outcomes in Australia as 'an entrenched mental health crisis that must be addressed' (DPMC, 2015).

The RANZCP does not assert that constitutional recognition will put an end to this 'crisis'. The factors that contribute to the current situation are complex and overlapping. Some factors are transgenerational, some are systemic and others are very specific. There is no simple solution, but rather a pressing need to address this from multiple angles in order to achieve holistic change.

The RANZCP supports constitutional recognition in the context of the growing body of evidence that shows that factors which influence mental health and wellbeing expand well beyond domains directly related to health. Exposure to social and structural factors such as inequality, discrimination and racism are known to be linked to poorer physical and mental health outcomes, including heightened incidence of self-harm and suicide. Aboriginal and Torres Strait Islander peoples also have very strong community connections, ancient and resilient cultures, and proud artistic traditions which are not always supported or embraced by non-Indigenous Australia, leading to acculturative stress. This stress is caused by the difficulties faced by Aboriginal and Torres Strait Islander peoples while striving to maintain cultural identities and heritages within the dominant culture, as well as coping with ongoing discrimination.

Successive Australian government policies, such as the forced removal of Aboriginal and Torres Strait Islander children from their families, have caused harm to individuals and communities across generations (Human Rights and Equal Opportunity Commission 1997; Department of Social Services, 2009) with the intergenerational and ongoing dispossession, trauma and discrimination experienced by Aboriginal and Torres Strait Islander peoples continuing to contribute to poorer health outcomes. Socioeconomic disadvantage, incarceration and lacks in resources have led to low educational attainment, poor literacy levels, limited job prospects, incarceration and associated repercussions which further compound negative health outcomes (RACP, 2007). It also bears mentioning that due to the ongoing repercussions of the Stolen Generation, there is often a hesitancy among Aboriginal and Torres Strait Islander peoples to approach societal institutions for support, for fear of what the repercussions might be. In the past and present, repercussions have often included institutionalisation, the involvement of child protection authorities, removal from land and community, and incarceration.

While there have been many positive milestones in the journey towards recognition and equality, there remains much work to be done. Aboriginal and Torres Strait Islander peoples continue to experience discrimination, marginalisation and disempowerment with all the associated negative impacts on physical and social and emotional wellbeing. Australia, as a nation, must take the necessary steps to put things right wherever possible and constitutional recognition is a critical step in this journey.

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## The importance of self-determination for mental health

The RANZCP advocates for constitutional recognition on the basis that it would improve the overall health and wellbeing of the Aboriginal and Torres Strait Islander population in a number of ways. Constitutional recognition may contribute towards easing the stress that Aboriginal and Torres Strait Islander peoples experience in trying to manage two worlds which are not always compatible with each other. The symbolism of constitutional recognition may lead to greater confidence among Aboriginal and Torres Strait Islander communities to approach services, including health and mental health services, as required. It may also prompt a change in the culture of these institutions, leading to greater understandings of the need for training in cultural awareness and competency, and for the creation of safe and culturally responsive services.

The support of Aboriginal and Torres Strait Islander people for the specific set of proposed reforms is essential to secure the potential health benefits of constitutional recognition. Even reforms which might stand to produce positive results in the legal sphere risk causing harms to the mental health of Aboriginal and Torres Strait Islander people if they are enacted without their support. Such reforms may entrench feelings of disempowerment and marginalisation rather than supporting the positive mental health effects associated with self-determination.

There is evidence to show that self-determination and supportive societal structures can be a protective factor against negative mental health outcomes. This is illustrated in a study on youth suicide in Canadian First Nations communities in British Columbia. Researchers found that communities with lower suicide rates had six factors in common – active participation in land claims, self-government, band-administered school systems, responsibility for police and fire services, control of health care and culture facilities (Ritter, 1985; Chandler & Lalonder, 1998).

