



## Constitutional reform:

### What's it about and what's RecVic's position?

#### The story continued...

The Australian Constitution was drafted by the six Australian colonies (known as States after Federation in 1901) at the end of the 19th Century and approved in referendums held from 1898-1900. At Federation, there were only two references to Aboriginal people in the body of the Australian Constitution:

- Section 51(xxvi): the so-called 'race power', conferred on Parliament the power to make laws with respect to 'the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws'.
- Section 127 provided: 'In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.'

The purpose of section 127 was to prevent Queensland and Western Australia from using their large Aboriginal populations to gain extra seats in the Commonwealth Parliament and a larger share of taxation revenue.

At the time of Federation, legislation in Queensland and Western Australia disqualified, among others, Aboriginal men from voting. Against this background, Section 25 allowed for the continuation of such racially discriminatory laws. Section 25 countenances the exclusion of persons of particular races from voting in State elections but was designed to penalise, by a reduction of their federal representation, those States where Aboriginal people had not been given the right to vote.

The 1967 Referendum, the most successful in history with a 'yes' vote of over 90%, resulted in two amendments to the Constitution. First, the repeal of the overtly discriminatory provision in section 127 meant the removal of the prohibition on counting Aboriginal people in the population statistics. Second, the specific exclusion in Section 51(xxvi) of power to make laws with respect to the 'people of the aboriginal race in any State' was removed. Aboriginal and Torres Strait Islander peoples ceased to be mentioned at all in the Constitution.

The 1988 Constitutional Commission Report recommended the removal of the race powers, insertion of a new paragraph that would give the Commonwealth Parliament express power to make laws with respect to 'Aborigines and Torres Strait Islanders', intended to be beneficial, and the inclusion of a new section that would give everyone the right to freedom from discrimination on the ground of race.



In 1995 ATSIC proposed the Social Justice Package arguing for “the securing of constitutional recognition of special status and cultural identity of indigenous peoples”, which was rejected by then Prime Minister John Howard.

The report of the Council for Aboriginal Reconciliation presented to the Prime Minister and Parliament in 2000 recommended that the Australian Constitution acknowledge “the True Place of Indigenous peoples within the Nation”, and that such constitutional reform should also seek to remove the Section 25 race power and outlaw racial discrimination.

In 2008 Prime Minister Rudd named Constitutional Recognition as one of the next steps in reframing this nation’s history in his National Apology to the Stolen Generations. Also in 2008 the Yolgnu and Bininj clans presented the Prime Minister with a Statement of Intent calling on the government “to work towards constitutional recognition of [their] prior ownership and rights”, in response to which he announced his support for recognition of Aboriginal and Torres Strait Islander peoples in the Constitution.

## **Recommendations of the Expert Panel**

In 2010 then Prime Minister Julia Gillard appointed an Expert Panel<sup>1</sup> to conduct extensive consultations with Aboriginal and Torres Strait Islander communities and non-Indigenous people and present a proposal for Constitutional Reform. The Expert Panel presented its Report to the Prime Minister and Parliament in January 2012, and its recommendations are clearly similar to those of the Council for Aboriginal Reconciliation more than a decade earlier. The Expert Panel recommended:

- Deleting Section 25, permitting States to disqualify people from voting on the basis of race, and Section 51 (26), which allows the Commonwealth to make laws on the basis of race;
- Adding a new Section 51A Recognition of Aboriginal and Torres Strait Islander peoples, that recognises Aboriginal and Torres Strait Islander peoples as the first occupants of Australia; acknowledges the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters; respects the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples and acknowledges the need to secure the advancement of Aboriginal and Torres Strait Islander peoples;
- Adding a new Section 116A Prohibition of racial discrimination that says Governments shall not discriminate on the grounds of race, colour or ethnic or national origin; and
- Adding a new Section 127A Recognition of languages that recognises English as the national language of Australia and Aboriginal and Torres Strait Islander languages as the original Australian languages, a part of our national heritage.

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<sup>1</sup> The Members of the Expert Panel: <http://www.recognise.org.au/about/expert-panel>



## **What is the status of the recommendations?**

There is multi-party support for Constitutional Recognition, and a commitment by both major parties to proceed to a referendum, whether it is within this term of government, or the next has not been clarified as yet. The Aboriginal and Torres Strait Islander Peoples'

Recognition Act 2013 was passed on 13th February 2013 with a two-year sunset clause, allowing time to build public awareness and support for constitutional reform prior to a referendum on the issue.

A Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples<sup>2</sup> (JSC) was appointed to inquire into and report on steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition. This Committee has been working to secure strong, multi-partisan support around the timing, specific content and wording of referendum proposals. At this stage it appears there is multi-partisan support for both the recognition of Aboriginal and Torres Strait Islander peoples and the prohibition of racial discrimination. The newly reformed JSC, with Mr Ken Wyatt AM MP as the Chair of the committee and Senator Nova Peris OAM as the Deputy Chair has committed to releasing an interim report in September this year and a final report by June 2015.

