Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution

August 2015

Position Statement 68

Authorising Committee/Department: Board
Responsible Committee/Department: Aboriginal and Torres Strait Islander Mental Health Committee
Document Code: PS 68 PPP Recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution

Background

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) calls for the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. Whilst there have been many positive milestones in the journey towards recognition and equality, including the 2008 Apology, the Closing the Gap campaign and above all the resilience and strength of Aboriginal and Torres Strait Islander communities, there remains much work to be done.

Aboriginal and Torres Strait Islander peoples continue to experience discrimination, marginalisation and disempowerment. This inequity has run the length of the history of contact with European settlers, with the resultant trauma spanning generations. Discriminatory attitudes and policies in the broader Australian community continue into the present day, along with associated negative impacts for physical and mental health and wellbeing. The deep-seated inequality experienced by Aboriginal and Torres Strait Islander peoples is reflected in the fact that life expectancy is on average 17 years less than that of the broader population (Recognise, 2014).

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 recognition. 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 in New Zealand, 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).

Australia, as a nation, must take the necessary steps to put things right wherever possible and to provide appropriate restitution to the communities and individuals who have been injured by historical policies. Recognising Aboriginal and Torres Strait Islander peoples as the traditional owners of the land and waters now known as Australia is a critical step in this journey. Psychiatrists have an important role in contributing to this process and in continuing to practice and support reconciliation. Understanding the need and supporting the call for recognition is part of this contribution.

Evidence

Aboriginal and Torres Strait Islander peoples are discriminated against in legal jurisdictions as they are not recognised as Australia’s first people in law (Commonwealth of Australia, 2012). In comparison with other nations with a similar colonial history, such as New Zealand, Canada and the United States, Australia has been slow in the movement towards protecting equality in law and developing policies to address historical wrongs (Australian Human Rights Commission, 2010). The lack of recognition of Aboriginal and Torres Strait Islander peoples as the traditional owners of the land and waters of Australia...
in the Constitution impacts on identity and sense of belonging within the communities, perpetuating discrimination and eroding wellbeing.

The loss of traditional lands after the arrival of European settlers in Australia and the ongoing, associated spiritual and cultural dispossession experienced by Aboriginal and Torres Strait Islander peoples has further contributed to much lower than average health and wellbeing outcomes. Aboriginal and Torres Strait Islander peoples possess a strong connection to the land, encapsulating spirituality, cultural practices, way of life and sense of identity (Australian Indigenous Health, 2013). The loss of sacred sites and all that is associated with this has had a disruptive effect and led to increased mental illness and other complications (Garvey, 2008).

Other Australian government policies, such as those which are linked to the forced removal of Aboriginal and Torres Strait Islander children from their families and placement with white families, have also caused harm to individuals and communities across generations (Department of Social Services, 2009). The RANZCP’s Position Statement 42 ‘Stolen generations’ provides more information on this issue. Socioeconomic disadvantage, mistreatment in institutions, incarceration and lack of resources has led to low educational attainment, poor literacy levels, limited job prospects and associated repercussions which further compound negative health outcomes (RACP, 2007; Ministry of Health, 2007).

Importantly, constitutional recognition is not just about addressing past wrongs, it is also about celebrating and valuing the diversity of Australia as a nation, and recognising the contribution of Aboriginal and Torres Strait Islander peoples. Aboriginal and Torres Strait Islander communities have produced many great leaders who have long worked tirelessly towards self-determination, as well as achieving excellence in their chosen fields, including sports, health, law and politics. Aboriginal and Torres Strait Islander communities’ deep, spiritual connection to the land has persevered, despite adversity, and this continues to be passed down through the generations. Australian society is also beginning to take note of the importance of this body of knowledge, with guidance increasingly being sought from Aboriginal and Torres Strait Islander elders to inform land and water care. Aboriginal and Torres Strait Islander communities continue to use traditional artistic methods, preserving Dreamtime stories and cultural knowledge through this practice. In the broader artistic community, some of the country’s greatest and most original artists have been of Aboriginal or Torres Strait Islander background, achieving local and international acclaim in arenas including visual arts, theatre, dance, filmmaking, music and poetry, with this creative output regularly showcased at international film festivals, galleries and theatres worldwide.