Another model that shows that self-determination can contribute to improved mental health outcomes is Derrick Silove's ADAPT model. This model was developed to inform mental health and psychosocial programming in post-conflict settings and with refugee communities who have post-traumatic stress disorder (PTSD). While Aboriginal and Torres Strait Islander peoples may not suffer from PTSD in the same way that refugee communities do, these communities share a common link of community-wide, historical and transgenerational trauma, linked to dispossession, societal breakdown and loss of control and capacity for self-determination.

Silove postulates that stable societies are grounded on five core psychosocial pillars. The importance of the Safety/Security pillar can be observed in emerging laboratory evidence suggesting that there is a fine balance in the brain between excitatory and inhibitory mechanisms that modulate the learned fear response. The intensity of the response is dynamic, moderated by cortical pathways that help the survivor to interpret ongoing risk. Where survivors are faced by ongoing or future threat, the primitive traumatic stress reaction remains in an active state, increasing the likelihood that it will become chronic. For survivors of trauma, the key issue is to create conditions of safety and security in order to ensure the best chances of recovery possible (Silove, Steel and Psychol, 2006).

The Justice pillar of the ADAPT model is based on the clinical experience that unresolved cumulative injustices of the past can play a central role in maintaining psychological symptoms into the present. This can lead to collective responses of anger and sensitivity to further injustice, mistrust, and the need for acknowledgement of past suffering. The social consequences of not addressing this unresolved pattern can be severe and result in adverse impacts for individuals, families and communities (Silove, 2013).

Based on these observations, the RANZCP supports all efforts towards reconciliation, including constitutional recognition, so long as they are based on genuine efforts to improve the capacities of Aboriginal and Torres Strait Islander peoples to engage in political decisions which affect their lives.



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## Lessons from New Zealand

The potential for constitutional recognition to mitigate social exclusion and the acculturative stress of negotiating two sometimes incompatible worlds is exemplified in the New Zealand example and the signing of the Treaty of Waitangi which has transformed New Zealand society, imbuing Māori peoples with an element of faith in the reinforcement of their rights, Indigenous status and entitlement to respect at a national level, including in governance structures. The Treaty is a demonstration of the value and respect New Zealand has for its Indigenous peoples and their participation in wider society.

As a bi-national College, the RANZCP has had the benefit of learning from the experience of New Zealand, gaining guidance about the importance of treaty. The signing of the Treaty of Waitangi by over 500 Māori chiefs (representing most tribes) and the British Crown in 1840 was a seminal event with important national consequences. Firstly, the treaty is embedded in the way of life of the nation. Secondly, it has transformed New Zealand society: Māori have faith in the treaty as a confirmation of rights and an affirmation of Indigenous status and respect. Lastly and fundamentally, the treaty is a clear demonstration of the value New Zealand has for its Indigenous peoples and their participation in society. The Treaty of Waitangi has given the Māori population a strong base from which to speak. It has not led to equality of health outcomes but it has given Māori a better position from which to advocate for their communities and for what is needed to bring about positive and meaningful change (Durie, 2013).

The RANZCP recognises a number of elements which are crucial to ensuring that steps taken towards reconciliation are meaningful. Each of these have been major factors in New Zealand and continue to carry importance in the present day. These include:

- the recognition of indigeneity as an important constitutional element
- the implementation of the articles in the Declaration on the Rights of Indigenous Peoples
- acknowledgement of Indigenous land rights and the association between connection to land and wellbeing
- fostering the revitalisation and use of Indigenous languages
- providing for Indigenous representation in governance at community, state and federal levels
- fostering partnerships between Indigenous leaders and government agencies
- recognition of Indigenous health perspectives as important catalysts to improve health status
- building a workforce that includes Indigenous peoples and actively contributes to health gains
- active engagement of Indigenous peoples in education at all levels, including for mature learners
- building the capabilities necessary for self-governance at community and tribal levels
- using measures that recognise Indigenous priorities for best outcomes
- building Indigenous leadership networks that transcend sectoral and tran-sectoral divisions
- adopting family-centred agendas – for example in New Zealand the Whānau Ora policy – that integrate health, social services, education, justice and employment sectors.

