

Indigenous Constitutional Recognition: The 1967 Referendum and Today*

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This year marks the 50th anniversary of an extraordinary event in the history of Australia and I feel very privileged to be asked to share my perceptions about the nature and impact of this event.

The event, of course, being the successful 1967 referendum in which an overwhelming majority of Australians voted to amend certain sections in the Australian Constitution concerning Aboriginal people. Essentially these changes allowed for Aboriginal people to be included in the census and altered the ‘race power’ to allow federal parliament to make ‘special laws’ about Aboriginal peoples.¹

Firstly, I should acknowledge I am neither a lawyer nor an expert on legal constitutional issues. Secondly, although I have great respect for history, I am not a trained historian, and thirdly and importantly, my comments represent my own Indigenous perspective rather than being *the* Indigenous perspective on the subject.

Perhaps as some indication of the integrity or legitimacy of my perspectives, I would refer to my experience of over 30 years as a senior public administrator involved in Indigenous affairs and, in particular, to the 15 year tenure as the last principal and inaugural Chief Executive Officer of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)—which ended in December last year. I am extremely proud of my long-term association with AIATSIS.

To provide a reminding ‘snapshot’ of the social and political environment in 1967, I will highlight the prevailing issues of the time:

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¹ The question put at the referendum was: ‘Do you approve the proposed law for the alteration of the Constitution entitled—“An Act to alter the Constitution so as to omit certain words relating to the people of the Aboriginal race in any State and so that Aboriginals are to be counted in reckoning the Population”?’

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- Australia was still coming to grips with a new prime ministerial era involving a transition from the long-term Menzies era to the relative new administration and leadership of Harold Holt.
 - Domestically we continued to enjoy a long economic boom and the burgeoning mining boom was underway.
 - Australia's involvement in the war in Vietnam was a major cause of social and political unrest, giving rise to emerging fiscal resourcing challenges.
 - Sadly as an almost 'back to the future' scenario, Hobart bush fires claimed 62 lives and the 1966–67 summer was considered to be the worst cyclone season in eastern Australia on record.
 - The four digit national post code system was introduced and STD calls were possible in most of eastern Australia.
 - In the sporting arena, Red Handed won the Melbourne Cup, and, after long-term success, St George did not play in the National Rugby League Grand Final (won by the mighty South Sydney Rabbitohs) and Richmond started a new era by winning the Victorian Football League (now Australian Football League) flag.

From a broader international perspective, the 1960s were rightfully considered to be the age of protest and an era of significant reform across various important socio-political agendas (domestically and internationally) involving a number of prominent individuals as well as powerful collectives.

In May 1967, I was 19 years old and extremely unworldly and unwise regarding political matters, particularly in regard to constitutional matters. Perhaps my main concern at that time revolved around whether or not I was to be conscripted into National Service and how this might affect my life. However, despite my general unworldliness, I was nevertheless keenly aware of the discriminatory place and low social standing of Aboriginal peoples in Australia—developed in a visceral sense through the prism of the lived experience and the history of my own immediate family and kinship and community connections.

Although we were a small Aboriginal family residing in the Sydney inner city waterfront precinct of Millers Point (historically better known as 'The Rocks'), we were far from isolated from the wider Aboriginal community in Sydney (particularly in La Perouse and Redfern). As well, we were in touch (through frequent reciprocal visits and the reliable Koori 'grapevine') with family and other connections from our traditional Kamilaroi country, located in the New England area of New South Wales. Accordingly, this paper includes three components of my personal perspectives:

- a short commentary about the history up to 1967 and the nature of the challenges, demands and associated campaign for national constitutional reform on Aboriginal issues
- my personal recollection and perspective on the impact of the successful 1967 referendum
- my perspective on aspects of the significant challenges associated with constitutional recognition currently facing the nation.

The 1967 referendum questions

The 1967 referendum conducted on 27 May 1967 posed two questions. The first question for consideration referred to then and historically as the ‘nexus’ question represented an attempt to alter the balance of numbers in the Senate and the House of Representatives. My cursory research suggests that the coupling of the nexus question with the Aboriginal question was thought, by some political players, to have the potential to influence a more positive outcome for the nexus question. However, I do not cover this issue in this paper, suffice it to state that history shows the nexus question was not supported, having only achieved a majority in one state and a national ‘yes’ vote of around 40 per cent.²

The focus of this paper is the second question which was to determine whether two references in the Constitution which discriminated against Aboriginal people should be removed. The sections were:

51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

...(xxvi) the people of any race, *other than the aboriginal race* in any State, for whom it is deemed necessary to make special laws.

127. In reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, *aboriginal natives* shall not be counted.³

Those championing constitutional reform considered that the removal of the words ‘other than the aboriginal race in any State’ in section 51(xxvi), as well as the entire removal of section 127, was essential for the campaign to be successful.

² Strangman notes that ‘Clearly a majority of electors had distinguished between the two proposals and on the nexus question had rejected the advice of the parties they traditionally supported’ (Denis Strangman, ‘Two defeated referendum proposals 1967 and 1977’ in Richard Lucy (ed.), *The Pieces of Politics*, Macmillan, South Melbourne, Vic, 1979, p. 341).

³ Emphasis added.

It is probably unnecessary for me to state that the campaign was indeed successful, and spectacularly so, because the 1967 referendum saw the highest ‘yes’ vote ever recorded in a federal referendum with an unprecedented 90.77 per cent vote for change.⁴ Interestingly, according to Barrie Dexter, such a successful outcome—‘the size of the vote’—came as somewhat of a surprise to then Prime Minister, Harold Holt.⁵

Until that time only four out of the previous 24 referendum questions had been successful. I make the point that politically there was a bipartisan approach to this referendum and a ‘no’ case was not formulated or publicly articulated.⁶ I will comment more about this later in this paper.

The campaign for reform

The demands and the formal campaign for constitutional reform in Aboriginal affairs leading to the successful 1967 referendum had a long, complex, tortuous and, to say the least, frustrating history. It involved many champions and heroes—Aboriginal and non-Aboriginal alike. In this paper I can’t do justice to this struggle or to the role of individual leaders and participants, however I have attempted to paint a succinct picture of these demands—and the associated campaign supporting the 1967 referendum.

Universally, the demands for constitutional change were essentially about the federal government assuming control for Aboriginal affairs and therefore wresting control from the states (in concert with efforts seeking the removal of discriminatory and racist elements in the Constitution itself). Megan Davis and Marcia Langton have reminded us of the history of the calls for constitutional change and federal government control of Indigenous affairs by individual Indigenous leaders prior to the 1967 referendum. These include those made by David Unaipon (1926), Fred Maynard (1927), King Burruga (1933), William Cooper (1937), Doug Nicholls (1949) and the Yirrkala elders petition (1963).⁷ To this list I would add the 1938 ‘Day of Mourning’ protest held in Sydney involving Aboriginal leaders and activists Jack Patten, Bill Ferguson and Pearl Gibbs, as well as the 1965 ‘Freedom Rides’ under the leadership of Charles Perkins.

⁴ Subsequently the Constitution was changed, giving formal effect to the referendum result, by the *Constitution Alteration (Aboriginals) Act 1967*, which received assent on 10 August 1967.

⁵ Barrie Dexter, *Pandora’s Box. The Council for Aboriginal Affairs 1967–1976*, Keeaira Press, Southport, Qld, 2015, p. 15.

