

---

# ACHIEVING CITIZEN ENGAGEMENT IN THE REFERENDUM ON INDIGENOUS RECOGNITION

---

*by Paul Kildea*

## INTRODUCTION

When constitutional reform is put on the agenda, we often hear lots of talk about how 'the people' are going to 'drive change' and 'have their say'. Historically, though, constitutional change has been driven mainly by a small group of elite actors comprising parliamentarians and the lawyers who advise them. Of course, the public have voted on reform proposals at referendums, but this occurs only at the very end of the process. The task of initiating, debating and refining constitutional reform has remained largely in the hands of politicians. Meanwhile, the role of the people has been relatively passive, a mere right of veto over decisions made by others.

In recent years there have been increasing calls to close the gap between the rhetoric and reality of citizen engagement in constitutional reform. Failing to engage the public adequately in the constitutional change process can create an impression that reform proposals are only in the interests of politicians, reinforcing alienation from the government. Conversely, some authors have suggested that improving citizen engagement is increasingly important to connecting people with their Constitution and giving them a sense of ownership over the reform process.<sup>1</sup> A 2004 Senate committee report on the possibility of Australia becoming a republic added its voice to this perspective when it remarked upon 'the crucial importance of engaging the Australian people and giving them ownership of their Constitution' and recommended renewed efforts to educate and actively involve Australians in the constitutional change.<sup>2</sup>

The challenge of engaging the public in constitutional reform looms large as we look ahead to the referendum on the recognition of Aboriginal and Torres Strait Islander peoples. If 'the people' are to feel ownership over the proposals that are eventually put to a referendum, it is essential that they be broadly and deeply engaged in the debate from the very beginning. But how can this be achieved in practice? How can we maximise both the quantity and quality of citizen engagement in the reform process? In this article I suggest that six factors must be addressed if we are to secure effective public engagement

in the debate about Indigenous recognition: public awareness, relevance, education, active involvement, genuine input and inclusiveness. After discussing these six factors, I argue that citizen engagement at this early stage remains weak and propose four steps that the federal government should take to address this.

## PUBLIC AWARENESS

Raising public awareness of the referendum as early as possible is essential to achieving widespread citizen engagement. People need time to become familiar with an issue and weigh up the pros and cons of change. This is especially the case for constitutional matters because Australians do not have a regular practice of talking about their Constitution, so whenever a referendum is proposed we tend to begin from a 'standing start'.

In the past, governments have often been guilty of introducing referendum proposals at the last minute, giving the public little time to become acquainted with the issues. The Gillard government has avoided this mistake by providing a timeframe of about 2-3 years for public debate on the constitutional recognition of Indigenous peoples.<sup>3</sup> Unfortunately, so far it has done little to raise awareness about the referendum, leading to an unnecessarily slow start in engaging citizens on the issue. I expand on this point later in the article.

## RELEVANCE

Once people are aware of the proposal to recognise Indigenous peoples in the Constitution, they are likely to wonder whether it is worthy of their interest and attention. While some Australians will take a natural interest in it, many others will want to know how it is relevant to their own lives, or why they should consider it a priority above other pressing policy issues. Unless convinced of the relevance and significance of constitutional reform, the public is unlikely to take an initial interest in the issues and follow the unfolding debate closely.

The question of Indigenous recognition poses challenges in this respect. Some might see it as directly affecting Indigenous peoples only, and therefore of no interest to

non-Indigenous Australians. Others might view it as a low priority compared to the significant problems that Aboriginal and Torres Strait Islander peoples face in areas such as health and education. In addition, those in the population who hold racist attitudes towards Aboriginal and Torres Strait Islander peoples are unlikely to see it as an issue worthy of public attention. If these perceptions become dominant, it is unlikely that the public will become broadly and deeply engaged in the issue over the next few years.

