



Constitutional Recognition Update March 2015

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RecVic’s Updated Position Statement

Feb 2015

RecVic supports the scope and intent of the recommendations made by the Expert Panel. We also wish to acknowledge the ongoing and important work that the JSC has done consolidating the learnings from the public hearings and formalising the final report to Parliament in June this year.

We contend that the inclusion of a protection against racial discrimination as put forward in the Expert Panel’s recommendation 116A is integral to the credibility of the constitutional reform (CR) agenda. We have found from our consultation and community engagement over the last 18 months with Aboriginal and Torres Strait Islander peoples, interfaith, CALD communities and the broader Victorian population that without substantive constitutional reform, recognition will be seen as tokenistic; symbolism is not enough.

We argue that it is important to include the principle of ‘free prior and informed consent’ as defined by the United Nations Declaration of the Rights of Indigenous Peoples (DRIP). To do this within the proposed constitutional reform model will help to ensure the positive purpose of government policies and legislation. We believe that an advisory panel, as proposed by the Cape York Institute, could review policies and legislations that directly affect Aboriginal and Torres Strait Islander peoples before being legislated. Any model however, that deviates from the Expert Panel’s recommendations needs to have appropriate community consultation and review.

Furthermore, we believe that it is important to address the need to move towards treaties and agreements, in parallel with, and continuing beyond, the CR process. We believe that such action



would assist in reducing the opposition to the CR process from those who consider it does not adequately take account of these issues.

It is fundamental moving forward that Aboriginal and Torres Strait Islander peoples are involved in the decision making process when it comes to Indigenous Affairs.

As an organisation it is important to be clear that we reserve the right to review its support for this reform agenda if a model is proposed that does not address these issues appropriately and does not have the support of the majority of Aboriginal and Torres Strait Islander Peoples. Like many aspects of its work, RecVic Council is aware of a range of opinions around this issue and thoughtfully considers its work in this area.

Where is the campaign at?

The Constitutional Recognition campaign is at a critical stage; it is clear that without strong leadership the momentum to work towards a referendum to recognise Aboriginal and Torres Strait Islander Peoples as the First Peoples as well as address the issue of racial discrimination within our Constitution may be negatively affected.¹ RecVic has an important role to play keeping the Federal Government to account and helping to ensuring our networks are up to date with the process. The levels of awareness of the campaign declined towards the end of last year (to 34%) however the level of support has remained the same (around 60%). This is attributed to political drift.² It is integral that there is both leadership and resourcing to sustain networks of interest on this issue.

The Expert Panel's Recommendations³ remain the cornerstone for discussion and debate on this issue. Although there has been multi-partisan support to move towards a referendum, the Federal Government, neither former nor current, have responded to both the Panel's recommendations and the proposals put forward by the Joint Select Committee⁴. Reconciliation Victoria encourages the Federal Government to respond constructively and as soon as possible so as not to draw this process on any longer. No timeline has been delivered, however at the Recognise Fundraising Gala dinner last December, PM Abbott identified 2017 as both a symbolic and achievable timeframe as the 50 year anniversary of the most successful referendum in this nation's history, the 1967 referendum.

The Act of Recognition has been extended for 3 years, until March 2018. This extension provides time to continue to raise awareness and the level of support for Constitutional Recognition. The Joint Select Committee's Final Report is due out at the end of June, as Megan Davis states, "Negotiating and designing a constitutional amendment is legally and politically complex"⁵ There has been multi-partisan support to work towards a referendum, however there is now a clear division between the Coalition and Labour parties when it comes to the model. The Coalition Government has stated that they do not wish to include a non-discrimination clause however the Labour

¹ The Business Council of Victoria: (http://www.reconciliationvic.org.au/user-data/Constitutional_Recognition/Chance_for_indigenous_constitutional_recognition.pdf)

² The Final Report of the Aboriginal and Torres Strait Islander Peoples Act of Recognition Review Panel: http://www.reconciliationvic.org.au/user-data/Constitutional_Recognition/FINAL_REPORT_OF_THE_ACT_OF_RECOGNITION_REVIEW_PANEL_3.pdf

