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Noel Pearson, Greg Craven unite on indigenous constitutional reforms

PATRICIA KARVELAS THE AUSTRALIAN SEPTEMBER 18, 2014 12:00AM

Cape York leader Noel Pearson has put a joint proposal to Tony Abbott on constitutional reform. Source: News Corp Australia

CAPE York leader Noel Pearson and conservative academic Greg Craven have presented Tony Abbott with a joint proposal for constitutional change that includes a new section to establish an indigenous body that would scrutinise legislation and advise parliament but would not have veto power.

Mr Pearson and Professor Craven, the Australian Catholic University's vice-chancellor, have joined forces to put forward a breakthrough option for reform that delivers on the Cape York leader's push for more than superficial constitutional change that just recognises indigenous people, but avoids "judicial activism" that could hinder a "yes" vote in a referendum.

It is understood that Mr Pearson is also open to exploring the idea of setting aside Senate seats for indigenous Australians or remote indigenous regions.

The Australian understands the Pearson-Craven proposal has been circulated to senior members of parliament, including the Prime Minister who was briefed on it yesterday during his visit this week to Arnhem Land.

Professor Craven, a constitutional academic, backs the idea for a new indigenous body, raised in Mr Pearson's Quarterly Essay last week, and has worked on a joint plan for how it would operate.

Unlike the scandal-riddled former Aboriginal and Torres Strait Islander Commission, a large

government bureaucracy that received about $1.1 billion in funding from the commonwealth each year to be spent on economic development programs, the new body would not have a funding role.

It would be created by a new section of the Constitution, which Mr Pearson and Professor Craven argue would establish its importance as a part of the nation's democracy. It would be stipulated that the body would neither affect the sovereignty of the parliament nor have any power other than to provide "advice" to the parliament.

Details of how the membership would be made up are not set, but it is understood the body could be partly appointed and partly elected. Mr Pearson said this week he would not support any constitutional proposal that undermined the principle of parliamentary sovereignty. "I support indigenous Australians contributing to the democratic process through some constitutional procedure," he said. Mr Pearson is understood to back a push for a debate on dedicated Senate seats for indigenous Australians or remote indigenous regions, as revealed in The Australian.

The dedicated Senate seats would not constitute a veto on the parliament, and would not undermine parliamentary sovereignty.

While Mr Pearson has worked on one model with Professor Craven, he is also working with a range of other Aboriginal leaders to reach consensus. He is canvassing other conservatives.

The Pearson-Craven proposal also backs a declaration of recognition that would sit alongside the Constitution, rather than being contained within the Constitution, a proposal previously raised by Professor Craven but now supported by Mr Pearson.

The proposal also backs the removal of provisions such as section 25 of the Constitution, allowing the electoral disqualification of designated races, and section 51 (26), permitting laws to be made for members of a particular race.

It says that the removal of the race power would necessitate its replacement by another authorising piece of legislation for indigenous people, but this would be worded to recognise them as a constituent component of Australia's fundamental culture, not as a race.

Mr Abbott has spoken to Bill Shorten about a bipartisan push for the constitutional recognition of indigenous Australians. A parliamentary committee, chaired by indigenous Liberal MP Ken Wyatt, has recommended a referendum on the issue be held before or at the same time as the next federal election, due in 2016.

As revealed in The Australian yesterday, Mr Abbott is understood to prefer 2017, which would fall outside his government's first term and coincide with the 50th anniversary of the 1967 Aboriginal referendum.

Mr Abbott yesterday warned that the nation needed to "get it right, and get it through".

"If we rush prematurely into naming dates, into deciding what the proposal will be, I think we cruel our pitch, I think we jeopardise our chances of getting it through," he said.

Mr Abbott all but ruled out 2016 because it would be an election year. "An election is about the most partisan exercise you can imagine," he said.

He said that, although he intended to listen to Mr Wyatt's committee, that did not mean he had to agree with its recommendations.

Indigenous Affairs Minister Nigel Scullion said 2017 was the front runner for a referendum because public awareness at present was too low to ensure success.

The head of the Prime Minister's Indigenous Advisory Council, Warren Mundine, warned it was important not to overreach and noted only about four out of every 10 Australians were aware of the issue.

Mr Shorten said constitutional change to recognise indigenous people needed to be meaningful. He conceded a new clause to outlaw racial discrimination might be too much for many voters.

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