

How would a referendum change Australia's racist laws?

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The 1967 referendum on Aboriginal rights.

Thanks to Scotland, the word referendum is in the air throughout the Commonwealth. Tony Abbott is poised to announce a timetable for a referendum on recognising Aboriginal peoples in the Constitution. Very likely, it will be a marathon rather than a sprint, as it seems that the referendum will not be held next year, or even in 2016, but as late as May 27, 2017.

That date marks the 50th anniversary of Australia's most successful referendum. In 1967, over 90% of voters granted the federal Parliament power over Aboriginal affairs and deleted a section from the Constitution that said Aboriginal people could not be counted in reckoning the population of Australia. It could be an auspicious day to vote again on similar issues.

The Prime Minister has shown commendable leadership in regard to this referendum. Setting a timeline will finally bring a focus, and ultimately a sense of purpose, to the debate. He has also done much to foster cross-party support, through his overtures to opposition leader Bill Shorten.

The government has yet to strike the right note on how the Constitution should be altered. Presenting the right model for change is crucial. This was demonstrated most recently at the 1999 referendum, when people rejected the idea of a "politicians' republic". The change must be underpinned by sense of popular ownership. Australians will reject anything they believe has been foisted upon them by politicians.

In one respect, the Prime Minister has fallen out of step with the people. He has cast doubt on the idea that the referendum should move beyond symbolism to preventing the federal Parliament from discriminating against people on the basis of their race.

By contrast, Australians have said at innumerable consultations and public discussions that we should respond to our history of racist laws by preventing such laws from being enacted again. Indeed, this idea is more popular with some than recognising Aboriginal people in the document.

The voices of indigenous people have been especially powerful. Generations of Aboriginal people have borne the burden of discrimination imposed by law. They have been denied the vote, had their children removed, been prevented from marrying, told where they could live and had their wages confiscated.

The Constitution permitted this discrimination, and so it is no surprise that Aboriginal people want it changed. They have made it clear that recognising them and their history will ring hollow if Parliament retains the power to deny them their rights as equal citizens.

Official reports have echoed this. An expert panel representing all major political parties spent a year talking to the community. It recommended in 2012 that the Constitution protect all Australians from racial discrimination. Abbott took aim at this, saying that it resembled a "one-clause Bill of Rights". He has repeated this in recent days, saying that "any referendum proposal that becomes a de facto bill of rights is highly unlikely to succeed".

These concerns are misplaced. A single clause prohibiting racial discrimination is not any form of Bill of Rights, nor could the High Court turn it into one. It would simply add another protection to the list of one-off rights already in the Constitution, such as those for freedom of religion and trial by jury.

The change would hardly be radical. The federal Parliament passed the racial discrimination act in 1975. Courts have applied that law for nearly four decades to prevent state and territory laws from discriminating on the basis of race, especially against Aboriginal people. However, that act cannot provide the same protection against federal laws. This requires a change to the Constitution.

No workable alternative has yet been put forward. One suggestion is that Senate seats be reserved for Aboriginal people. This would require major surgery to the Constitution, which is based on the idea of the Senate as a state's house. It is not likely to be practical in any

event, as it would require an Aboriginal electoral roll, and so raise fraught questions about when a person's ancestry means they are Aboriginal.

It has also been said that the Constitution could set up an indigenous body to advise Parliament. This has real merit, but we need to be realistic about its effectiveness. Advisory bodies have a long record of being ignored when they run counter to the prevailing mood of the electorate or government policies.

All this comes back to the point that, if people are to be protected from racial discrimination, this must be written into the Constitution. This might be done by way of a standalone clause that protects everyone, or a more modest option that only applies to Aboriginal people. Whatever the form, the referendum must reflect the community's desire for change. This is essential if the referendum is to succeed at the ballot box.

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