The referendum could be framed in terms which are pressing to more Australians. The Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, has said that the referendum 'is about looking forward and moving forward as a nation towards the goal of true reconciliation' and 'reset[ting] the relationship between Aboriginal and Torres Strait Islander peoples and the rest of Australia'.<sup>4</sup> Similarly, Prime Minister Julia Gillard has described constitutional recognition as being 'an important step to building trust and respect'.<sup>5</sup> Looked at in this way, the referendum is about countering racial discrimination, advancing reconciliation, and nation-building. Framed in these terms, the debate about Indigenous recognition can potentially attract the interest and attention of all Australians. It will be important for political leaders and other public figures to emphasise this message as the debate unfolds. Mechanisms aimed at getting the public actively involved in the reform debate, such as those discussed below, will also help drive home the relevance and significance of the referendum issues.

## EDUCATION

Once people take a basic interest in the constitutional recognition of Indigenous peoples, it is essential that they be provided with information about it. This will not only help them cast an informed vote at the eventual referendum, but will also provide a solid foundation for them to participate in other ways.

Unfortunately we are starting from a very low base when it comes to public understanding of the Constitution. A 1987 survey found that almost half the population did not know that Australia had a Constitution, while a 1994 study found that just 18 per cent of Australians had some degree of understanding of what the Constitution contained.<sup>6</sup> Governments have contributed to the problem by running unimaginative education campaigns in the lead up to referendums. For most voters, the main source of information is a lengthy and confusing campaign pamphlet that arrives just weeks before polling day.

We are in a position to learn from past mistakes. The objective should be to give people basic facts about the various options for Indigenous recognition early in the process. Armed with this information, people will gain confidence and have the necessary tools to contribute to public debate in substantive ways. Education materials should be factual, brief and expressed in language that everyone can understand. In a digital age, we should be aiming to disseminate information in multiple formats (including text, photos and video) and as widely as possible through social networking sites such as Facebook and Twitter. The Expert Panel has kick-started this process by releasing a discussion paper and other organisations, such as the Australian Human Rights Commission, have also developed education materials.

## ACTIVE INVOLVEMENT

The term 'citizen participation' leads many people to think immediately of public meetings and submissions to official inquiries. While these mechanisms are important, it is essential to think more creatively in order to maximise public engagement. People are more likely to get involved if they are given a range of options that allow them to participate in active, enjoyable and rewarding ways.

One approach that has worked in the past is to invite people to participate in small-scale deliberative forums. In the 1990s, the Constitutional Centenary Foundation teamed up with local councils to run mini-constitutional conventions all over Australia. At each of the conventions, about 50 ordinary citizens would listen to short presentations from experts before breaking up into small groups to debate issues ranging from the republic, to federalism, to local government. At the end of the day the participants wrote up their ideas and reform recommendations into a communiqué, which was distributed to local media. Unlike public meetings, where most people sit passively listening to others, these deliberative conventions fostered active participation. By encouraging strangers to talk things through and find common ground on complex constitutional issues, they gave participants a rich learning experience and a sense that they had made a real contribution to national debate.

Another participation mechanism that grabbed public attention in the 1990s was a preamble-writing competition. The Constitutional Centenary Foundation ran a 'Preamble Quest' that attracted almost 400 entries. The Foundation summarised the various contributions in a report and sent it to the Prime Minister just as he was drafting his own. Incidentally, then little-known Member for Lalor, Julia Gillard, ran her own preamble competition in

her electorate; the winner was given a free visit to the Melbourne Zoo. As with the deliberative forums, this initiative encouraged active engagement and, for many, proved to be a fun and rewarding experience.

#### GENUINE INPUT

While people will welcome being given a variety of ways to get involved in the debate over Indigenous recognition, they are likely to be turned off if those mechanisms do not allow genuine input into the process. People have become cynical over the years about governments running consultations that, while asking for public input, subsequently ignore or manipulate it to suit pre-ordained outcomes. A recent example is the 2009 National Human Rights Consultation – despite it recording overwhelming public support for a national Human Rights Act, the Rudd government ignored this and proceeded with more modest reform instead.<sup>7</sup> The Gillard government should avoid this by clearly signalling how community input will feed into decisions about which options will proceed to the referendum.