⁶ Nationally, 9.23 per cent voted ‘no’, with the highest ‘no’ votes recorded in Western Australia, South Australia and Queensland—said to be in those states and in rural areas where Aboriginal people were most visible.

⁷ Megan Davis and Marcia Langton (eds.), *It’s Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform*, Melbourne University Press, Carlton, Victoria, 2016, p. 4.

Such individual demands had long been supported by various organisations in a long history, which commenced in earnest from the early 1900s. The collective thinking, held by individuals and groups who wished for improvement in the lives and circumstances of Aboriginal peoples, was that the way to achieve such improvement was for the federal government to assume a greater (and controlling) role in Aboriginal affairs. According to Bain Attwood and Andrew Markus, these advocates:

urged the federal government to recognise Aboriginal welfare as a trust vested in the nation and argued that it should actually assume an Australia-wide responsibility for Aboriginal people.⁸

This reform position became a common and shared objective for the various individuals and groups who championed positive change. They included a wide diversity of individuals, political representatives and academics; humanitarian, church, feminist and welfare community groups; trade union representatives and others. However, until the 1960s, such demands appeared to fall on deaf ears as far as the federal government was concerned and certainly were vehemently opposed, to varying degrees and on various grounds, by the states.

At the risk of excluding significant players in the progressive historical demands for reform, I have attempted to summarise some elements of these events and developments (from federation in 1901) and these are included in Attachment 1 to this paper.

Despite the apparent bipartisan political environment, the history of this referendum campaign in the relatively brief period prior to early 1967 involved ongoing parliamentary scrutiny and debate. Significantly, around this time the Federal Council for Aboriginal Advancement (FCAA, later the Federal Council for the Advancement of Aborigines and Torres Strait Islanders) was established in Adelaide in 1958. At its annual conference in 1962, FCAA formally proposed to undertake a national campaign which ultimately became the successful coordinated campaign supporting the 1967 referendum.

During 1962 and 1963, the Federal Council for Aboriginal Advancement ran a national petition campaign calling for constitutional change. The campaign highlighted the discriminatory national laws and policies controlling the lives of Aboriginals. It included compelling factual evidence of discrimination involving voting rights, marriage freedom, parenting rights, personal mobility restrictions,

⁸ Bain Attwood and Andrew Markus, *The 1967 Referendum: Race, Power and the Australian Constitution*, Aboriginal Studies Press, 1997, p. 6.

property ownership, wage rates, alcohol consumption and the diversity and inconsistency of legal settings within and between states.

Remarkably, through its efforts, the national campaign collected some 103,000 signatures in 94 separate petitions, which were presented to federal parliament and ultimately secured parliamentary support. The referendum was conducted on 27 May 1967 with the ‘yes’ vote carrying the day and by an overwhelming margin!

Some critique of the campaign regarding myths and/or misrepresentation

The historical records confirm that essentially the ‘yes’ campaign was based on the call for the attainment of ‘citizenship’ for Aboriginals and our emancipation from discriminatory legislative restraints on our lives and freedoms, and on enabling the federal government to make special laws for Aboriginals.

However, there is no doubt that in the appeal to the public to support the ‘yes’ vote, there was a degree of either deliberate or misguided misrepresentation of what the 1967 referendum was all about by those advocating reform. In making this comment, I essentially focus on key interrelated issues—citizenship, voting rights and the nature and degree of the existing legislative discrimination.

Even today many commentators, both Indigenous and non-Indigenous, young and not so young, repeat the myths associated with the 1967 referendum and which disclose a fundamental misunderstanding of the nature of the referendum. Statements such as ‘when we got the vote’ and ‘when we became citizens of our country’ are often heard and, in my view, hark back to the 1967 campaign itself which utilised similar sentiments. Indeed, the very petitions which were prepared for the public campaign were headline captioned with the words ‘National Petition—Towards Equal Citizenship for Aborigines’.⁹

Citizenship

The Constitution makes no formal reference to citizenship—and, as others (including Paul Hasluck) have remarked,¹⁰ Aboriginals already had formal citizenship via the *Nationality and Citizenship Act 1948* (supported in various contexts by state legislation).

⁹ AIATSIS archives.

¹⁰ Attwood and Markus, *op. cit.*, p. 20.

Voting rights

Aboriginal voting rights date back to the 1850s and since then various state and federal legislation (including federally in 1902, 1949 and 1962, Western Australia in 1962 and Queensland in 1965) has incorporated and supported Aboriginal franchise.¹¹ While I readily accept that owing to a number of significant socio-political factors (including social exclusion and discrimination, education standards, general ignorance of and misinformation about the political system, as well as the ‘tyranny of distance’ affecting access to voting processes), many Aboriginal people either chose not to vote or were unaware of their eligibility to vote. Nevertheless, Aboriginal franchise was clearly not part of the constitutional reform of the 1967 referendum.

Discriminatory legislation

With regard to the discriminatory legislation existing at both a state and federal level, by around 1965 most of the discriminatory laws had been repealed by various federal and state governments (and here I emphasise that I am not referring to discriminatory administrative policies or practices and/or social discrimination but rather legislation).

By 1966, at a federal level, Aboriginal people were entitled to pensions and maternity and unemployment benefits. Progressively, in Victoria in 1957, New South Wales in 1963 and South Australia in 1966, state-based legislation was amended and repealed to remove long-standing oppressive and discriminatory laws.

At the time of the 1967 referendum, Queensland and Western Australia, where Aboriginal people still lived ‘under the Act’, retained discriminatory legislation covering the rights, lives and freedom of Aboriginal people (although both these states had allowed Aboriginal franchise). In so saying, I do not wish to ignore or dilute the harsh reality of oppression and discrimination still suffered by Aboriginal peoples even after discriminatory legislation had been repealed.

I would certainly not wish to do this when we are celebrating the 20th anniversary of *Bringing Them Home*, the 1997 report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. This report highlighted the entrenched assimilationist policies and practices which lie at the heart of the intergenerational trauma suffered by the Stolen Generations and their families.

¹¹ At the first federal election in March 1901, the franchise was extended to people eligible to vote in state elections, which in some states included Aboriginals. The following year, federal parliament passed the *Commonwealth Franchise Act 1902* which excluded ‘any aboriginal native of Australia, Asia, Africa, or the islands of the Pacific, except New Zealand’ from voting unless they were on the electoral roll before 1901. In 1949, parliament amended this Act to give Aboriginals who had completed military service, or who could vote in their state, the right to vote in federal elections. In 1962, this was extended to all Aboriginal and Torres Strait islander people. However, enrolment and voting did not become compulsory for Aboriginal and Torres Strait Islanders until 1984.

Sadly, I understand that many of the report's recommendations which go to supporting and healing our 'mob' have yet to be implemented. However, I am simply attempting to show that the degree and influence of discriminatory laws had positively shifted in the lead up to the 1967 referendum—although this situation did not appear to be acknowledged and was certainly not promulgated by the 1967 campaigners.