Although many of these items will not be automatically achieved via constitutional recognition, neither could they meaningfully exist without it. Health outcomes are inextricably linked to each of these items as a healthy Indigenous population has roots in self-governance, engagement with education, prioritisation of culturally meaningful outcomes, and strong leadership networks.

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## **A First Nations Voice**

The RANZCP supports the constitutional establishment of an Aboriginal and Torres Strait Islander advisory body to guarantee an Indigenous voice in political decision. It is essential that a federal power to make laws for Aboriginal and Torres Strait Islander peoples be accompanied by mechanisms to ensure that laws are drafted with the input and support of Aboriginal and Torres Strait Islander peoples. The RANZCP would suggest that having this body be democratically elected would present significant benefits in ensuring the broader Aboriginal and Torres Strait Islander population have input into political decision-making processes. There are a number of mechanisms for this kind of consociational approach which may be considered, including mechanisms which have been implemented in countries around the world including New Zealand.

In the case of Aboriginal and Torres Strait Islander peoples, much of the trauma has its roots in colonial history but continues to repeat and impact into the present day. It is crucial, therefore, that a safe and just environment is created, one where political processes accommodate self-determination principles, recognising the cultural identity, practices, customs and histories of Aboriginal and Torres Strait Islander peoples, and provide protection from discrimination and associated ongoing trauma. Self-determination is only one part of the overall healing process yet it is an essential part, and one that cannot be underestimated.

## **Statement of acknowledgment**

The RANZCP has supported the inclusion of a statement of acknowledgement within the Constitution, recognising Aboriginal and Torres Strait Islanders as traditional owners and custodians and first peoples of the land and waters now known as Australia, paying respect to the continuing cultures, languages, customs and heritage of Aboriginal and Torres Strait Islander peoples. However, the RANZCP also recognises that some Aboriginal and Torres Strait Islander people have concerns about such a statement. We also recognise that other reforms have been prioritised in the Uluru Statement from the Heart (2017) and the Final Report of the Referendum Council (2017).

The RANZCP supports constitutional recognition on the basis that it would have a beneficial effect on the mental health and wellbeing of Aboriginal and Torres Strait Islander communities. As such, the value of a statement of acknowledgement depends on the support of Aboriginal and Torres Strait Islander communities – without this support, such a statement would not provide an acknowledgment of respect but rather a continued eschewing of the rights of Aboriginal and Torres Strait Islander peoples to self-determination. The RANZCP therefore maintains its support of a statement of acknowledgment, whether vested in the Constitution or produced in extra-constitutional legislation as recommended by the Referendum Council, conditional on broad support from Aboriginal and Torres Strait Islander communities for whichever option is preferred.

## **A federal power to make laws for Aboriginal and Torres Strait Islander peoples**

The RANZCP has supported the removal of section 51 (xxvi), which can be used to pass laws that discriminate against people based on their race, and the insertion of a new clause allowing the Parliament to make laws for the benefit of Aboriginal and Torres Strait Islander peoples. The RANZCP defers to the view of legal experts and Aboriginal and Torres Strait Islander communities in the determination of appropriate wording for such a power.



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The RANZCP is concerned that constitutional jurisprudence still permits the Commonwealth to make laws that discriminate on the basis of race under this head of power. Until this is changed, Aboriginal and Torres Strait Islander peoples are vulnerable to the implementation of laws that cause harm, even if implemented with good intentions. Historically, laws and policies have been passed in Australia that, although they may have been considered as for the benefit of Aboriginal and Torres Strait Islander peoples at the time, were in practice damaging and discriminating. The RANZCP points to the example of the Stolen Generations, a policy which led to incalculable transgenerational damage yet which at the time was considered and defended by some members of the non-Indigenous population as for the benefit of Aboriginal and Torres Strait Islander children. More recent laws in the Northern Territory have faced similar criticism.

