

CONGRESS KEY ISSUES: CONSTITUTIONAL REFORM



WHY SHOULD I SUPPORT THE RECOMMENDATIONS FOR A REFERENDUM?

Throughout the history of the Australian nation our people have been calling for due recognition in the Constitution. But we know that change to the Constitution can be a good or bad thing, depending upon the question proposed and the outcome.

Congress is supporting the recommendations for a Referendum to change the Constitution. Congress representatives were included on the Expert Panel that has delivered a report to the Government.

The recommendations presented to the Government have been widely supported during consultations and focus group meetings undertaken by Panel member and through surveying our own Congress Members. The final report outlines the unanimous support by the Panel for the recommendations to Government on what reform should be undertaken. Read the executive summary [here](#) or the full report [here](#).

The Panel's report is a very good presentation of the need for action.

The Constitution of Australia is difficult to change and only a few referendums have been successful in the past 110 years. This Government has now created an important but rare opportunity to amend the Constitution with bipartisan support.

The recommendations prepared by the Expert Panel have been carefully researched to ensure legal clarity. They are designed to make simple but substantive improvement to the Constitution and at the same time have the potential to receive popular support in a Referendum.

The first goal was to ensure that recognition of the First Peoples was achieved in the text of the Constitution. Another important outcome was to remove two remaining elements in the Constitution that negatively refer to 'race', and to insert a clause that prohibits racial discrimination in law.

As a positive step the Expert Panel recommended that the Constitution be amended to ensure Parliament can only make laws for the advancement of Aboriginal and Torres Strait Islander people. The other addition to the Constitution is a clause to acknowledge Aboriginal and Torres Strait Islander culture and languages as part of the national heritage of Australia.

Here are the [full recommendations](#) that the Expert Panel is making to the Government.

The Panel found that there was not enough public support for the rights of the First Peoples to be set out in the Constitution and any proposal put to referendum would not be successful.

However expert legal advice was sought to ensure the recommendations do not limit or extinguish those rights. The report also identifies the ongoing calls by our people for a Treaty and the claims for our continuing sovereign status in our own lands See Chapter 9 of the report - [The question of sovereignty](#)

The Panel also incorporated into the final report a specific chapter which outlines the historical neglect and disregard. Chapters 1, 2 & 6 of the report traces the unequal and discriminatory treatment towards Aboriginal and Torres Strait Islander people in Australia.

Congress and the Panel both believe that:

- a referendum, as recommended by the Panel, will succeed with the support of Aboriginal and Torres Strait Islander people
- the majority of Australians are in favour of recognising the First Peoples in the Constitution
- these matters need to be resolved if there is to be reconciliation between all peoples of Australia.

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ARE WE STILL TRYING TO ACHIEVE A TREATY?

The proposed Referendum will in no way adversely affect any efforts being made by Aboriginal and Torres Strait Islander peoples for a Treaty with the Government.

Congress will support negotiations for a treaty with the Government after confirming Aboriginal and Torres Strait Islander people seek that arrangement. For our part the challenge to Congress is to obtain clear and consistent instructions from the people on how to achieve a treaty.

During its deliberations the Panel gave consideration to establishing a 'treaty-making' power in the Constitution. It was reasoned that a power might be considered to bind future Governments to any agreement signed with the First Peoples of Australia.

The Government already has the power to make agreements with the First Peoples. However future governments cannot be bound to such an agreement, by force of the Constitution.

After careful consideration and advice, the Panel concluded this proposal would not be supported or successful in a referendum.

The research undertaken by the Panel revealed that there was little support in the Australian public for such a proposal and Congress has accepted that Australians would not vote in favour of a Referendum on a 'treaty-making' power.

Congress is aware that a Treaty has been strongly advocated by the National Aboriginal Conference during the 1980s and the Aboriginal and Torres Strait Islander Commission.

Chapter 8 of the official report discusses 'Agreement-making'. Read it [here](#).

The Panel also concluded that agreement-making, based upon the free and informed consent of the First Peoples will be a major part in achieving good relations between the Government and the First Peoples.

WHAT ABOUT SOVEREIGNTY?

The Panel concluded the assertion of the sovereignty of the First Peoples would not be successful in a referendum.

The Constitution does not address Aboriginal and Torres Strait Islander sovereignty. The High Court of Australia has made legal determinations in previous cases that establish a ruling in favour of Aboriginal and Torres Strait Islander sovereignty would invalidate the Constitution.

As part of its discussions and considerations, the Panel commissioned research on the public views on the specific rights of the Aboriginal and Torres Strait Islander peoples.

This research leaves no doubt that a Referendum which seeks to establish any distinct rights of the First Peoples or addresses the question of continuing sovereignty of the first peoples would be defeated.

Congress recognises the sovereignty of Aboriginal and Torres Strait Islander peoples is a priority issue. Our Members and Delegates have already confirmed this priority. The pursuit of independent status of sovereignty or self-determination might be better pursued through international efforts and political negotiations in Australia.

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NATIONAL CONGRESS
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Congress Co-Chairs, as members of the Panel, relied upon specific legal advice whether the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution would weaken or adversely affect the peoples' claim of sovereign identity.

The advice received involved complex legal reasoning but ultimately expressed the view that the recommendations for Constitutional reform would not adversely affect any future legal claim of sovereignty.

Chapter 9 of the report is entitled [The question of sovereignty](#).

This chapter discusses the history of claims by the Aboriginal and Torres Strait Islander peoples, and presents the conclusion that reconciliation in Australia will be difficult to achieve – 'if not impossible' - unless Australians grapple with questions of the relationship with the First Peoples and the assertion of unceded sovereignty is addressed.

Read the full chapter [here](#).