I have made the preceding comments in the interest of highlighting some myths about the 1967 referendum. I believe there are other aspects of the campaign which could be similarly challenged, however I will only focus on the preceding issues in this paper.¹²

While I do not make these comments as a criticism of the campaign or the campaigners themselves, it appears to me that those involved in the campaign did misrepresent the issues at stake, either by accident or design. I also restate that the main objective of the campaign was to secure Commonwealth Government primacy in Aboriginal affairs. Obviously the campaigners shaped and presented the case to appeal to a broader societal sense of social justice and fairness, and in ways which were easily digested and understood (and thus avoided any need to articulate the specific details of the amendments and/or any complex legal interpretations relating to these changes). My points here have resonance today in the context of the current constitutional reform discourse and I will come back to this later.

Impact of the 1967 referendum

My perception of the impact of the 1967 referendum has two strands or rather two distinct and separate narratives:

1. the immediate and short-term impact
2. the longer term impact.

These two aspects of my perspective are very different to each other.

Immediate and short-term impact

In attempting to describe the immediate and short-term impact of the 1967 referendum I am reminded of one of my late father's sayings. He would utter this expression when his expectations were not met on some key issue or event of personal importance—'They promised us the world and gave us an atlas!' This expression goes some way to describing my perception of the immediate impact of the 1967 referendum.

¹² For example, see the debate as to whether, prior to the 1967 reforms, the Constitution prevented the Commonwealth Government from becoming involved and/or taking control of Aboriginal affairs.

The campaigners had predicted a brave new world for all us blackfellas and proposed that a successful referendum would bring about great and immediate beneficial reforms through greater recognition, the application of social equality and a new progressive era of Aboriginal affairs. From my personal perspective, however, nothing changed at all in our lives. When the result was announced, I recall a number of family and Aboriginal friends acting rather celebratory about the outcome (including, in particular, my grandmother who was a big fan of Faith Bandler). I personally wondered what all, or indeed any, of the fuss was about!

There was absolutely no evidence to me that anything had changed at all. Indeed, I remember my family discussions gave some prominence to the right to legally patronise and be served in hotels as an important (albeit misconstrued) outcome of the referendum—and I have no recollection whatsoever of any other discussions or mention of the census and/or expectations about changes in Aboriginal affairs. As far as I could tell the referendum outcome had no impact on any of our other Aboriginal relatives and/or friends and community connections.

Certainly, I did observe the local non-Indigenous community appeared to be very satisfied and comfortable with the outcome. I feel our local non-Indigenous friends and community assumed the outcome signalled, somehow overnight, the closure on a bad old racist Australia and the beginning of a good new non-racist country where Aboriginal people would be given ‘fair go’. I also agree with the view that many non-Indigenous Australians regarded this line of thinking as an ‘act of redemption’, in that it resulted in all us blackfellas now being instantaneously the ‘same as everyone else’, enjoying the same rights and freedoms.¹³ I recall that the press coverage (and here I am mainly referring to radio broadcasts) appeared to give this impression.¹⁴

So from my perspective, apart from some immediate ‘feel-good’ responses, in the short term the 1967 referendum had very little impact whatsoever. Similarly (and with the benefit of hindsight), it is obvious that the successive federal coalition governments—in the immediate term the Holt administration and in the longer term the Gorton and McMahon administrations—took very little, if any, action at all to alter the status quo and to assume control of Aboriginal affairs immediately following the 1967 referendum outcome. This was despite the weight of the overwhelming ‘yes’ vote.

¹³ Attwood and Markus, *op. cit.*, p. 59.

¹⁴ In my view, the outcome confirmed to the broader Australian public what it always believed of itself—that Australia and Australians were fair-minded, humanitarian people who did not tolerate discrimination. This position, however honourable and laudable and which appeared to be held by most non-Indigenous Australians, was based on a complete lack of any in-depth knowledge or understanding about Aboriginal people and the history and the prevailing nature and degree of social, economic, legal and political discrimination and pervasive state control encountered by Aboriginal people in our everyday lives.

Faith Bandler, one of the heroes of the successful campaign, expressed similar views:

Changes following the referendum were disappointingly slow. Our earlier euphoria died down. The government despite putting the referendum to the people had themselves been lukewarm about it. This was evident not only from their pre-referendum posture but also from the absence of any real plan of action on which they should embark following the referendum. Meanwhile the lives of Aborigines virtually remained the same—still under state control...¹⁵

In this context we are also heavily indebted to Barrie Dexter for his memoir, entitled *Pandora's Box*, about his time as a member of the three-man Council for Aboriginal Affairs (together with economist Dr H.C. 'Nugget' Coombs and esteemed anthropologist Professor Bill Stanner) and as the newly appointed head of the Office of Aboriginal Affairs, which was established by Prime Minister Holt later in 1967 following the referendum.¹⁶ Dexter outlines in considerable chronological detail the work of the Council in the context of public policy. In doing so he paints a most salient picture covering the five years following the referendum as a regrettable period of 'political and bureaucratic apathy and a paucity of empathy, understating of and commitment to improving Indigenous lives'.¹⁷

Dexter describes the initial air of optimism when Prime Minister Holt established both the Council and the Office of Aboriginal Affairs. However, the following quote from Dexter summarises his view of the period following the referendum—and in my view appropriately describes the successive coalition governments' commitment and actions up until 1972:

the firm support that Mr Holt had shown for handling the Commonwealth's new responsibilities through the Council and the Office would, I reasoned, no doubt be continued by his governmental colleagues. *How wrong I was!*¹⁸

So from a number of perspectives, and particularly my own, the immediate to short-term impact of the 1967 referendum was negligible.

¹⁵ Faith Bandler, *Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders*, Aboriginal Studies Press, Canberra, 1989, p. 116.

¹⁶ Dexter, op. cit.

¹⁷ Paul Daley 'When two old foes opened Pandora's box, it unleashed an unlikely reconciliation', *The Guardian*, 29 May 2015, www.theguardian.com/australia-news/postcolonial-blog/2015/may/29/book-opens-pandoras-box-of-sad-tales-but-true-of-indigenous-experience.

¹⁸ Dexter, op. cit., p. 23. Emphasis added.

Longer term impact

My perceptions about the longer term impact of the 1967 referendum are very different to my thoughts and negative perception about its immediate short-term impact. I consider the longer term impact to be both positive and extremely profound. I am reluctant to use the word symbolic in this context because, while the outcome could be accurately described as being symbolic in many ways, in my view the impact also had a much greater, tangible, transformative nature, and therefore is both symbolic and substantial in its historical influence.

I base this view on a variety of integrated thoughts and evidence which collectively have convinced me that the outcome of 1967 referendum does represent an unprecedented critical and momentous tipping point in the history of progressive (and regressive) developments involving Australia's Aboriginal or, as it is nowadays referred to, Indigenous affairs sector.

Regardless of any myths and/or misrepresentations, I believe very strongly that the majority of my fellow Indigenous Australians take considerable comfort, confidence and moral strength from the 1967 referendum outcome. Many of us consider the outcome to represent the historic high point in our relationship with the nation and we collectively own and cherish this historic marker, despite any pragmatic assessment of what it was all actually about.

Even if not entirely accurate, it is good to talk about citizenship in the context of the 1967 referendum as a collective marker and moral compass point regarding our existence and dignity, our cultural integrity, our quest for recognition and respect for our place in the fabric of the nation. It is good to own such a collective historic tipping point in history as I believe it acts as a uniting influence in our arguments for change and for a better world.

