



TREATY AND CONSTITUTIONAL RECOGNITION: MUTUALLY EXCLUSIVE OR MUTUAL GOALS?

This paper will outline the main arguments for a treaty or constitutional recognition of Aboriginal and Torres Strait Islander people. It will then examine some of the key organisations and individuals leading the campaigns for both of these movements as well as critiques of these movements.

AN OVERVIEW

The ongoing legacy of brutal dispossession, land confiscation, forced assimilation, denial of the vote, removal of children, failed policies, and continuing injustices have resulted in First Nation people of Australia calling for various remedies for these wrongs.

There are two current movements for change – one calling for Constitutional Recognition and another for a Treaty.

- a **Constitution** is a governing set of laws
- a **Treaty** is a contract between two sovereign parties

Currently, the Australian Constitution does not recognise that Aboriginal and Torres Strait Islander people lived in Australia for over 40,000 years, maintaining the oldest continuing culture on Earth.

Indigenous recognition in the Constitution has been framed by government and party leaders as not so much about changing the document but completing it – **a gesture of national reconciliation.**



Australia is the only Commonwealth country not to have a treaty with its First Peoples.

The idea of a treaty dates back several centuries. For example, in 1832, the Governor of Tasmania asserted it was “a fatal error... that a treaty was not entered into” with the Indigenous people of Tasmania. More recently, Prime Minister Bob Hawke promised (and failed) to deliver a treaty by 1990.

the ideas of treaty and constitutional recognition are not mutually exclusive

Closely tied to the issue of treaty is sovereignty. Many First Nation people claim sovereignty on the basis that Indigenous people never surrendered to the government and therefore have a right to self-govern and self-determine.

in 1982, the **Canadian Constitution** was separated from the United Kingdom. The new constitution included a Charter of Rights to secure legal and formal recognition of Aboriginal people in Canada and to affirm and protect treaty rights of these groups.

In **New Zealand**, the Treaty of Waitangi was signed in 1840 and is the founding document of the nation, rather than a constitution. The Treaty sets out a whole range of mechanisms for how the Maori Nation and New Zealand state should frame their relationship. This is further supported by political structures, such as the Maori Representation Act (1867) which created Maori-specific Parliamentary seats.

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RECOGNISE

RECOGNISE, part of Reconciliation Australia, is a people's movement to recognise Aboriginal and Torres Strait Islander peoples in the Australian Constitution and ensure that there is no place left in it for racial discrimination.

RECOGNISE asserts that providing constitutional recognition of Aboriginal and Torres Strait Islander peoples would help improve these communities' health and wellbeing, and be a significant step towards eradicating inequalities.

As a double majority vote to change the constitution is difficult to obtain, a significant component of work carried out by RECOGNISE is the national awareness campaign. Since 2012 this campaign has achieved the following:

- **Awareness of the constitutional recognition issue has doubled**
- **Over 300,000 Australians have signed up in support of a referendum.**
- **Over 75% of the general community support a referendum as do more than 87% of Aboriginal and Torres Strait Islander people.**

RECOGNISE has been criticised by a number of Indigenous community leaders particularly for its top down approach. Professor Marcia Langton has commented that the campaign encourages 'a blind yes' vote to a referendum question that does not yet exist.

What is most evident is that the next step in the healing process must be driven by and for the Aboriginal and Torres Strait Islander community in Australia.

NATIONAL CONGRESS OF AUSTRALIA'S FIRST PEOPLES

National Congress is a national, independent and representative body which aims to be a unifying voice for Aboriginal and Torres Strait Islander people.

The position of Congress on certain issues evolves with the views held by a majority of members. According to the organisation's website, "Congress supports reform of the Constitution to get rid of racism and recognise the culture and identity of our Peoples". This position was based on a 2011 member survey.

More recent polling data released earlier this year reveals that while 47% of members support constitutional recognition, over 68% agree that securing a treaty should be first priority.

WHERE TO FROM HERE?

It is possible for a debate about constitutional recognition and a treaty to occur simultaneously.

A number of well-known and respected Indigenous activists, including Lowitja O'Donoghue, Noel Pearson, Mick Gooda, and Stan Grant support this nuanced approach.

In a Reconciliation Week address delivered earlier this year, the Joint Campaign Director for RECOGNISE stated ***"treaty and constitutional recognition can coexist. We can work for both"***.

New Senator for Western Australia, Pat Dodson, in his first week, stated that ***"They're not mutually exclusive matters."***

This is Part 1 of a two part series.
Part 2 in February 2017 will look at the issues around Indigenous sovereignty in Australia.