

VACCA Information Sheet on
**Constitutional Recognition
for Aboriginal and Torres
Strait Islander Peoples in
Response to Expert Panel
Recommendations.**



Victorian Aboriginal Child Care Agency Co-Op. Ltd

www.vacca.org

What is the constitution and why are changes needed?

The Australian Constitution is the set of rules by which Australia is run. It sets out how Parliament works, what powers it has, how federal and state governments share power, and the roles of Executive Government (that is, the Prime Minister and her/his ministers) and the High Court. The High Court functions as a legal umpire if there are disputes about what the Commonwealth can or can't do.

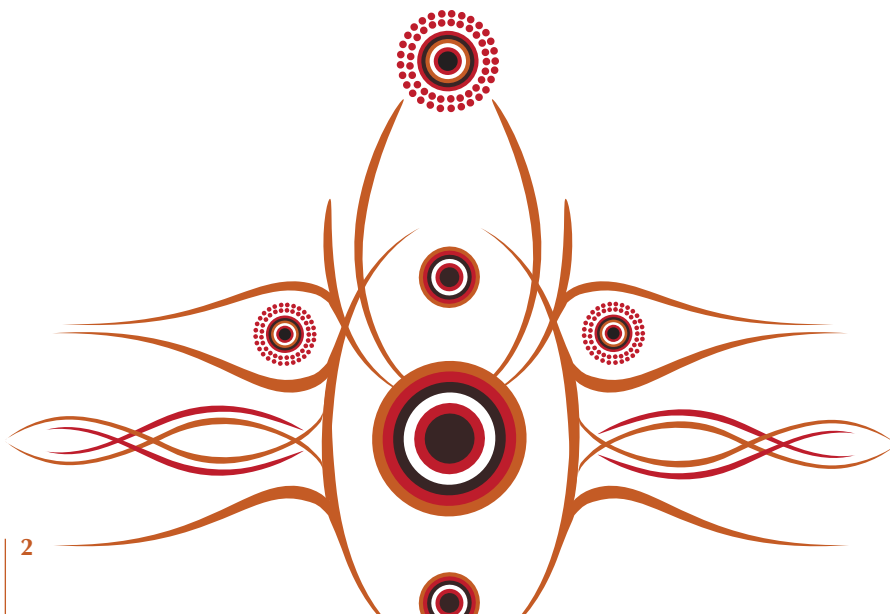
The Australian Constitution came into effect in 1901, after the Australian colonies agreed to form the nation of Australia. Aboriginal people were not consulted as part of this process and many Aboriginal people believe that the Constitution is merely an imposition as there has been no consent given or treaty. The issue of 'sovereignty' – that is, the question of whose land this is, remains an open question.

Aboriginal people were mentioned in the original version of the Constitution, but not in a positive way. For example, the original Constitution stated that Aboriginal people would not be counted in determining the size of the Australian population and the Commonwealth could not make laws for them. The 1967 Referendum amended the Constitution and removed these discriminatory references to Aboriginal people. However, now the Constitution does not mention Aboriginal and Torres Strait Islander peoples at all.

The Constitution does not recognise the First Peoples of this land; their subsequent rights and status and their contribution to our national identity.

The Constitution also has racist provisions. For example, section 51 part 26 (the 'race power') allows for laws to be made for "the people of any race for whom it is deemed necessary to make special laws" and section 25 allows State Governments to prevent particular racial groups from voting.

Constitutional recognition of the First Peoples and removal the race powers could help create mutual trust and respect leading to stronger relationships between Aboriginal and Torres Strait Islander Australians and other Australians. It could be the next step, after the National Apology, in addressing the unfinished business of reconciliation.



What was the process?

At the 2010 Election, the Liberal/National Party Coalition placed Constitutional recognition in its policy platform. One of the conditions requested by the Greens and the Independents to support the Labor Party to form Government after the Election was to create a process towards changing the Constitution so that it recognised Aboriginal and Torres Strait Islander peoples. On 23 December 2010 the Prime Minister announced the appointment of an Expert Panel on the Constitutional Recognition of Indigenous Australians. The Panel was made up of Indigenous and community leaders, people with legal expertise and parliamentary members. The Panel was co-chaired by Professor Patrick Dodson and Mr Mark Leibler AC and given the task of consulting the community and preparing recommendations for constitutional change.