#### INCLUSIVENESS

Finally, it is essential that all education and participation initiatives be designed with an eye to the inclusiveness of the process. It is important to provide opportunities for everyone's voice to be heard, not just the 'usual suspects'. Numerous studies have shown that levels of political knowledge and participation are generally lower among certain social groups, including persons of low socio-economic status, young people, and persons with culturally and linguistically diverse backgrounds. To minimise inequality in the process, special efforts must be made to cater to the needs and circumstances of such groups, whether that involves providing information materials in multiple languages, or deliberately seeking the input of younger people through social networking sites. In terms of the referendum on Indigenous recognition, the highest priority is to ensure that the government actively seeks a wide variety of Aboriginal and Torres Strait Islander voices and builds those perspectives into the process. This will involve engaging with Aboriginal and Torres Strait Islander communities in a variety of remote, regional and urban settings, and doing so in a culturally appropriate way. This was not done effectively in the lead up to the 1999 referendum, especially on the preamble issue. However, with the help of the Expert Panel, there is an opportunity to involve Aboriginal and Torres Strait Islander communities much more effectively in the lead up to the next referendum.

#### CITIZEN ENGAGEMENT AND INDIGENOUS RECOGNITION: AN EARLY ASSESSMENT AND SUGGESTIONS FOR THE FUTURE

The federal government's decision in December 2010 to establish an Expert Panel to lead community consultation on the constitutional recognition of Indigenous peoples was a welcome first step in encouraging citizen engagement with the issue. In the months since its creation, the Panel has published a discussion paper, established a website and conducted numerous public meetings. The early activities of the Panel have been complemented by the work of organisations like the Australian Human Rights Commission and Australians for Native Title and Reconciliation, which have embarked on their own education and campaign initiatives.

While these early developments are encouraging, public engagement in the issue remains weak, primarily because of a general lack of awareness in the community that the referendum is going to take place. The government has done little since announcing the Expert Panel to raise the issue's profile. Indeed, the Prime Minister mentioned constitutional recognition in only two speeches in the first half of 2011.<sup>8</sup> The government's failure to raise awareness has undermined the engagement efforts of the Expert Panel – people cannot participate in something if they are not aware that it exists. The minimal traffic on the Panel's strong online initiatives (a discussion forum, Facebook site and Twitter feed) is evidence of the scant attention the public is paying to the issue.

If the Expert Panel had more time to complete its community consultations, this would not be so concerning. But the Panel is due to report to the federal government on possible reform options by the end of 2011, with public submissions to the process closing on 30 September 2011. This may be the public's last opportunity to influence which options get put to a referendum, which the government is expected to finalise in 2012. It would be disappointing if the community's best chance to have input into this decision came to an end before public awareness and engagement were properly established.

In the interests of expanding both the breadth and depth of citizen engagement on the constitutional recognition of Indigenous peoples, the federal government should change its current approach to public engagement in four ways. First, it should extend the Expert Panel's reporting timeframe to July 2012. This would give the public an additional six months to learn about and become familiar with the issue of Indigenous recognition.

Second, the government should use this time to actively raise awareness and promote engagement in relation to the Expert Panel's consultation process. As part of this, it should provide the Panel with an expanded advertising budget to help publicise its consultations and its online presence.

Third, the government should provide the Panel with additional resources for the purpose of running more imaginative participation activities. While public meetings have their place, they foster a mostly passive form of citizen engagement. In the first half of 2012 the Panel should hold a preamble-writing competition, with the aim of encouraging Australians to contribute to public discussion about the words that might be used to recognise Aboriginal and Torres Strait Islander peoples in the preamble to the Constitution. This is an activity that is creative and enjoyable and is an effective way of getting a wide variety of people involved in the reform debate. Also, the Panel should look to complement its public meeting schedule with a series of local deliberative forums to be held in the first half of 2012. As the experience of the Constitutional Centenary Foundation demonstrates, such forums are highly effective in fostering an active process of learning and perspective-sharing, giving participants a feeling that their contribution is valued.