A new beginning

The referendum outcome was directly responsible for the involvement of the federal government in Indigenous affairs—something we take for granted today. I have no doubt the progressive public policy and administrative reforms initiated firstly by Holt through the work of the embryonic Council for Aboriginal Affairs and later, and to a much greater degree, under the Whitlam government and by successive governments (both Labor and coalition) draw from and/or owe their origins to the strident 'call to arms' represented by the positive 1967 referendum outcome. This work resulted in the dismantling of residual discriminatory laws and policies of governments and paved the way for, and supported, more enlightened approaches and developments.

Another critical and tangible (as opposed to symbolic) outcome was that the federal government was given the power to make special laws on behalf of Indigenous Australians. While as Indigenous Australians we might now question or debate whether this power has historically been used beneficially or detrimentally (for example, the Northern Territory intervention and the suspension of the *Racial Discrimination Act 1975* three times), there is absolutely no doubt such powers represent a substantive reform and a real outcome of the 1967 referendum.

Assimilation/self-determination and beyond

At the time, some commentators may well have considered that the overwhelming ‘yes’ vote appeared to validate the policy of ‘assimilation’ in the collective desire for equality. However, conversely it appears clear to me that the 1967 referendum, which in the longer term heralded a more enlightened policy approach, actually acted as a catalyst in the dismantling of the policy of ‘assimilation’—initially into an era of ‘self-determination’ and then beyond.

This reform better acknowledged our existence, influence and voice as a distinct cultural group, and more accurately captured our position and aspirations as Indigenous Australians and our preferred relationship with governments. Hopefully such reforms can continue to lead to the elusive—and yet to be achieved—era of genuine ‘empowerment’, where the principles of the United Nations Declaration of the Rights of Indigenous Peoples, supported by real and shared engagement with ‘our mob’, are central and provide the fundamental template and drivers for any federal and/or state approaches, policies and practices in Indigenous affairs.

Census

Another significant impact which owes its origins to the 1967 referendum involves the national census and its collation from 1967 of extremely significant information about the size, composition and nature of Australia’s Indigenous population.

Such information is of critical importance to the public policy community (and others, including service delivery agencies and educators) and to the creation and shaping of policy, programs and projects aimed at addressing the wicked, intractable degree of intergenerational disadvantage suffered by Indigenous Australians. The national Closing the Gap campaign and associated initiatives rely upon such demographic information to provide the basis for setting aspirations, as well as for assessing progress at the various regional, state and national levels. Closing the Gap is important business and a direct and tangible result of the 1967 referendum.

Recognition and rights

I make the observation that the public policy and administration changes flowing from the 1967 referendum also coincided with—and tended to better recognise and support—emerging Indigenous collectives (for example, Aboriginal legal and health services and Aboriginal land councils) and the formation of a collective Indigenous identity and related movements.

Such groundbreaking individuals and groups sought a range of reforms (including initially land rights) but were particularly assertive in demanding greater recognition (domestically and internationally) of Indigenous Australians as a distinct, unique and resilient cultural group and as Australia's First Nations peoples. This involved recognition of both our rights as citizens as well as our special or unique rights as the First Peoples of Australia.

Professor Larissa Behrendt wrote:

the referendum remains an important moment in Australian history. The real achievement was the way the referendum united people across the political spectrum...it was an important step in furthering the political agenda for a new generation of Aboriginal activist.¹⁹

The size of the 'yes' vote

It is doubtful whether the overwhelming result of 1967 would be possible today. I say this with all due respect. However, I do so knowing that political and public perceptions have diversified and shifted considerably since 1967 and, of course, in 1967 there was the absence of a 'no' case—which would be unlikely today. I provide more comment about this later in the paper when reflecting on contemporary challenges.

In this context, the 1967 referendum and its impact is historically significant owing to the success and landslide strength of the 'yes' vote. Referring to the 1967 referendum, Davis and Langton maintain that the '1967 Referendum should be remembered on its own for a wonderful achievement of collaboration between Indigenous and non-Indigenous Australia'.²⁰

¹⁹ Attwood and Markus, *op. cit.*, p. 167.

²⁰ Davis and Langton, *op. cit.*, pp. 5–6.

High point and tipping point

Similarly, as further fundamental evidence of the significant and profound impact of the 1967 referendum, I would highlight the innumerable times that the event has been and continues to be referred to in public (and other) discourse by various Indigenous thought leaders, commentators, activists, politicians, academics, public servants, educators and others. Invariably, such references provide thoughts and discussions of a comparative nature involving the circumstances and the outcomes prevailing then and those of the present.

Invariably, in this context, the 1967 event and its significance are positively judged and portrayed as having acted as a catalyst for change and as basis for right and proper consideration of Indigenous matters which need to be recognised and/or resolved.

Such common and frequent references to the 1967 referendum outcome on anniversary dates and at other special occasions serve to highlight and reaffirm the significance of the event and its impact on society. In particular the importance and significance placed on the event by both Indigenous Australians and others during such times clearly reaffirms the weighty historical impact on the nation.

I feel that while many progressive and significant socio-political developments in Indigenous affairs have occurred since 1967—for example, the Aboriginal Tent Embassy, land rights, the Mabo decision and native title, reconciliation, Paul Keating’s Redfern speech, and the National Apology to the Stolen Generations²¹—the 1967 outcome is nevertheless a ‘stand out’ milestone as the most historic and significant influence in the relationship between Indigenous Australians, governments and mainstream Australia.

So in summary, I believe the 1967 referendum to be a watershed event, extraordinarily powerful in both symbol and substance. I believe it represents both a high point and tipping point in the history of Australia as a result of:

- the unprecedented success in the landslide ‘yes’ vote
- its success in securing the federal government’s involvement in Indigenous affairs, and related positive influence on dismantling discriminatory laws and policies and the breaking down of the ‘assimilationist’ policy regime applying up to the 1970s and since that time
- its contribution to the improvement of the nation’s capacity to better recognise and understand the scope and size of our Indigenous population and the degree

²¹ In my view, these are all connected to the outcome of the 1967 referendum.

of disadvantage suffered by Indigenous Australians—and therefore to design strategies to address such disadvantage

- the beneficial impact on the nature of the relationships between Indigenous Australians, governments and mainstream Australia
- its positive influence in the acceptance and recognition of Indigenous Australians as a resilient, culturally rich and unique First Nations peoples
- its unifying and mobilising effect on Indigenous Australians, as individuals and collectives, in our efforts to advocate for a better future and to do so with greater support and understanding from a more informed mainstream Australia.

A parity of esteem

I wish to record further personal thoughts about both the short-term and long-term impact of the 1967 referendum—which reflect my feelings at age 19 and which remain unchanged to the present day.

I strongly feel that in addition to addressing issues of equality and equity and the associated quest to ‘close the gap’ in various elements of our health, education and other socio-economic indicators, Indigenous Australians share another important aspirational objective. I refer to this quest as seeking a ‘parity of esteem’.

Many people who know me are aware that I have spoken about this objective often and for some time. My long-held thoughts have been most eloquently articulated more recently by Noel Pearson, who stated:

there is a basic democratic problem in our Country. Unless this nation continues to harbour that old pseudo-scientific belief in the inferiority of its Indigenous peoples—for some a matter of romantic tragedy and for others an unsentimentally brutal truth—then there is something wrong with the nation as a whole, rather than with the parlous minority.²²

By the attainment of a parity of esteem, I refer to the reaching of a point in time whereby Indigenous Australians and our identities, our cultures, our languages, our histories and our dignity as resilient peoples are afforded the same degree of respect as other cultures. In this and in the Australian context, I am specifically referring to the cultures collectively referred to as Western cultures.