The Panel has talked with thousands of people from across the country, hosting over 200 public consultations across 84 communities in remote, regional and metropolitan Australia. At these consultations, over 4000 individuals and representatives of business, media, government and nongovernment organisations spoke to members of the Panel about their ideas or concerns for constitutional change. More than 3600 submissions were sent to the Panel. The Panel presented its report to the Prime Minister in January 2012.

What did the Panel suggest and what does it mean?

The Panel have recommended the following changes to the constitution of Australia:

1. *Deleting Section 25, which permits the States to disqualify people from voting on the basis of race.*
2. *Deleting Section 51 (26), which allows the Commonwealth to make laws on the basis of race.*

These changes remove the racist aspects of the Constitution.

3. *Adding a new Section 51A Recognition of Aboriginal and Torres Strait Islander peoples:*
 - *Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;*

- *Acknowledging the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;*
- *Respecting the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;*

Acknowledging the need to secure the advancement of Aboriginal and Torres Strait Islander peoples; the Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples.

These changes acknowledge the status of Aboriginal and Torres Strait Islander peoples as the First Peoples of the land we now call Australia. They recognise the connection of the First Peoples to the lands and waters and their continuing cultures, languages and heritage.

4. *Adding a new Section 116A Prohibition of racial discrimination.*

- (1) *The Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin.*
- (2) *Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group.*

These changes would enshrine greater legal protection against racial discrimination. The Commonwealth would be unable to make laws against racial groups and any current laws could be challenged before the High Court who would make a decision as to if a discriminatory law was allowed to remain. Only laws that protected culture, language or heritage or improved life could be made.

5. *Adding a new Section 127A Recognition of languages.*

- (1) *The national language of the Commonwealth of Australia is English.*
- (2) *The Aboriginal and Torres Strait Islander languages are the original Australian languages, a part of our national heritage.*

This change would protect Aboriginal and Torres Strait Islander languages but also declare English as the national language.

What is VACCA's position?

The Victorian Aboriginal Child Care Agency (VACCA) welcomes the Expert Panel's Report and recommendations concerning constitutional recognition of Aboriginal and Torres Strait Islander peoples. For VACCA, the safety of Aboriginal children, and particularly their cultural safety, is paramount. If the rights of Aboriginal children and communities had been recognised and respected it is likely that our communities would have had greater forms of legal protection and redress in the face of the on-going process of colonisation and racial discrimination and far better wellbeing and health outcomes. It is our view that the lack of recognition of the status and rights of the First Peoples in the Constitution and Australian society has consequences for Aboriginal and Torres Strait Islander children, youth and families.

While we are disappointed that the Expert Panel has not gone further in terms of recognition of the past, recognition Indigenous sovereignty, self-determination and rights, measures concerning agreement making and Aboriginal and Torres Strait Islander representation, we do understand that the Expert Panel was charged to make recommendations that would attract bipartisan support and be likely of success at a referendum. With the above considerations in mind:

VACCA supports the constitutional changes recommended by the panel and will work towards educating the Aboriginal community in Victoria concerning the benefits of constitutional change for our children and families.

What next?

The Australian Constitution can only be changed by the people through a referendum – that is by a vote of the people. The process begins with a Bill being debated and passed by the Australian Parliament. Between two and six months later a proposal can be put to Australian voters at a referendum.

For the Constitution to be changed there must be a double majority. This means that the majority of all Australian voters must vote 'yes' to the proposal and a majority of voters in at least four states must vote 'yes'. The votes of people living in the Northern Territory and the Australian Capital Territory votes are counted in the national total but not in any state figure.

The Government is now considering the Panel's recommendations and has provided Reconciliation Australia with funds to educate the community on the issues. To ensure success the Government wants to hear from the people as to whether there is support for the changes suggested by the Expert Panel. They also are unlikely unless there is broad support by the major parties at both the Commonwealth and the State Government level.

More information: The plain English summary and full Report can be viewed at <http://www.youmeunity.org.au/final-report>.

