

Recognition, Referendums and Relationships: Indigenous Worldviews, Constitutional Change, and the 'Spirit' of 1967

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The constitutional recognition of Aboriginal and Torres Strait Islander peoples is part of an answer to a larger question with which all colonial settler-states must contend: how to achieve a just resolution between those who were here before, and those who came after. This chapter explores the possibilities of such a resolution from an Indigenous perspective.

What is 'constitutional recognition'?

At the time of writing there is no finalised set of proposed changes, but it seems likely that any referendum question will include at least some of the proposals put forward by the Expert Panel on the Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (Expert Panel).¹ The Expert Panel – which was comprised of Indigenous and non-Indigenous community leaders, constitutional experts and parliamentary members² – made five recommendations for constitutional reform.³ First, the removal of s 25 – which contemplates that States can disqualify people from voting on the basis of their race. While s 25 is intended to discourage any such disqualification, it is still a relic of a discriminatory era insofar as it allows for racially-based disenfranchisement. Second, the removal of s 51(xxvi) – which empowers the Commonwealth to make laws for '[t]he people of any race, for whom it is deemed necessary to make special laws'. Section 51(xxvi) (like s 25) is seen as preserving outdated racial distinctions.⁴ Further, there is seemingly nothing that prevents s 51(xxvi) from being used to *adversely* target the peoples of a particular race.⁵

1 Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (Commonwealth of Australia, 2012) 205-12 (Expert Panel Report).

2 Ibid 234-9.

3 Ibid xvii.

4 Ibid 139.

5 See Robert French, 'The Race Power: A Constitutional Chimera' in HP Lee and George Winterton (eds), *Australian Constitutional Landmarks* (Cambridge University Press,

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