

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



The recommendations

The Panel recommends five key changes to the Constitution:

1. Deleting Section 25, permitting 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
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.
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.
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.

More information: The plain English summary and full Report can be viewed at

<http://www.youmeunity.org.au/final-report>.

Reconciliation Victoria's submission to the Panel can be viewed at

http://www.youmeunity.org.au/uploads/have_your_say/4235136f87e7f354036e.pdf

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



Key messages

IT'S A POSITIVE STEP FORWARD

Recognising Aboriginal and Torres Strait Islander people as the First Australians in the Constitution is a *positive step forward* for our nation, continuing on the reconciliation journey started with the 1967 Referendum and continued with the 2008 Apology to the Stolen Generations.

The Constitution currently allows Governments to discriminate against any group on the basis of race. This is out of touch with modern Australia and does not reflect who we are as a nation today.

IT'S ACHIEVABLE

The proposed changes recommended by the Panel:

- Are capable of being supported by the majority of Australians:
 - 80% of Australians support amending our Constitution to prevent racially discriminatory laws (Newspoll Oct 2011)
 - Of the almost 3500 submissions to the Panel 97% of organisational submissions and 82% of individual submissions were supportive of changing our Constitution
- Are of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
- Will contribute to a more unified and reconciled nation;
- Are technically and legally sound.

IT'S TIME!

- There is bi-partisan support for Constitutional recognition of Aboriginal and Torres Strait Islander peoples
- The proposed changes are neither radical nor new – they would just bring Australia into step with other countries such as South Africa, India and Canada (Pat Dodson)
- Recognising Aboriginal people in the Constitution has been on the agenda for at least 12 years - it was recommended by the Council for Aboriginal Reconciliation and supported by the Howard Government in 1999.
- Let's maintain and build on momentum towards reconciliation of the 2008 Apology.

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



Some common misconceptions

"Recognising Aboriginal people in the Constitution is racist"

"Why should Aboriginal people be recognised and not all people who've come to Australia?"

The recommendations *do not* propose recognition of Aboriginal and Torres Strait Islander peoples *on the basis of race*.

Rather, recognition is recommended on the basis of Aboriginal and Torres Strait Islander peoples' status as the first occupants of Australia, their continuing relationship with their traditional lands and waters and their continuing cultures, languages and heritage, which are of value and importance to modern Australian society.

This is not comparable to recognition of other groups of Australians on the basis of their ethnic or cultural backgrounds.

"We need practical solutions to Indigenous issues"

"This is just symbolism / tokenism, and won't make any real difference"

Aboriginal and Torres Strait Islander peoples have stated clearly and consistently that recognition is very important to them.

Disadvantage, discrimination and racism are still suffered frequently by Aboriginal and Torres Strait Islander peoples.

The lack of acknowledgment of Aboriginal and Torres Strait Islander peoples' existence in Australia's Constitution has a major impact on their sense of identity, value within the community and perpetuates prejudice and discrimination which further erodes the hope of Indigenous people. There is an association with socioeconomic disadvantage and subsequent higher rates of mental illness, physical illness and incarceration. Recognition in the Constitution would have a positive effect on the self-esteem of Indigenous Australians and reinforce their pride in the value of their culture and history. It would make a real difference to the lives of Australians.¹

The 1967 Referendum resulted in significant changes for Aboriginal and Torres Strait Islander peoples through allowing for the Land Rights Act and Cultural Heritage protection among others.

"These changes could open a can of worms – they could have unintended negative consequences"

The changes wouldn't result in new powers, but would keep the Parliament's existing ones.

The language presented by the Panel is simple, cautious and clear. The recommendations were thoroughly examined by Constitutional experts and found to be technically and legally sound.

¹ YouMeUnity, 'A National Conversation About Aboriginal and Torres Strait Islander Constitutional Recognition' Discussion Paper, May, 2011p. 12

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



Frequently Asked Questions (Source: YouMeUnity)

What is the Australian Constitution?

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 ministers) and the High Court.

The Australian Constitution came into effect in 1901, after the Australian colonies agreed to form the nation of Australia.

What does the Constitution say about Aboriginal and Torres Strait Islander peoples?

Aboriginal people were mentioned in the original version of the Constitution, but not in a positive way. For example, the Constitution stated that Aboriginal people would not be counted in determining the size of the Australian population.

The 1967 Referendum amended the Constitution and removed these discriminatory references to Aboriginal people. However, now the Constitution does not expressly mention Aboriginal and Torres Strait Islander peoples at all.

Why should the Constitution be changed to include recognition of Indigenous Australians?

In many ways the Constitution has served Australia well but it does not recognise the first peoples of this land.