On the passing of the Act in February 2013 the Prime Minister announced \$10 million funding to Reconciliation Australia to facilitate the community conversation about the proposal. Reconciliation Australia launched the Recognise campaign on this day, a re-branding of the YouMeUnity campaign. Recognise has its own office and staff based in Sydney, and is governed by the Reconciliation Australia board. Recognise administered a grants program last year of small activity funding (up to \$5000) and larger partnership funding (up to \$50,000) to work with organisations to engage Australians in the conversation about Constitutional Recognition. We hope that this will be continued once their second round of funding has been confirmed by the Federal Government in May.

Recognise have developed materials including flyers, badges, a schools' kit and a website. On 26 May 2013 in Melbourne, Recognise also launched the 'Journey to Recognition', a relay around Australia to raise awareness and support for the proposal. The Journey headed to Adelaide, then north to Arnhem Land and concluded its first leg in early August at the Garma Festival. The second leg headed west and finished in Perth at the beginning of December, where the young people's campaign 'Recognise This' was also launched. The Journey is about to launch its 3<sup>rd</sup> leg of the Journey, heading south along the Western Australian Coast and then up to Cape York and down the East coast of Australia. Recognise is continually conducting polling to gauge the level of community awareness of and support for the proposal. The most recent polling from Auspoll released in February this year indicated that, 49 per cent of the public now know about the recognition goal and

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<sup>2</sup> Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Constitutional\\_Recognition\\_of\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Peoples](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples)



support levels have held, with 58 per cent in support and only 12 per cent of people opposed.<sup>3</sup> Clearly there is a still a great deal of work to do in raising public awareness.

### **What is RecVic's position?**

RecVic supports the scope and intent of the recommendations made by the Expert Panel and is working towards community review, understanding and, if necessary, improvement of the recommendations.

We do so acknowledging that recognising Aboriginal and Torres Strait Islander peoples in the Constitution is part of the unfinished business of the recommendations made by the Council for Aboriginal Reconciliation in 2000. We see Constitutional Recognition as a positive step forward, but not an end to the reconciliation journey: it alone is not sufficient to achieve outcomes required of a fully reconciled and fair Australia.

RecVic is further considering the following outstanding issues not explicitly addressed by the Panel's recommendations, which we discussed in our Submission to the Panel:

- A requirement for 'prior and informed consent' in relation to the proposal to enable laws to be made for the 'advancement of Aboriginal and Torres Strait Islander peoples';
- Agreements, treaties and the claims of Aboriginal and Torres Strait Islander people to sovereignty. RecVic sees the campaign for Constitutional Recognition as a vehicle to engage people in the reconciliation process; to revitalise and grow the grass-roots reconciliation movement in Victoria.

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We seek to contextualise this issue as part of the reconciliation journey; to connect conversations about Constitutional reform to the bigger picture of working towards just and respectful relationships between Aboriginal and non-Aboriginal people, and of the vision of Australia we want for the future. We recognise that Australia is yet to enter into agreement-making processes or treaty negotiations with the First Peoples of this country, and that constitutional recognition does not address these issues.

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<sup>3</sup> Patricia Karvelas, "Peris to fight for referendum campaign funds" (The Australian, February 19, 2014)  
[http://www.reconciliationvic.org.au/user-data/Constitutional\\_Recognition/Peris\\_to\\_fight\\_for\\_referendum\\_campaign\\_funds.pdf](http://www.reconciliationvic.org.au/user-data/Constitutional_Recognition/Peris_to_fight_for_referendum_campaign_funds.pdf)



## What are we doing?

RecVic received partnership funding through the Recognise campaign in May last year to build awareness and understanding about what is proposed, through providing information and facilitating opportunities for discussion.

We have utilised our grassroots networks of local government, local reconciliation groups, Aboriginal organisations, schools and others to coordinate a Victorian campaign to raise awareness about the proposed Constitutional Reform agenda.

Our approach during this first phase has focussed on:

- Promoting local recognition of Aboriginal people, history and culture within communities across Victoria, to build a platform of recognition that would support CR – eg. building awareness and recognition of local Traditional Owners, celebrating the contributions of local Aboriginal people and organisations
- Putting the proposal for CR in the broader context of the reconciliation journey, where it has come from and where it could lead – eg. treaties – and what it could mean for the bigger picture of Australia's national identity
- Facilitating inclusive and open discussion among Aboriginal and non-Aboriginal people in communities, giving space for different viewpoints and questions

## Sources:

1. Expert Panel Report: <http://www.recognise.org.au/uploads/assets/html-report/1.html>
2. Final Report of the Council for Aboriginal Reconciliation: <http://www.austlii.edu.au/au/orgs/car/finalreport/index.htm>
3. Reconciliation Victoria Website: <http://www.reconciliationvic.org.au/pages/constitutionalrecognition.php>
4. Recognise website: <http://www.recognise.org.au/about>
5. Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Constitutional\\_Recognition\\_of\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Peoples](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Constitutional_Recognition_of_Aboriginal_and_Torres_Strait_Islander_Peoples)

You can download a copy of this paper at: [http://www.reconciliationvic.org.au/user-data/Constitutional\\_Recognition/RecVic\\_Constitutional\\_Recognition\\_Updated\\_Briefing\\_Paper\\_March\\_2014.pdf](http://www.reconciliationvic.org.au/user-data/Constitutional_Recognition/RecVic_Constitutional_Recognition_Updated_Briefing_Paper_March_2014.pdf)