

Constitutional recognition of Australia's First Peoples

"The feeling I get from people from all walks of life, from country people, from people in the cities, Aboriginal and Torres Strait Islander people: the time is right now to do this and I'm very confident that it'll get up."

Mick Gooda, Social Justice Commissioner



What is the issue?

The Australian Constitution was not written as a people's Constitution. In fact, it was drafted without the input of women or of Australia's Aboriginal and Torres Strait Islander population.

Since the removal of section 127 and the extension of the race power to apply to Aboriginal people in 1967, the Constitution has not been amended to make reference to Aboriginal Australians as a unique, distinct and important cultural group. The Australian Constitution in its current form excludes Aboriginal and Torres Strait Islander peoples. It also permits racial discrimination, as there are no enshrined rights of the Australian people in constitutional form such as in a constitutional bill of rights. The current state of the Constitution does not reflect Aboriginal peoples' prior occupation of Australia, custodianship of land, waters and sea, or contribution to our nation's history. Aboriginal people have sought constitutional recognition of their rights and legal legitimacy for decades.

Why now?

In December 2010 the Australian Government, with the support of the Opposition, the Greens and Independent members of Parliament, appointed an Expert Panel on constitutional recognition of Indigenous Australians. The task of the Panel is to advance the idea of constitutional recognition; and to explore how it might be achieved. The Panel's task is to consult with the community and make recommendations by December 2011 on options for constitutional change that could be placed before the Australian people at a future national referendum proposed to occur within the next 3 years. Australia's Constitution, as well as being the basis for all of Australia's laws, reflects our nation's values, its idea of itself. Aboriginal peoples - as the world's oldest continuing culture - must form a key part of that idea.

Why is Anglicare involved?

Anglicare SA has a role to play in the debate about constitutional recognition of Aboriginal Australians. We have an imperative to talk and raise constitutional recognition as an issue as we **believe** it is another step in overcoming racism. Aboriginal people are Australia's First Peoples and should be recognised in our Constitution. Our nation's most important document should represent our full history, our diverse cultures, and the true spirit of our nation. It should reflect our complete genealogy – not just one part of the family tree. Moving forward while acknowledging the past, **Anglicare is committed** to action on Reconciliation through meaningful engagement and participation with Aboriginal people in our communities and working towards grassroots responses to community need. We recognise that we still have a long way to go but we aim to walk together to actualise reconciliation.

Anglicare believes constitutional change is an important step towards Reconciliation. While it shows respect for the history and culture of the original custodians of Australia, we acknowledge it is not sufficient in addressing the social and economic exclusion still experienced by Aboriginal Australians.

For a Referendum to succeed, a majority of voters in a majority of States plus a majority nation-wide need to vote in favour of the proposed changes. Given that only eight out of 44 referendums to change the Constitution have been carried, **Anglicare believes** this is an important issue that needs greater community involvement and awareness.

What change is needed?

Anglicare SA supports both changes to the preamble and substantive change to the Australian Constitution in order to recognise the unique position of Aboriginal and Torres Strait Islander peoples.

Anglicare advocates for deep and transparent extensive consultation with Aboriginal people on any proposed changes. **Anglicare believes** non-Aboriginal people need to listen to Aboriginal people about the effects that their exclusion from the Australian Constitution, since it was written over 100 years ago, has on them as Australia's first peoples.

Anglicare advocates for non-Aboriginal people to consider with good faith the suggested changes coming from Aboriginal peoples.

Anglicare supports the following changes and looks forward to further analysis of each of these options to ensure that the consequences and impact will benefit Australia's First People.

Non-discrimination provision

Anglicare advocates for the insertion of a non-discrimination guarantee in the Constitution that prohibits racial discrimination. This would prevent discriminatory Commonwealth legislation being enacted. This would benefit all Australians as it would not be specific to Aboriginal people.

A new preamble

Anglicare advocates for a new preamble in the Constitution that recognises Aboriginal and Torres Strait Islander peoples' distinct cultural identity and prior ownership and occupation of waters and lands.

Anglicare believes this could be an important symbolic statement even though it would have little to no legal effect.

Deletion of the 'race power' in s51(xxvi)

Anglicare advocates for the removal of the race power so as to prevent it from being used to the detriment of a particular race.

Deletion of s25

Anglicare advocates for the deletion of s 25, which allows people of a particular race to be disqualified from State elections, which means they would not be counted in determining the number of seats that state is entitled to in the Federal House of Representatives. Inserted in its place could be a substantive guarantee of racial equality and non-discrimination.

Anglicare supports further analysis of each of these options to ensure that the consequences and impact will benefit Australia's First People.

What can you do?

- **Join the movement:** [Sign up](#) to Anglicare SA's campaign for Constitutional Recognition of Aboriginal People
- **Get involved:** Complete the [online surveys](#)
- **Have your say:** Join us in attending the Adelaide consultation of the expert panel – [register](#) with us if you would like to be part of the Anglicare group attending.
- **Participate:** Anglicare SA is holding a number of events in the coming months. Go to our [website](#) to find out more information and be part of the movement.
- **Join our cause** on Facebook at www.facebook.com/countmeinaus

Sources

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