³ The Expert Panel's Recommendations: <http://www.recognise.org.au/about/expert-panel-report/>

⁴ Interim Report: <http://goo.gl/cErk4d>; Progress Report: <http://goo.gl/6hg8lC>

⁵ Megan Davis: http://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/articles/Davis_ILB%208%2815%29PDF_Updated.pdf



government has declared its support for such a provision.⁶ As Megan Davis asserts, "...the primary objection to a non-discrimination clause is political: Australian politicians do not want a bill of rights, Australian politicians do not want their power to legislate to be constrained." From the perspective of many Aboriginal and Torres Strait Islander leaders, without this clause their support for Constitutional Recognition would be retracted.⁷ RecVic sees the inclusion of s116A as recommended by the Expert Panel as critical in ensuring substantial change.

There has been important analysis and coverage Larissa Behrendt has written a powerful piece which summarises the issues well. Ms Behrendt's article, "Recognition for Indigenous Australians is not like the republic. We need a model to debate", published in The Guardian discusses how 'The campaign for constitutional recognition has begun to stall in the absence of a model, and risks running out of steam from disinterest and disillusionment.'⁸ Last year's Australian of the Year, Adam Goodes "...called on his fellow Australians to fix the "heartbreak" that comes with excluding Aboriginal and Torres Strait Islander people in the Constitution, saying the nation can no longer "close its eyes" to a crucial part of its history."⁹

The past few months have seen the landscape continually shift. We have seen the campaign drop off the political agenda. This interim period has been damaging to the campaign and has seen the NO campaign emerge on a number of fronts¹⁰ with concerns about the reform agenda and the Recognise campaign. We have learned from some of the concerns raised is that the evidence used is not backed by constitutional law, there is a lot of misinformation and fear driving the NO case along with other concerns around priority and agenda. Dr Mark McMillan, a Wiradjeri man and senior lecturer at Melbourne University's Law School who has a background in constitutional law, stated at a forum recently¹¹, that this reform agenda does not impact on the sovereignty of Aboriginal and Torres Strait Islander peoples nor does it impact future discussions about treaties and agreements. Megan Davis and George Williams have further clarified this in their book 'Everything you need to know about the referendum to recognise Indigenous Australians'¹², "The proposed changes to the Constitution would be neutral on the subject [of treaty]...It is possible that a recognition referendum might make discussion of a treaty more productive." They go on to say that the federal Parliament already have the 'power to legislate for a treaty', "All this means that bringing about a treaty is not a question of constitutional power, but of whether the Commonwealth has the political will to pursue this course of action."¹³

⁶ Labour Support: <http://www.theaustralian.com.au/national-affairs/labor-backs-constitutional-racial-non-discrimination-clause/story-fn59niix-1227255752688>; Coalition statement:

⁷ Pat Dodson: <http://goo.gl/B94cTo> ; National Congress of Australia's First Peoples:

⁸ To read Larissa Behrendt's full article, follow this link. <http://goo.gl/xxwEQN>

⁹ To read Rosie Lewis' full article, published in The Australian on the 26th January, follow this link.

([http://www.reconciliationvic.org.au/user-data/Constitutional Recognition/Australia Day honours.pdf](http://www.reconciliationvic.org.au/user-data/Constitutional%20Recognition/Australia%20Day%20honours.pdf))

¹⁰ Examples of those advocating against Constitutional Recognition: Vote No to Constitutional Change:

<https://www.facebook.com/VotenoToConstitutionalChange> ; Recognise What?:

<http://recognisewhat.org.au/2014/>; Andrew Bolt: <http://www.heraldsun.com.au/news/opinion/i-am-you-are-we-are-australian/story-fni0ffxg-1226813342744>

¹¹ Rivers to Recognition Forum, February 12, 2015 at Maribyrnong City Council.

¹² Davis, Williams, "Everything you need to know about the referendum to recognise Indigenous Australians" (NewSouth, NSW, 2015) p124

¹³ *ibid*



The outcomes of the Federal Budget cuts to direct services have also become more apparent so the priority for ACCOs is to provide to their communities. The Federal IAS Funding has required services, under the Culture and Capability Programme, to support activities to raise awareness about the campaign; this puts additional pressure on services on top of their delivery areas. Of the 950 successful applications for IAS funding, only 250 were Aboriginal service providers.

