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# What is Indigenous constitutional recognition?



Tony Abbott and Bill Shorten prepare to welcome Indigenous leaders to Kirribilli House on July 5. James Alcock



A forum with 40 Indigenous leaders on Monday hosted by Prime Minister Tony Abbott and Opposition Leader Bill Shorten **announced the establishment of community conferences** in the hope they can decide what is included in a 2017 referendum on Indigenous recognition.

The conferences would be overseen by a new "referendum council" of Indigenous and non-Indigenous Australians, reporting on a quarterly basis, Mr Abbott and Mr Shorten announced.

Mr Abbott said he would hope these conferences would begin their work from September and form a consensus by the middle of 2016.

Asked whether the panel decided on specifics, Mr Abbott said it "was not a day to rule

particular things in and out", and Mr Shorten said "what we now have today is a process".



Tony Abbott and Bill Shorten with indigenous leaders on Monday. Peter Rae

While many leaders saw it as helpful, others such as lawyer, academic and activist Noel Pearson said [Monday's meeting was "highly stage-managed" and predetermined.](#)

**But what is Indigenous recognition and why does Australia need to address it?**

Two sections of the constitution still allow governments to discriminate based on race.

[Section 25](#) allows states to disqualify people from voting based on their race and [Section 51 \(26\)](#), also known as the "races power", [allows Federal Parliament to make laws based on race.](#)

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There is also no acknowledgement of the place of Indigenous Australians in our nation, nor any recognition that the country's history goes back thousands of years prior to British settlement .

Since the the constitution, created to unite the Commonwealth, can only be changed in a referendum, changing these sections would need to be taken to the people.

**Some of the steps so far ...**

- 1965: Law changes mean Indigenous people around the country gain the same voting rights as other Australians.
- 1967: A referendum changed the constitution to include allow the federal government to make laws for Indigenous Australians, but did not deal with the "races powers".
- 1995: The Aboriginal and Torres Strait Islander Commission (ATSIC) report *Recognition, Rights and Reform* released, finds overwhelming support for recognition.
- 2012: *The Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples* report released.
- 2014: Prime Minister Tony Abbott takes the referendum to the election. Since then he has endorsed May 2017 for the vote.
- 2015: The joint parliamentary committee on Indigenous recognition [reported in June](#), finding the race passages should be dealt with if the change was not to be just symbolic.

- 2015: Mr Abbott said the hope is still for a referendum in May 2017, with community consultations on what voters will decide on to start in September.

### What is 'symbolic' recognition?

Many Indigenous leaders fear that simply changing the preamble to the constitution to recognise the Indigenous past and not change the race passages will be a symbolic, not substantive, recognition.

These leaders say this sort of minimal change may not provide legal protection from unjust or disproportionate laws against Aboriginal and Torres Strait Islanders.

On the other hand, there is the "minimal" case for constitutional change, such as that championed Frank Brennan.

Professor Brennan [says ruling out racial discrimination from the constitution has no prospect of winning widespread community support](#), and the change would force the courts to "second-guess every piece of legislation" relating to Indigenous people before parliament.

### Some of the prominent players for and against

#### For

- The federal government, the opposition and [the Greens](#)
- [RECOGNISE](#), a peak body pushing for constitutional change
- [Reconciliation Australia](#), [Australians for Native Title and Reconciliation](#)
- AFL and Cricket Australia
- AFL footballer Adam Goodes and singer-songwriter Archie Roach
- "Father of reconciliation" Patrick Dodson

#### Against

- Liberal senator Cory Bernardi has [criticised](#) some proposals saying they could "divide" the country.
- [Liberal Democrats senator David Leyonhjelm](#) said recognition would represent a "perverse sort of racism". He has even said there were doubts about whether Aboriginal people were the first occupants of Australia.

#### In-between

- Noel Pearson argues for a separation of Indigenous recognition from the campaign to remove the [race passages from the constitution](#). He says a constitutional body should provide Indigenous representation on Indigenous issues to parliament.
- Luke Pearson from IndigenousX says while he is open to the idea of constitutional change, he says the government should not bank on widespread Indigenous support for the RECOGNISE campaign.