There is strong evidence to link racism with negative mental and physical health outcomes (see Zubrick et al., 2014). As a result, the RANZCP supports constitutional reform which would prevent the Parliament from introducing legislation which is to the detriment of Aboriginal and Torres Strait Islander peoples, while still preserving the Commonwealth's power to enact laws which can address the inequalities which exist as a result of historic injustices.

The RANZCP's support for such an amendment is conditional on two things: first, as with every aspect of constitutional recognition, broad support from Aboriginal and Torres Strait Islander peoples is required; secondly, if section 51(xxvi) is amended, it should be accompanied by the inclusion of a constitutional prohibition against racial discrimination.

## **A constitutional prohibition against racial discrimination**

The RANZCP has supported the insertion of a constitutional guarantee against racial discrimination to ensure that an amended section 51 would not permit the creation of racially discriminatory laws. Aboriginal and Torres Strait Islander stakeholders have widely emphasised that symbolism must be accompanied by meaningful change and amending the Constitution to explicitly prohibit discrimination is therefore important (Kimpton, 2014). Changing the Constitution to prohibit racial discrimination is therefore an important check on the powers of the Commonwealth, a largely non-Indigenous polity, to make laws for Aboriginal and Torres Strait Islander peoples.

Like other aspects of constitutional recognition, this should only be introduced with broad support from Aboriginal and Torres Strait Islander communities. The RANZCP also notes that to have a broader prohibition of racial discrimination which applies to all races could circumvent any potential issues that could arise among the broader population who, if the changes only referred to Aboriginal and Torres Strait Islander peoples, may perceive that the Constitution is being changed to favour one section of the Australian population over all others. If framed correctly, however, prohibiting discrimination in the Constitution is entirely in keeping with Australia's national identity, with its emphasis on egalitarianism and fairness, and is also a natural progression from Australia's ratification of international legal conventions like the *United Nations Declaration on the Rights of Indigenous Peoples*.

## **Deleting section 25**

The RANZCP has supported the removal of section 25. This section provides for an event where state governments ban Australians from voting on the basis of their race. In the RANZCP's view, this section is not compatible with a constitution which recognises the important place of Aboriginal and Torres Strait Islander peoples and should therefore be removed.

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## **Makarrata Commission**

The RANZCP recognises the recommendation from the Uluru Statement from the Heart for a Makarrata Commission ‘to supervise a process of agreement-making between governments and First Nations and truth-telling about our history’ (First Nations National Constitutional Convention, 2017). The RANZCP is a strong supporter of reconciliation and would welcome further exploration of this proposal. This may be undertaken alongside progression of constitutional reform, recognising that any resultant treaty may have greater power if ultimately entrenched in the Constitution.

## **Conclusion**

The RANZCP believes that the powerful symbolism of recognising Aboriginal and Torres Strait Islander peoples in the Constitution must be accompanied by substantive changes to the legislative power of the Commonwealth to prohibit discrimination and make laws for the benefit of Aboriginal and Torres Strait Islander peoples, incorporating Aboriginal and Torres Strait Islander community ownership and input wherever possible. Without these factors, constitutional recognition risks being perceived as an empty gesture and falling short of its potential to effect genuine and positive change.

While constitutional recognition will not rectify historical injustices on its own, it does represent an important step towards forging a more constructive and genuinely shared national identity. Recognition would have a positive effect on the self-esteem of Aboriginal and Torres Strait Islander peoples and would benefit all Australians by reinforcing the collective national pride in the longevity of Aboriginal and Torres Strait Islander heritage, culture and history. The RANZCP is committed to this process and will continue to promote initiatives that strengthen and empower Aboriginal and Torres Strait peoples and contribute to their wellbeing and recovery.

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