Australia's leading medical groups have united to call for Aboriginal and Torres Strait Islander people to be recognised in the country's founding document, as a way to improve health outcomes. A coalition of 117 groups including the Australian Medical Association, National Aboriginal Community Controlled Health Organisation, the Cancer Council and The Heart Foundation has signed a statement calling on Australians to support constitutional recognition. A Recognise Health Website¹⁴ has been launched.

Alternative Proposals

An Indigenous advisory panel model has been put forward by Noel Pearson and the Cape York Institute (CYI)¹⁵, "Indigenous constitutional recognition should guarantee Indigenous people a better say in the nation's democratic processes with respect to Indigenous affairs."¹⁶ What the CYI has put forward echoes what Aboriginal leaders have been advocating for, for decades - self-determination. It is fundamental moving forward that Aboriginal and Torres Strait Islander peoples are involved in the decision making process when it comes to Indigenous Affairs. If an appropriate model can be developed that recognises the need and right for Aboriginal and Torres Strait Islander voices in the decision making process, that is supported through legislation, then we would provide in principle support, with the proviso that thorough and well-resourced community consultations are conducted. We appreciate the complexities in pursuing this issue. We nevertheless think that a rigorous consideration of possible approaches is necessary.

Recognise

Recognise is the national public awareness campaign which launched on Sorry Day in 2013. Recognise is part of Reconciliation Australia (RA) and is governed by the board of RA. Recognise receives funding from the Federal Government as well as through philanthropic and corporate supporters. The *Journey to Recognition* began its fifth leg, kicked off in Tweed Heads on the 5th March. For information about where to next and events that will be hosted alongside the Journey, visit the Recognise website¹⁷. Recognise received \$5 Million at the end of last year from the Federal Government, to be expended by the end of this financial year. This means they have received \$15M in the past 2.5 years to support a national awareness campaign. Recognise has produced a number of short videos which are valuable conversations starters. Visit their YouTube page¹⁸ for more details.

¹⁴ Recognise Health Website: <http://www.lowitja.org.au/recognisehealth>

¹⁵ Cape York Submission: <http://capeyorkpartnership.org.au/wp-content/uploads/2015/02/Supplementary-Submission-to-Joint-Select-Committee-January-2015.pdf>

¹⁶ Ibid. p4

¹⁷ The Journey to Recognition: <http://www.recognise.org.au/thejourney/>

¹⁸ Recognise YouTube: <http://goo.gl/JioM5q>



Our approach

RecVic has helped facilitate 122 events across Victoria since May 2013. We have held over 6,551 conversations with people about Constitutional Recognition through forums, stalls at festivals, school talks, and community/ organisational briefing sessions across the State since May 2013.

We have maintained a consistent approach over the past 18 months focussing on:

- Promoting **local recognition** of Aboriginal people, history and culture within communities across Victoria, to build a platform of recognition that would support CR – e.g. 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, where it could lead 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.

The **Victorian Constitutional Recognition Coalition** (established in 2011, of which we are a founding member) connects over fifteen organisations engaged and interested in the campaign, including non-Aboriginal peak bodies and organisations. The Coalition meets monthly and has been a valuable forum for coordination, information sharing and strategic discussions. The members include: Victorian Council Of Social Services, Uniting Church, Salvation Army, Victorian Council of Churches, Faith Communities Victoria, Oxfam, ANTaR Victoria, Geelong One Fire, Shepparton Reconciliation Group, Jewish Community Council of Victoria, Moreland and Maribyrnong Councils, and Aboriginal organisations: Victorian Aboriginal Child Care Agency (VACCA), Victorian Aboriginal Community Controlled Health Organisation (VACCHO) and Victorian Aboriginal Community Services Organisation (VACSAL).

We have kept the **reconciliation network** of 35 groups across the state up to date with information and resources on the campaign, including facilitating quarterly network meetings and offering encouragement and support to groups considering and running community events in their local area. Over half of these groups have already run their own local events raising awareness of Constitutional Recognition with support from RecVic.