As Indigenous Australians, as the most resilient cultural group on the planet, we are tired of being too often referred to, treated and considered as peoples whose cultures,

²² Davis and Langton, *op. cit.*, pp. 163–4.

languages, beliefs and histories are somehow inferior or secondary to others. We seek greater acknowledgement and respect for who we are and our place in the nation and the world.

In seeking this parity of esteem I believe we Indigenous Australians do not wish to deny, denigrate or usurp the cultures of others or to takeover the world. We simply seek to establish our rightful place in the nation and globally—we seek genuine mutual regard for the integrity and dignity of our ways of knowing, our ways of thinking, our ways of doing and who we are.

Despite the claims for a better world articulated by the successful 1967 referendum campaigners and despite other positives, I believe we did not go anywhere near achieving a parity of esteem at that time. Without ignoring the obvious goodwill and good faith involved, I feel the outcome of the 1967 referendum was driven by other societal influences more concerned with providing benevolent and patronising support to deal with the Aboriginal ‘problem’, rather than as a means of giving expression to the concept I refer to as a parity of esteem. Today we still have some way to go in this quest before we can really believe we have reached, truly share and maintain a parity of esteem between Indigenous Australians and other Australians.

Indigenous constitutional recognition—what does it mean?

I need to record that Indigenous constitutional recognition to me refers to having embedded in our Constitution both symbolic and substantive content which acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia, acknowledges and values the richness and diversity of our cultures, and provides permanent safeguards to ensure we have a role in decision-making and will be treated fairly.

There is universal acceptance that the original Constitution, supposedly the founding document of the nation, was drafted with a complete absence of any Indigenous considerations whatsoever save some elements of discrimination and exclusion. The 1967 referendum left some significant issues unresolved, including formal recognition of Indigenous Australians (and left unchanged the voting veto on the basis of race in section 25).

I acknowledge that Indigenous recognition, in the way I have defined it, can happen outside the Constitution (through common law and other legislative provisions). However, if we concur that the Constitution is truly the foundation document of Australia, that it provides the structural basis for our system of government, and somehow reflects our values as a nation, then I believe as Australians we must support the need for amendment.

As Professor George Williams has suggested, we must accept that it is ‘time to fix a silence at the heart of Australia’s constitution’.²³ So there remains some important, unfinished constitutional business to be conducted.

Indigenous constitutional recognition—contemporary challenges

I wish to acknowledge the 2017 First Nations National Constitutional Convention conducted under the auspices of the Referendum Council and convened in Central Australia from 23 to 26 May. This event, which was the culmination of 12 Indigenous-only ‘dialogue’ forums convened around the nation, is attempting to determine the preferred position (involving both symbolic and practical reform) on constitutional recognition from the perspective of Indigenous Australians.

Given Indigenous constitutional recognition is about us, Indigenous Australians, it is entirely fitting and proper that our views have primacy in deciding the nature and form of any constitutional amendments. Accordingly, in order to determine the preferred Indigenous position, the fundamental questions being put at these Indigenous dialogue forums and the National Convention—and which will hopefully be resolved—appear to be ‘Do you support constitutional change? And, if you do, what form do you think change should take?’²⁴

While I have not been involved in these events, in my previous role at the Australian Institute of Aboriginal and Torres Strait Islander Studies, I was involved in the scoping, planning and scheduling of these events in consultation with the eight Indigenous members of the Referendum Council under the leadership of one of my heroes, Patricia Anderson AO.

From a broader perspective, the First Nations National Convention has as a guiding template for possible Indigenous constitutional recognition the work and recommendations of two significant national consultations. These are the 2012 final report of the Expert Panel on Constitutional Recognition of Indigenous Australians and the 2015 final report of the Australian parliamentary Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. The First Nations National Convention can also draw from the Referendum Council’s 2016 discussion paper on the topic.

²³ George Williams, ‘Time to fix a silence at the heart of Australia’s Constitution’, *The Sydney Morning Herald*, 18 July 2014, www.smh.com.au/comment/time-to-fix-a-silence-at-the-heart-of-australias-constitution-20140717-ztwge.html.

²⁴ Referendum Council, *Discussion Paper on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples*, Department of Prime Minister and Cabinet, 2016, p. 1, www.pmc.gov.au/resource-centre/indigenous-affairs/discussion-paper-constitutional-recognition-aboriginal-and-torres-strait-islander-peoples.

In the interest of brevity, and for the purpose of this paper, I do not intend to articulate the details of each and every recommendation in either of these reports and discussions, but will make some selective comments about their deliberations and findings.

Both the Joint Select Committee and the Expert Panel have indicated there is strong national support for Indigenous constitutional recognition and this appears to be confirmed by the surveys conducted by RECOGNISE as part of its recent public campaign to raise awareness of the issue. Importantly, both the committee and Expert Panel have opted for a range or package of amendments rather than any single amendment to the Constitution.

In considering these reports, the Referendum Council has summarised the key proposals as including:

- drafting a statement acknowledging Aboriginal and Torres Strait Islander peoples as the First Australians as an introduction or preamble to a proposed new law-making power in the Constitution, or enshrining it as a statutory Declaration of Recognition outside the Constitution
- amending or deleting the ‘race power’, section 51(xxvi) of the Constitution and replacing it with a new head of power (which might contain a statement of acknowledgement as a preamble to that power) to enable the continuation of necessary laws with respect to Indigenous issues²⁵
- inserting a prohibition against racial discrimination into the Constitution
- providing for an Indigenous voice to be heard by parliament and the right for Aboriginal and Torres Strait Islander people to be consulted on legislation and policy that affects us
- deleting section 25, which contemplates the possibility of state governments excluding some Australians from voting in state elections on the basis of their race.²⁶

Please refer to the Referendum Council’s discussion paper for further explanation of each of these proposals.²⁷

²⁵ The report notes that ‘To pass a law on anything, the federal government needs to identify a head of power.’ At present section 51(xxvi) of the Constitution, which is referred to as the ‘race power’, is the ‘head of power that allows the federal Parliament to make laws regarding Aboriginal and Torres Strait Islander peoples on issues such as native title and heritage protection’. The Referendum Council recommended the new head of power avoid the word ‘race’ and describe who the power is to be used for. Essentially it would be the power to make laws with respect to Aboriginal and Torres Strait Islander peoples (ibid., p. 9).

²⁶ Ibid., p. 9.

²⁷ www.pmc.gov.au/resource-centre/indigenous-affairs/discussion-paper-constitutional-recognition-aboriginal-and-torres-strait-islander-peoples, pp. 8–11.

However, as the saying goes, the devil is always in the detail! And it also goes without saying that not only do we need to concern ourselves with the details about the content of any proposed amendments to the Constitution but we also need to have strong regard to the processes that support any referendum.

An obvious and fundamental concern about the issue of Indigenous constitutional recognition is that of securing the necessary double majority, that is a majority of 'yes' votes in a majority of states. This represents a momentous challenge in any referendum and, in my view, is particularly the case with this issue!