By recognising Aboriginal and Torres Strait Islander peoples in our Constitution, we would be acknowledging their role as custodians of the world's oldest continuing culture. It is something of which we can all be immensely proud.

Recognising Indigenous Australians is a positive step towards reconciliation and building a nation based on mutual respect between Aboriginal and Torres Strait Islander Australians and other Australians.

Why should Australians support constitutional change?

First, not all citizens are treated equally under the Australian Constitution. While racial discrimination is no longer accepted in our community, in our workplaces or in our daily lives, the Constitution permits laws that discriminate on the basis of race. For example, section 51 (the 'race power') states:

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



*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:
... (xxvi) the people of any race for whom it is deemed necessary to make special laws ...*

Second, while Australians value and celebrate the unique contribution Aboriginal and Torres Strait Islander art and culture has made to our national identity, the Constitution, Australia's founding document, gives no acknowledgment of the place of Indigenous Australians in our nation's history or our contemporary society.

Third, many people believe that constitutional recognition would serve as a powerful symbol of the nation's desire to embrace Indigenous Australians in a spirit of true reconciliation.

What benefits will constitutional recognition have for Aboriginal and Torres Strait Islander Australians?

Constitutional recognition would help create mutual trust and respect leading to stronger relationships between Aboriginal and Torres Strait Islander Australians and other Australians.

It would be a big step towards reconciliation, demonstrating the commitment of non-Indigenous Australians to acknowledge the place and contribution of Aboriginal and Torres Strait Islanders in our nation's history and contemporary society.

Constitutional recognition would contribute to raising the self-esteem of Aboriginal and Torres Strait Islander peoples as well as improving their social and emotional wellbeing.

The Royal Australian and New Zealand College of Psychiatrists published a report noting that mental health benefits would result from constitutional recognition.

Constitutional recognition could include removing racially discriminatory provisions in the Constitution and enhance the legal protection provided by the Constitution for all Australians.

What changes has the Panel recommended?

The report's recommendations include changes to the Constitution which: recognise the continuing cultures, languages and heritage of Aboriginal and Torres Strait Island peoples; remove racist elements; and prohibit discrimination on the grounds of race, colour or ethnic or national origin.

The changes proposed by the Panel remove race from the Constitution, but maintain the Parliament's ability to make laws for Aboriginal and Torres Strait Islander people. The changes wouldn't result in new powers, but would keep the Parliament's existing ones.

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



How are changes made to the Constitution?

The Australian Constitution can only be changed by the people through a referendum.

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.

Didn't we recognise Aboriginal and Torres Strait Islander Australians in the 1967 referendum?

In the 1967 referendum, voters were asked if two references in the Constitution that discriminated against Aboriginal people should be removed. More than 90 per cent of Australian voters voted 'yes', the largest 'yes' vote in an Australian referendum.

From then on, Aboriginal and Torres Strait Islander peoples were included in the counting of the Census, and the Commonwealth had the power to make laws for 'the people of any race for whom it is deemed necessary to make special laws'. This power included making laws for Aboriginal and Torres Strait Islander peoples from different parts of Australia who were previously subject to the differing laws of each state or territory.

However there was nothing in the 1967 referendum that recognised the special place of Australia's first peoples in the Constitution or that prohibited racially discriminatory laws. That's why, in 2011, constitutional recognition is seen as unfinished business.

Are Australians likely to support change?

The Panel does not underestimate the challenge of achieving nationwide consensus on the referendum. Only eight out of 44 referendums since Federation have been successful.

But we know all Australians want a fair and just society—and the changes that the Panel proposes will ensure not only that our first peoples are recognised, but also that all forms of discrimination are finally removed.

r e c o n c i l i a t i o n



v i c t o r i a

The road to Constitutional Recognition



What is the Expert Panel on Constitutional Recognition of Indigenous Australians and what does it do?

On 23 December 2010, following nominations from the public, the Prime Minister announced the appointment of the 20 member Expert Panel on the Constitutional Recognition of Indigenous Australians.

It is made up of Indigenous and community leaders, people with legal expertise and parliamentary members. The Panel is co-chaired by Professor Patrick Dodson and Mr Mark Leibler AC.

The Australian Human Rights Commission and the National Congress of Australia's First Peoples are represented on the Panel as ex-officio members.

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.

What happens next?

The Government will consider the Panel's recommendations.

Does constitutional reform have the support of all political parties?

The Australian Government, the Opposition, the Australian Greens and Independent Members of Parliament have all given in principle support for the recognition of Aboriginal and Torres Strait Islander Australians in the Constitution.

The Panel includes members of parliament representing the Government, the Opposition, the Australian Greens and the Independents.