

Wednesday, 16 May 2012

Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution

The Constitution of Australia establishes the framework for the laws and government of our country. To change the Constitution of Australia, a national Referendum that passes through a double majority – an overall majority of votes along with a majority of voters in a majority of states – is required. In the history of Australian Federation, 8 Referenda have been carried from 44 propositions.

The highest supporting vote – 90.77 per cent – for an Australian referendum was attained in 1967. This was on the proposal to remove the discriminatory treatment of Aboriginal people in section 51 and the removal of section 127 from the Constitution:

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 people in any State, for whom it is necessary to make special laws.

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

The practical effect of the changes enabled the Commonwealth to enact specific laws for Aboriginal and Torres Strait Islander peoples (previously the responsibility of the states) and enabled Aboriginal and Torres Strait Islander peoples to be counted in the census.

The long public campaign in the lead up to the vote in 1967 was spearheaded by the Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI), an organisation consisting primarily of Aboriginal and Torres Strait Islander peoples, Trade Unions, and Churches. Whilst this campaign was overwhelmingly successful, in the eyes of Aboriginal and Torres Strait Islander peoples and Australians committed to reconciliation, further changes to the Australian Constitution are needed.

Pat Dodson, Yawuru elder and co-chair of the You Me Unity Constitutional recognition panel, argues that the Constitution of Australia is based on the principle of Terra Nullius.

It is silent on the issue of recognition of Aboriginal and Torres Strait Islander peoples, and despite the changes made to the Constitution in 1967, Section 25 still enables the Government to disqualify people from voting on the basis of race.

In recognition of these issues, prior to the 2010 Federal election, all major political parties in Australia committed to holding a referendum on including a reference to Aboriginal and Torres Strait Islander peoples as the First Nations peoples of Australia in the Constitution.

In December 2010, the Gillard Labor Government appointed the You Me Unity Panel to consult with the Australian public on these matters. The panel recommends that:

- Section 25 is removed;
- Section 51 (xxvi) is removed;
- A new section 51A is adopted to recognise Aboriginal and Torres Strait Islander peoples and to preserve the Australian Government's ability to pass laws for the benefit of Aboriginal and Torres Strait Islander peoples;
- A new section 116A is adopted, prohibiting racial discrimination;
- A new section 127A is adopted, recognising Aboriginal and Torres Strait Islander languages while confirming that English is Australia's national language.

It is we the people of Australia who can change our Constitution. The active engagement of the Australian public in this national conversation is crucial. This conversation must focus on Australia's national identity, the concept of belonging, and the place of Aboriginal and Torres Strait Islander peoples as the First Nations peoples of our country. Although it will be a challenge to achieve consensus, history tells us that bipartisan support is crucial to success.

Action

The Australian trade union movement now has an historic opportunity to engage in the campaign to recognise Aboriginal and Torres Strait Islander peoples and remove racial discrimination in the Constitution of Australia. It has a large role to play in educating and informing union members and the Australian public on Constitutional change.

The ACTU Congress believes that the recognition of Aboriginal and Torres Strait Islander peoples in the Constitution of Australia will be a further step towards building a nation based on mutual respect and understanding, and a nation that values its rich history.

Congress recognises the need to amend the Constitution of Australia to contribute to a more unified and reconciled nation.

Congress supports the recognition of Aboriginal and Torres Strait Islander peoples in the body of the Constitution of Australia, rather than the preamble.

Congress supports changes to the Constitution of Australia that remove discrimination on the grounds of race, colour, ethnic or country of origin.

Australian unions commit to campaign, inform and educate affiliates and union members on the importance of recognition of Aboriginal and Torres Strait Islander peoples in the Constitution of Australia.

Congress supports the involvement of union members and the wider community in lobbying and community activities, relevant to the campaign for Constitutional change.

The ACTU will work with affiliates to support and foster broad community participation, particularly amongst union members, in the campaign for Constitutional change.

The ACTU and affiliates will provide resources to assist in raising public awareness amongst affiliates, union members and the broader community, in the campaign for recognition of Aboriginal and Torres Strait Islander peoples in the Constitution of Australia.

Moved: Joanne Kerr, CPSU

Seconded: Lara Watson, CFMEU