I quote Patrick Dodson:

History shows us that Australians tend to be cautious when it comes to changing the constitution, particularly if the proposition put to the voting public is not well understood.²⁸

Adding to my thoughts and Dodson's words, and to highlight the challenges involved, I echo the four principles adopted by the Expert Panel in developing its findings. These were that proposals must:

- contribute to a more unified and reconciled nation
- be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
- be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums
- be technically and legally sound.²⁹

There is considerable challenge in addressing these significant conditions today.

And further, the Expert Panel held concerns, as I certainly do, that:

For many Australians, the failure of a referendum on recognition of Aboriginal and Torres Strait Islander peoples would result in confusion about the nation's values, commitment to racial non-discrimination, and sense of national identity. The negative impact on Aboriginal and Torres Strait Islander peoples would be profound'.³⁰

²⁸ Davis and Langton, *ibid.*, p. 183.

²⁹ Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution*, January 2012, p. xi.

³⁰ *Ibid.*, p. xvii.

To which I would add that any negative impact would perhaps have a much deeper and more profound effect on, and say much more about, mainstream Australians and the nation with regard to its standing and position internationally—and any such negative impact would inevitably be long-term!

Importantly, in this context, the following factors of concern have also been articulated by the Expert Panel and again, in my view, are all extremely valid and reflective of the challenges ahead. According to the report, these factors are:

- whether there is strong support for the proposals to be put at referendum across the political spectrum
- whether the referendum proposals are likely to be vigorously opposed by significant and influential groups
- the likelihood of opposition to the referendum proposals from one or more State governments
- whether the Government has done all it can to lay the groundwork for public support for the referendum proposals
- whether there would be sufficient time to build public awareness and support for the referendum proposals
- whether the referendum would be conducted in a political environment conducive to sympathetic consideration by the electorate of the referendum proposals
- whether the referendum proposals would be seen by electors as genuine and meaningful so as to avoid the risk of rejection on the basis that they represent an inadequate or ‘tokenistic’ response to the profound questions raised by constitutional recognition of Aboriginal and Torres Strait Islander peoples.³¹

I believe that the response to these questions today would be either a resounding ‘no’ or give rise to serious uncertainty and I suggest that much more needs to be done. I will come back to these concerns.

To further help set the context from an Indigenous perspective, I refer to statements made at a very recent Indigenous dialogue forum held in Brisbane. The following positions were articulated by Indigenous participants, including members of the Referendum Council:

- Aboriginal people are interested in ‘proper substantive change’ and ‘As somebody said at one of the dialogues, if we can’t do something spectacular here it’s not worth doing’, ‘People are rejecting minimalism, some sort of

³¹ Ibid., p. xvii.

poetry or nice words. What we are asking for is very modest, we just want to have a say in the affairs and legislation that affects us' (Pat Anderson AO, co-chair of the Referendum Council).

- 'Indigenous People were focused on the best model, not on how to construct a successful referendum' and 'That means that politicians are looking at something very different from what Aboriginal people are looking at, and that tension will play out' (Megan Davis, a council member and Professor of Law at the University of New South Wales).
- Indigenous Australians are rejecting the 'elite', 'politicians' model' for changing the constitution and instead are 'overwhelmingly voicing a desire for changes that give them direct power over their future' (Professor Davis).
- The 'minimalist' model is the idea conservatives in the government are most likely to support—'What we are hearing is that's not enough. They want a bit of action; they want something substantive as well' (Professor Davis).
- Indigenous people 'appear to show interest in all of the substantive reforms that actually lead to some sort of structural change: the kind of reforms that will change the way in which business is conducted between the Government and Indigenous communities' (Professor Davis).
- 'This is possibly going to be part of making history and I want to play a positive part in building a history that's going to influence the future for my kids' (Nughi and Noonuccal teacher Chelsea Rolfe).³²

From my perspective, these comments are extremely salient and instructive!

The discussions at the Indigenous dialogues will have no doubt covered wide-ranging issues, questions and positions which embrace various extremes, from that of those who champion substantive constitutional reform to those who have no interest in the Constitution and therefore do not see any value in or need for change. I respect all such views.

In this paper I am not ignoring either the 'S' word or the 'T' word—and I readily recognise that both the issue of sovereignty and the concept of a treaty (or treaties) will provide legitimate grounds for discussions at the Indigenous dialogues and the National Convention. However, I am attempting to stick to the script in my discussion around the issue of Indigenous constitutional recognition.

³² These are selected quotes from ABC News found at www.abc.net.au/news concerning the recent Brisbane Indigenous dialogue forums, see 'National recognition talks show Indigenous appetite for real change, not lip service', 24 April 2017, www.abc.net.au/news/2017-04-24/indigenous-people-want-substantive-change,-talks-reveal/8467318, and 'Constitutional recognition: "politicians' model" faces lukewarm response by Indigenous Australia', www.abc.net.au/news/2017-03-07/politicians-model-constitutional-recognition-faces-rejection/8332758.

Treaty or treaties

I am aware that the issue of and any discussion about a treaty (or treaties) has been dismissed and/or assigned to an unspecified time in the future by our political leaders. I am also aware some political players feel that the concept of a treaty either detracts or places restraints around progressing constitutional recognition. I believe that this does not need to be the case and that constitutional recognition and the concept of a treaty are not mutually exclusive and can be integrated or linked in ways which can bring value and meaning to both.

I place on record my view that constitutional reform and the establishment of a treaty—or a package of treaties—between the federal government and Indigenous Australians are both worthwhile aspirations. I believe that there is considerable value and benefit to the nation in pursuing and securing both meaningful constitutional change and agreement in the form of a treaty (or treaties) in order to address unresolved issues of sovereignty and historical grievances.

I believe that as a nation, Australia should recognise that where treaty making has been used internationally (for example, New Zealand, Canada and the United States), such instruments and processes have served these nations and the relationship with their Indigenous peoples very well in the past and will continue to do so.

Concluding perspective

The preferred and legitimate Indigenous position on constitutional recognition has not yet been established and any final recommendations made to the government via the Referendum Council are awaited with particular interest. There are very strong indications that the Indigenous peoples involved in the dialogues are not simply discussing but advocating quite substantive reforms to the Constitution.

Accordingly, we have a potential convergence—or perhaps confrontation—of a package involving substantive Indigenous reform (assuming it is supported by the Referendum Council in any considered recommendations to government) versus conservative positions of what the government and others might support.

The conservative position would probably be based on a practical consideration of what might be achievable in a referendum process and other opposing views, including ‘the pendulum has swung too far’ type of responses from the past. As Professor Megan Davis has suggested, it will be very interesting to see how this ‘tension’ will play out.

