

reconciliation



v i c t o r i a

Working towards just and respectful
relationships between Aboriginal
and non-Aboriginal people.

Treaty and its relationship to Constitutional Recognition

Geelong One Fire Presentation – November 18, 2014

“Long after each of us in this room have passed on, what we leave our children, and their children, in fact what we leave as our contribution to the Australian nation, will be measured by the legacy we build, or fail to build, now.”

Mick Dodson - National Press Club Address,
November 12.

Recognise This: Budat Mununggurr stands up for recognition



The Expert Panel's Proposal

Recommendations for changes to the Constitution:

- 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.

Voices of support from Aboriginal and Torres Strait Islander Community members:

- "We want to be recognised. It's just as simple as that. We've never been recognised. We are the first Australians, okay? And it is time we were recognised."

LOWITJA O'DONOGHUE

- "This is much more than a question of symbolism; this is a question of national wellbeing and national identity. It's about coming to terms with who we are as a nation and deciding who we want to be in the future. "

NOEL PEARSON, Cape York Institute

- Recognition means that Aboriginal children can believe they have a future in their own country. Recognition means that the long journey of reconciliation has reached another milestone as the nation recognises itself as an old and sacred land. A land that welcomes and treasures all its people.

MURIEL BAMBLETT, VACCA

- "It needs to be a campaign of preciousness and engaging in genuine dialogues about what we want to see achieved in this county"

KERRY ARABENA, The University of Melbourne

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.

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Constitutional Recognition: an update on the campaign and political climate

- 62% of the Australian public support Constitutional Recognition
- 34% of the Australian Public are aware of the campaign
- Of those who are aware, only 17% believe they have a good understanding of the issues.
- Drift.....leadership is required to move forward.

Timing of a Referendum

“The **timing of a referendum** also needs to be settled quickly to give renewed certainty that we are progressing to a vote and to build momentum. The complex and hard work of finalising a model does not get any easier with delays or deferral.”

Final Report of the Aboriginal and Torres Strait Islander Peoples Act of Recognition Review Panel

What about Treaty/ies and Sovereignty?

- The Expert Panel's recommendations do not negate the possibility of future negotiations for Treaties and agreement making processes.
- "The arguments that constitutional recognition will impact on the sovereignty of Aboriginal people or a treaty is not legally correct. The sovereignty that Aboriginal people claim as inherent is just that and it cannot be taken by anything the Australian constitution says. There is nothing so far proposed as part of the current constitutional reform agenda that would take away or undermine the ability for Aboriginal and Torres Strait Islander people to enter into a treaty." Larissa Behrendt.

Does Constitutional Reform negate Aboriginal Sovereignty?



Treaties and Agreement Making – Possible Frameworks

"One option would be to work towards a single national treaty for Australia. However, even when expressed as a national issue, calls for a treaty generally also include a commitment to regional and local decision-making. The desire for a national treaty as well as for community-based decision-making might be met by establishing a national framework treaty that facilitates further agreement-making. Patrick Dodson made an important contribution to this idea in his 1999 Vincent Lingjari lecture. Under this approach, a national treaty could establish the framework within which treaties at the local or regional level could be negotiated." TREATY (pp 132-134)

Treaties and Agreement Making – Possible Frameworks

The UNSW Treaty Project publication TREATY, written by Sean Brennan, Larissa Behrendt, Lisa Strelein, George Williams, TREATY, Federation Press, 2005

The Treaty Project sees the components of a national treaty framework possibly including:

- Statement of recognition & acknowledgment
- Supporting framework for negotiation
- Implementation framework
- Legal protection

Treaties and Agreement Making – Possible Frameworks

with further detail of these components extending to:

Supporting framework for negotiation

- policies & structures for more specific treaty-making
- content
- standards and benchmarks for recognition
- rights of indigenous people underpinning process
- supporting funding mechanisms
- responsibility for oversight of negotiations
- settlement of disputes
- role, if any, of courts

Treaties and Agreement Making – Possible Frameworks

Implementation framework

- Structures to support and secure implementation of agreements
- Standards for treatment of negotiated treaty rights in relation to further actions of government

Legal Protection for other treaties and agreements reached in accordance with this