Finally, the government should hold a special nationwide deliberative forum in the form of a 'citizens' assembly'. A citizens' assembly would bring together a randomly selected sample of about 150 ordinary Australians who, over the course of several months, would engage in learning and deliberation on the various options available for Indigenous recognition, before making a recommendation to the government at the end. Proceedings would be televised, and non-participants could give input by emailing delegates or making formal submissions. The record of citizens' assemblies overseas is exciting – the general public have found it invigorating to see ordinary people leading debate, and recommendations have been thoughtful and considered.<sup>9</sup> They have proven effective in generating public interest and debate on constitutional questions, particularly when there are several options on the table. In the interests of securing broad interest and popular ownership in relation to Indigenous recognition, the government should move quickly to implement this cutting-edge form of citizen engagement.

Of course, the final decision as to which reform options should proceed to the referendum is in the hands of the federal Parliament. But that decision will enjoy far greater legitimacy if people feel like they have been genuinely and

actively consulted on the issue. By taking these four steps, the government can help to ensure that 'the people' will truly drive constitutional change this time around.

*Paul Kildea is a Research Fellow and Co-Director, Referendums Project, Gilbert + Tobin Centre of Public Law, University of New South Wales.*

- 1 George Williams and David Hume 2010, *People Power: The History and Future of the Referendum in Australia* (UNSW Press, 2010) 246-52.
- 2 *The Road to a Republic: Senate Legal and Constitutional References Committee*, Parl Paper No 222, (31 August 2004) 136.
- 3 In September 2010, as part of negotiations in relation to forming a new government, Labor entered into agreements with the Greens and the Independent MP Andrew Wilkie that included a commitment to hold a referendum on Indigenous recognition during the life of the 43<sup>rd</sup> Parliament.
- 4 Mick Gooda, 'Effective Engagement: The Tonic for a Reconciled Nation' (University of Sydney, 30 May 2011), <[http://www.hreoc.gov.au/about/media/speeches/social\\_justice/2011/20110530\\_reconciliation.html](http://www.hreoc.gov.au/about/media/speeches/social_justice/2011/20110530_reconciliation.html)>.
- 5 Julia Gillard, Transcript of Joint Press Conference (Melbourne, 8 November 2010), <<http://www.pm.gov.au/press-office/transcript-joint-press-conference-10>>.
- 6 Constitutional Commission, *Bulletin*, No. 5 of 1987 (September 1987); Civics Expert Group, *Whereas the People: Civics and Citizenship Education* (1994).
- 7 Robert McLelland, 'Australia's Human Rights Framework' (Media Release, 21 April 2010), <[http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases\\_2010\\_SecondQuarter\\_21April2010-AustraliasHumanRightsFramework](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/Page/MediaReleases_2010_SecondQuarter_21April2010-AustraliasHumanRightsFramework)>; Frank Brennan, 'A Charter of Rights is Divisive? The Vast Majority Think Not', *The Age*, 23 April 2010.
- 8 Julia Gillard, 'This Work Will Go On' (Speech to the House of Representatives, Parliament of Australia, 9 February 2011), <<http://www.pm.gov.au/press-office/work-will-go-speech-house-representatives>>; Julia Gillard, 'As we share this day of celebration, we look towards that day' (Speech at the Signing of Rio Tinto Gove Traditional Owners Agreement, 8 June 2011), <<http://www.pm.gov.au/press-office/we-share-day-celebration-we-looks-towards-day-speech-signing-rio-tinto-gove-traditional>>.
- 9 Mark Warren and Hilary Pearse (eds), *Designing Deliberative Democracy: The British Columbia Citizens' Assembly* (Cambridge University Press, 2008).