Challenges

However without specific knowledge of the Indigenous preferred position, and to reflect my own Indigenous perspective on the challenges facing the country at the present time, I record the following personal thoughts:

- Securing strong support across the political spectrum for the proposals to be put at referendum will be extremely challenging. I hold this view in the context of the current political environment and the machinations of major parties, minor parties and independents, and their respective propensity for adversarial and oppositional positions and behaviours. I also note the emergence of xenophobic positions and re-emergence of the fear and/or loathing of racial and cultural difference playing out in the political and public discourse, both domestically and internationally.
- Similarly, I do not feel that a referendum today would be conducted in a political environment conducive to sympathetic consideration by the electorate.
- It is highly likely that any proposals will be vigorously opposed by significant and influential groups, possibly including one or more state governments. Unlike 1967, I expect there will be a strong ‘no’ case and I understand the ‘no’ case will be supported by government funding (in order that the federal government be seen as honest brokers). I believe the more detailed and substantive constitutional change proposed, the stronger the opposition.³³
- Much more needs to be done, and undoubtedly more time is needed to create public awareness, before Australians can be satisfied the government has done all it can to lay the groundwork for effective public engagement and support, or otherwise, for any referendum proposals, and to dispel perceived concerns about a lack of interest.
- There is considerable risk that any referendum proposals may not be seen by electors as genuine and meaningful, so we need to avoid risking rejection on the basis that the proposals are inadequate or ‘tokenistic’—my fears here relate more to the Indigenous electorate and their perspectives and likely positions.

Misgivings

To complete my own Indigenous perspectives and obvious misgivings about the current challenges, I would add the following points:

³³ See Noel Pearson’s analysis and critique of the likely opposition from ‘more hard hearted unempathetic liberals who oppose any form of Indigenous rights and recognition whatsoever’ in Davis and Langton, *op. cit.*, pp. 163–179.

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- Most Indigenous Australians support both symbolic *and* substantive reform and they will resoundingly reject any reform that is only symbolic, cosmetic or minimalistic in nature.
 - If any substantive reforms are rejected or seriously diluted or compromised by the government then I believe the Indigenous leadership, supported by the Indigenous electorate, will simply walk away.
 - From an Indigenous perspective, Indigenous constitutional recognition will take ‘as long as it takes’ and the timeframe will not be hijacked or unduly influenced by the political convenience or expedience and agendas of others.
 - Indigenous constitutional recognition should not be achieved at any price. I am deeply concerned that any public, social or political airing of the arguments for and against constitutional change carries a real threat to our social cohesion. With this in mind, I make the following points:
 - The public debate around any proposed Indigenous constitutional recognition needs to be absolutely respectful by all involved.
 - All campaigners and advocates need to be fully aware of the sensitivities in any arguments and the potential for hurtful and divisive impact and fallout.
 - The risk in causing any immediate or longer term damage to social cohesion and unity needs to be anticipated by the avoidance of any ill-considered public statements and positions.
 - Racism and cultural denigration will divide us and will deter and even destroy any real and potentially beneficial engagement.
 - Put simply, I seek to protect my family, my children and grandchildren from harm by being denigrated and/or dismissed as second class Australians because of some misguided, uninformed or racist contribution to the debate.
 - We claim to uphold the values of a democratic country and so surely in such an important public discourse we can display all the respectful qualities of a truly civil society. This is certainly my fervent hope.
 - Hand in hand with these misgivings, I reiterate my hard held concerns that *an unsuccessful referendum* dealing with Indigenous constitutional recognition *would deal a tremendous blow to Australia’s international standing as a modern nation* which values its reputation for liberal thinking, equality and human rights. Further, on this issue:
 - Indigenous Australians do think about, respect and cherish our reputation as a county internationally.
 - Such nationalistic pride is not the exclusive province of non-Indigenous Australia. Mind you, as Indigenous Australians, we

approach these matters from very different cultural and historical paradigms and experiences. To a very large degree that is what the concept of Indigenous recognition in the Constitution is all about! It is about recognition and respect for our existence and history before and since 1770, and the resilience of our peoples and our cultures as the First Australians within a modern, multicultural nation made up of and shared by more recently arrived Australians.

- The indelible global blemish on the Australian nation created as a result of an unsuccessful referendum outcome would last for a very long time indeed—given the time frame required to achieve any redress (and which would require revisiting the same constitutional referendum processes).
- I repeat my view that such an outcome would speak much more harshly about the broader Australian nation than about its minority Indigenous population.

Conclusion

In conclusion, I would like to briefly revisit the issue of a ‘parity of esteem’ that I raised earlier. In this paper I have voiced strong reservations and concerns about the challenges in achieving Indigenous constitutional recognition. Nevertheless, I remain optimistic in the firm belief that Indigenous constitutional recognition is an honourable aspiration for all Australians, which is achievable and well overdue.

However, I would hope whatever the proposals may be and however we may conduct the debates, we could together as a nation make some significant progress towards achieving the illusive ‘parity of esteem’. If we were to do this, through stronger mutual regard and respect for each other, I have no doubt Australia would be a better country and that all our lives and life choices, and those of our children and their children, would be greatly enriched and be much more rewarding and fulfilling.

In so saying, I believe that the ‘wonderful achievement of collaboration between Indigenous and non-Indigenous Australia’, which Megan Davis and Marcia Langton spoke about when referring to the impact of the 1967 referendum, could be revisited and repeated at some time in the very near future.



Attachment 1

The following information provides a succinct history of the demands and claims for constitutional reform relating to Indigenous Australians from federation until the 1967 referendum.

1910

Public records disclose that very soon after federation, and specifically in 1910, the Australian Board of Missions was prominent in its call for the federal government to assume control of Aboriginal affairs on a shared basis with the states.

1913

The Australasian Association for the Advancement of Science (supported by its committee on Aboriginal welfare) made similar demands after the Commonwealth assumed control of the Northern Territory in 1911 (prior to this the NT was administered by the South Australian government). At the time, the Aboriginal population (and the Aboriginal ‘problem’) was in the clear majority in the Northern Territory.

1920s

The Association for the Protection on Native Races (involving church and anthropological interests) urged the Royal Commission on the Constitution to recommend the Constitution be amended to enable the federal government to assume ‘supreme control for all Aborigines’.³⁴ These demands were supported by others, including the Australian Federation of Women Voters, the Victorian Women Citizen Movement and the Australian Board of Missions.

At the same time, international interest and advocacy through the London-based Anti-Slavery and Aborigines Protection Society raised the spectre of Australia’s reputation as an emerging nation and its place in world affairs and position on human rights.

1929–33

The 1929–31 papers of the Royal Commission on the Constitution recorded that the majority of the commission failed to support the collective calls for reform.

1930s

Concerted reform efforts of humanitarian, scientific and feminist community advocates were supported by various Aboriginal bodies, with the Australian Aborigines’ League being the most prominent.

1938

The famous Aboriginal ‘Day of Mourning’ protest was held in Sydney to protest against Australia’s sesquicentennial celebrations. Once again the call for the federal government to assume control of all Aboriginal affairs was the overriding issue—and importantly the protestors called for a national program that would ‘raise all

³⁴ Attwood and Markus, *op. cit.*, p. 7.

Aborigines throughout the Commonwealth to full Citizen Status and civil equality with whites in Australia'.³⁵

1939–45

During World War Two, advocacy for reform slowed but still continued. In 1942, when the issue of reform of Commonwealth powers was raised, the Association for the Protection of Native Races (and others) championed constitutional change to bring about federal control of Aboriginal affairs.