- Must have “hallmarks of a treaty”
- Developed and determined jointly by the state and by Indigenous peoples
- Contain substantive provisions beyond mere platitudes
- Be binding on governments and other persons

The possible components of local or regional agreements may include:

- Setting
 - Recognition and acknowledgement
 - Principles and purpose
- Governance
 - Jurisdiction & authority
 - Indigenous governance
- Content
 - Land and economic settlements
 - Policy and program design (land and resource management, health, protection of cultural heritage, employment, education)
 - Program and service delivery
- Other Agreements: including cessation of claims
- Implementation: including monitoring

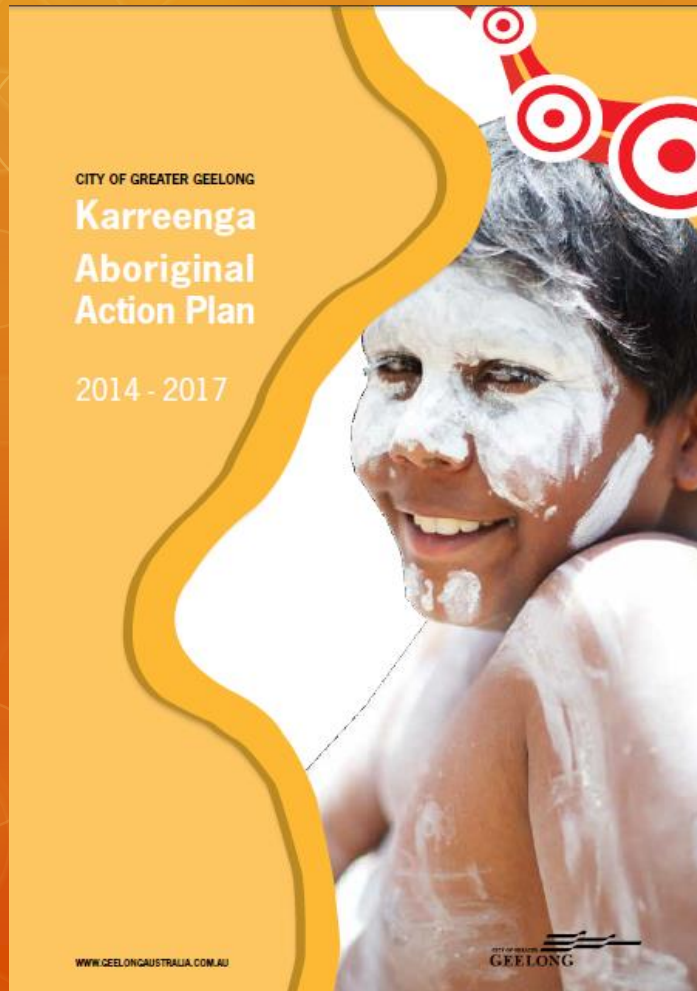
What is RecVic doing?

- Reconciliation Victoria and ANTaR Victoria formed the Agreements and Treaties Working Group in 2009 and are working with Aboriginal and other organisations to promote a rigorous consideration of the model and its relevance in Victoria, with intentions to:
 - Develop a capacity to talk about treaty/treaties more concretely
 - Tease out the details of the model of a national framework treaty supporting local and regional agreements, and understand what powers and actions are necessary to put this into effect
 - Propose consideration in the prolonged constitutional reform process of these necessary powers
 - Identify existing agreements which have some characteristics of treaty and consider how these might be strengthened

Regional Perspective: Geelong

- Indigenous Statement of Recognition and Commitment. (2009)
- Karreenga Aboriginal Action Plan (2014)
- Engagement with Wathaurong Aboriginal Co-operative, Wathaurong Aboriginal Corporation, Narana Creatings and Aboriginal people living in the region as well as the local reconciliation group (LRG) Geelong One Fire.

Karreenga Aboriginal Action Plan



Key Areas:

- cultural recognition and respect
- Aboriginal cultural heritage awareness
- development in arts and culture
- family and community support, and
- employment opportunities.

ACTION 6: Consider preparing a Treaty/Agreement....

A treaty and constitutional reform are not an either/or. We actually need both.”

Larissa Behrendt