Such important contributions across all these areas enrich the fabric of Australian society. Acknowledging Aboriginal and Torres Strait Islander peoples in the constitution would allow Australia to move forward in the spirit of partnership and unity and to fully embrace the uniqueness and diversity that is the essence of Australia.

The RANZCP celebrates the fact that some moves have already been made in Australia to begin to address historic deficiencies in human rights and recognise the value of Aboriginal and Torres Strait Islander contributions, however there remains much more to be done. While constitutional recognition will not rectify historical injustices on its own, it does represent an important step towards forging a more constructive and genuine shared national identity. Recognition would have a positive effect on the self-esteem of Aboriginal and Torres Strait Islander peoples. It would also benefit all Australians and work to reinforce the collective national pride in the longevity of Aboriginal and Torres Strait Islander heritage, culture and history. As well as addressing a national wound, it would make a significant contribution to the lives, health and wellbeing of many individuals, families and communities.

As a professional body of experts in the field of psychiatry, the RANZCP approaches the discourse on how the Australian Constitution should be changed from the perspective of which of the proposed changes would most benefit Aboriginal and Torres Strait Islander peoples and promote improved mental health.
health outcomes. The RANZCP supports change to the Constitution that is substantive, sound and sensible, and incorporating Aboriginal and Torres Strait Islander community ownership and input. The RANZCP believes that constitutional recognition without these key factors risks being perceived as an empty gesture and falling short of its potential to effect genuine and positive change.

Recommendations

The RANZCP has made several contributions to the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (the Committee) in its consideration of models for constitutional change (RANZCP, 2014; RANZCP, 2015). Overall, the RANZCP supports the following changes to the Constitution, as informed by Recognise’s recommendations and one of the key models to come from the Committee’s Progress Report (JSCCRATSIP, 2014).

- Recognise Aboriginal and Torres Strait Islanders as the traditional owners and first peoples of the land and waters now known as Australia and paying respect to the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples.
- Remove Section 25 which allows States to ban people from voting based on their race.
- Remove Section 51 (xxvi) which can be used to pass laws that discriminate against people based on their race.
- Insert a new Section 51 allowing the Parliament to make laws for the benefit of Aboriginal and Torres Strait Islander peoples.
- Insert a new Section 116 which expressly prohibits racial discrimination by the Commonwealth, States and Territories.

Additionally, the RANZCP supports its members in engaging with the issue:

- Psychiatrists are encouraged to stay informed and contribute to the debate on constitutional recognition of Aboriginal and Torres Strait Islander peoples by visiting the website: http://www.recognise.org.au.

References


**Disclaimer**

This information is intended to provide general guide to practitioners, and should not be relied on as a substitute for proper assessment with respect to the merits of each case and the needs of the patient. The RANZCP endeavours to ensure that information is accurate and current at the time of preparation, but takes no responsibility for matters arising from changed circumstances or information or material that may have become subsequently available.

**Revision Record**

<table>
<thead>
<tr>
<th>Date</th>
<th>Version</th>
<th>Approver</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>08/2011</td>
<td>1.0</td>
<td>GC2011/3.R40</td>
<td>Adopted</td>
</tr>
<tr>
<td>08/2015</td>
<td>2.0</td>
<td>B2015/R18</td>
<td>Approved</td>
</tr>
<tr>
<td>2018</td>
<td></td>
<td></td>
<td>NEXT REVIEW</td>
</tr>
</tbody>
</table>

© Copyright 2015
Royal Australian and New Zealand College of Psychiatrists (RANZCP)
This documentation is copyright. All rights reserved. All persons wanting to reproduce this document or part thereof must obtain permission from the RANZCP.