We have direct relationships with around two thirds of the 79 **local councils** across the state, as well as strong partnerships with Victorian Aboriginal organisations and representative bodies, national organisations with state affiliates and universities. This has helped to facilitate conversations with diverse population groups including young people, older people and culturally diverse community groups.

What we have learned

We have built on our experience over the past few years and continued to foster and support our networks to raise awareness on CR. We have continued to meet the requests from across sectors to know about this issue, initiated work in different sectors and have valued the opportunities Available.



We are aware of the diversity of opinions on the issue; there are people and community groups who are concerned about aspects of this reform agenda.

We have learned from our involvement in raising awareness about the issue that there are three key elements that have been fundamental in our work: **partnerships, respect and advocacy.**

We are aware that there remains a significant section of both the Victorian and national populations who are unaware, ambivalent and/or disengaged about the issue; so we are continuing to offer culturally safe opportunities to engage with people across this spectrum.

Advocacy:

RecVic believes we have an important advocacy role in feeding back our experiences from the local level to others involved in the campaign in Victoria and those working on the proposal and campaign at a national level. Part of this approach is advocating that the extent and integrity of the Expert Panel's recommendations should be maintained, as there is significant community concern that these recommendations may be 'watered down'. In the next stage, we see advocacy as a key strategy with policy makers and important stakeholders in Victoria.

We have made a number of submissions to the Joint Select Committee¹⁹ as well as presenting to the Committee on August 14²⁰. We have also developed 3 briefing papers over the past 2 years²¹. We are able to share these experiences with key stakeholders in Victoria through the Constitutional Recognition Coalition, and feedback to Recognise and the Joint Select Committee through presentations and submissions to ensure that what we learn on the ground, and the voices of the people that we meet, are heard and factored into the decision making process.

Where to next?

We know that to achieve a successful referendum we need a double majority; a majority of people and a majority of states to vote yes. With a final proposal that has the general consensus of Aboriginal and Torres Strait Islander peoples, what are the other factors that can contribute to a successful referendum?

George Williams and David Hume's research²² has indicated that there are 5 factors:

1. Multi-party support;
2. Popular ownership;
3. Popular education;
4. Sound and sensible proposals; and
5. A modern referendum process

We are progressing on a number of these criteria, however without the final proposal being announced, it is naïve to think that the Australian population will wholeheartedly support constitutional recognition. To move forward we need a proposal that recognises Aboriginal and

¹⁹ See Submissions: <http://goo.gl/H660EP>

²⁰ See HANSARD: <http://goo.gl/l9jeXZ>

²¹ See RecVic briefing papers under 'Reports': <http://goo.gl/wTa6oY>

²² George Williams & David Hume, 'People Power: The History and Future of the Referendum in Australia' (UNSW Press, Sydney, 2010).



Torres Strait Islander peoples as the First Peoples of this continent, that continues to allow the Federal Government to make laws on behalf of Aboriginal and Torres Strait Islander peoples, as well as protects all Australians from racial discrimination. Once this has been achieved, a timeline should be announced so that the momentum is not lost and a properly resourced campaign is funded. Any proposal to amend the Constitution must first be passed, "...by an absolute majority of both Houses of the Federal Parliament. If passed by both Houses, it must be submitted to a national referendum."²³ This must happen within six months of being passed by Parliament. YES and NO campaigns will also be funded depending on how MP's vote in the Lower House. With only 8 of the past 44 referenda being successful we have an enormous task ahead of us. The critical element remains the model; without a clear, and effective model, this process will be muddied by the current political turmoil.

For more **media coverage**, or to find out more about the **proposal for Constitutional Recognition** please visit RecVic's [website](#). RecVic has a **Speaker's Registry** so if your school, workplace or community group would like to find out more about the campaign, please contact the office.

Contact Us

RecVic website: www.reconciliationvic.org.au

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²³ Electoral Backgrounder: Referendum advertising:
http://www.aec.gov.au/about_aec/Publications/Backgrounders/ref-advert.htm