In 1943, the United Associations of Women and other feminist groups issued a Women's Charter which included a call for federal control of Aboriginal affairs. The Association for the Protection of Native Races (led by Sydney University's Professor of Anthropology, A.E. Elkin) made the same demand, saying it was time 'to bring into line the Aboriginal policies, acts, definitions, and regulations which prevail in different parts of the Commonwealth. They should be framed and administered from a national point of view'.³⁶

1942–44

A Curtin Labor government-sponsored constitutional convention recommended that certain powers be transferred to the Commonwealth for five years. As a result, in 1944, proposals essentially covering post-war reconstruction were presented in a referendum, including transferring the power for Aboriginal affairs to the Commonwealth. It is of interest that the issue was specifically referenced with regard to Australia's post-war 'special responsibility towards the native peoples of the South-West Pacific' (including those of New Guinea).³⁷ No doubt such considerations included sensitivities around international concern over Australia's treatment of its own Indigenous people. The referendum failed.

1945–50

After the war years, advocacy for constitutional reform continued involving various advocacy bodies including the National Missionary Council, the Association for the Protection of Native Races and the Aborigines Uplift Society. Such campaigns were supported and indeed greatly influenced by Aboriginal organisations such as the Aborigines Progressive Association (led by Bill Ferguson) and the Australian Aborigines' League (led by Doug Nicholls and Bill Onus).

1950s

The 1950s saw the successful establishment in Melbourne of a national organisation, the Council for Aboriginal Rights, to take up the cudgel. Its main initial thrust was to test existing laws against the standards of the United Nations' Universal Declaration of Human Rights.

³⁵ Ibid., p. 10.

³⁶ Ibid., p. 11.

³⁷ Ibid., p. 11.

By this time, the calls for constitutional reform had begun to gain traction. In the late 1950s the involvement of prominent socialist and feminist activist, Lady Jessie Street, who was the Australian representative of the Anti-Slavery Society, together with other socio-political developments, gave the reform objectives much more prominence and influence.

Undoubtedly, Lady Street's actions in elevating the treatment of Australian Aboriginals to the international stage and purview of the United Nations Commission on Human Rights was very powerful—and indeed compelling in the context of engaging the interest and support of the Australian public.

1956

Street's involvement coincided with the Australian Government's decision in 1956 to allow the British government to test atomic bombs in the Warburton Ranges in Central Australia, which resulted in the traditional Aboriginal people being driven off their ancestral lands. A report on the plight of these people disclosed deplorable treatment and ignited an explosion of protest from various groups, including politicians, church people, the Council for Aboriginal Rights (Shirley Andrews) and the Australian Aborigines' League (Doug Nicholls and Bill Onus), as well as the Women's International League of Peace and Freedom, the Council for Civil Liberties, members of the Communist Party of Australia, and of course the public at large.

As a result, renewed calls for constitutional change emerged with considerable public support and further public airing of the plight of the Warburton Ranges Aboriginals. Their wretched status and the horrific conditions they lived in fanned the fire of reform.

By this time, the calls for federal control of Aboriginal affairs (via constitutional change) were being indivisibly connected to the need for both the repeal of discriminatory racial laws and the conferring of full citizenship rights.

1950–early 1960s

Despite the apparent bipartisan political environment, the history of this referendum in the two-year period leading up to early 1967 involved ongoing parliamentary scrutiny and debate (championed by parliamentarians such as Bill Wentworth, Gordon Bryant and Kim Beasley snr). Significantly, it was around this time that the Federal Council for Aboriginal Advancement (later the Federal Council for the Advancement of Aborigines and Torres Strait Islanders) was established in Adelaide in 1958. At its annual conference in 1962 the organisation formally proposed to undertake a national campaign—which ultimately became the successful coordinated campaign supporting the 1967 referendum.

1962—the petition campaign

From 1962 to 1963 the Federal Council for Aboriginal Advancement prosecuted a strategy known as the petition campaign, which sought to highlight to the public the legal discrimination faced by Aboriginal people as fundamental evidence to support

constitutional change. This campaign (led by Shirley Andrews, Gordon Bryant, Barry Christopher and Stan Davey) showcased the discriminatory laws and policies controlling the lives of Aboriginals. It included compelling factual evidence of discrimination involving voting rights, marriage freedom, parenting rights, personal mobility restraints, property ownership, wage rates, alcohol consumption and the diversity and inconsistency of laws governing Aboriginals within and between states.

The main emphasis of the petition campaign was ‘upon Aboriginal people being treated the same as other Australians’³⁸ and the campaign called for an amendment to section 51(xxvi) of the Constitution.

Despite the bipartisan political environment, the public campaign nevertheless had an interesting and somewhat testing journey. This included agreement to and rejection of a referendum by the Menzies government in 1965—which incidentally had been heavily influenced by the Student Action for Aborigines’ ‘Freedom Ride’ protest in country New South Wales (led by Charles Perkins) which exposed to an unprecedented degree the entrenched nature and reality of racial discrimination.

Remarkably the national campaign ultimately collected some 103,000 signatures in 94 separate petitions. In addition to the public discourse, the campaign gave rise to many (supportive and opposing) cabinet and parliamentary debates and deliberations (involving a number of political luminaries including Robert Menzies, Holt, Beasley, Bryant, Billy Snedden and Hasluck) and led to two private members bills (introduced by Arthur Calwell and Billy Wentworth).

As an interesting highlight, in September 1963 Prime Minister Menzies agreed to meet with a delegation from the Federal Council for Aboriginal Advancement which included Gordon Bryant, Shirley Andrews, Joe McGuinness and Kath Walker (who later changed her name to Oodgeroo Noonuccal). During the meeting, Menzies offered Walker an alcoholic drink and was promptly informed that in so doing he was breaking the law. It was proposed that this incident encouraged Menzies to ‘give the situation of the Aborigines more thought’ and was considered by both Faith Bandler and Gordon Bryant as representing a ‘turning point’ in the campaign.³⁹

1967—referendum conducted

Ultimately parliamentary support was secured and on 27 May 1967 the referendum was conducted, with the ‘yes’ vote carrying the day and by an overwhelming margin.



³⁸ Attwood and Markus, *op. cit.*, p. 29.

³⁹ *Ibid.*, p. 33.

Question — You have emphasised how demoralising it would be for Aboriginal people if a referendum were lost, and that of course takes one immediately to how wide should the referendum be, what should be the content? Should it be formal? Should it be substantive? You also advocated for Indigenous people to have a voice and a right to be consulted. That obviously lends itself to distortion in a ‘no’ campaign. What are the considerations for determining whether to risk loss through including substantive provisions or whether to keep it to a minimum to enhance the prospects of success?

Russell Taylor — Even though the Aboriginal people who have been involved in the dialogues and in the current convention that is happening in Uluru have been advocating substantive reform, I do think that the leadership would try to consider not just the legitimacy of those substantive amendments but also the issue that of course we are all concerned about, which is what is doable or possible within a referendum. I think the Indigenous leadership will have regard to what is doable and might be prepared to compromise on certain elements of the substantive amendments, but I still believe that whatever is left after they do that will still be substantive.

Question — Could I ask Mr Mackerras, our well known psephologist who is here today, having heard Russell’s earlier presentation, and the qualifications he made about the prospects of the constitutional amendment in relation to Aboriginal rights and recognition, what is your guess as an experienced political observer as to how that may fare today?

Malcolm Mackerras — My guess is there won’t ever be a referendum for the simple reason that the Aboriginal leadership will make demands which would be described as ‘making the perfect the enemy of the good’, but eventually there will be a declaration of Aboriginal occupation of Australia which would be made separate to a referendum. It would to some extent help the Aboriginals to have an official declaration to that effect which is distinct from people simply saying so.