

Langton backs Pearson referendum model

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Aboriginal leader Marcia Langton has backed Noel Pearson's call for Aborigines to vote first on whether a referendum on indigenous recognition in the Constitution should go ahead, and declared that Aborigines should determine the model to be put forward.

Professor Langton, who is on the panel established by Julia Gillard to work towards the formal recognition of indigenous people in the Constitution, along with Mr Pearson, said giving Aborigines the first say would end disputes about what they preferred.

Her comments came as Australian of the Year finalist Larissa Behrendt, whom Mr Pearson said should have been invited on to the panel, warned the Gillard government it might be rushing consultations on constitutional recognition, putting the process at risk.

The indigenous law academic said the referendum, which the Prime Minister wants to hold at or before the election due in 2013, could fail without a long consultation process.

Professor Behrendt backed Mr Pearson's call for Aborigines to be central to the consultation process that would design a referendum question on recognition. "There is a need for an adequate timeframe for discussion," she said. "The worst thing that could happen is if it was put up to a vote and it failed."

Professor Langton criticised Professor Behrendt for raising the issue of Australia becoming a republic in an opinion piece in *The Age* yesterday, arguing that any mixing of the republic issue with indigenous recognition would kill the chances of the referendum succeeding.

Professor Langton said there were three camps in indigenous Australia pushing three different viewpoints about the form of the referendum question. One wanted a radical form of sovereignty, another wanted a conservative model that included mention of indigenous Australians only in the preamble and the third, her camp, believed in more fundamental change that removed the "race power" in the Constitution. She said a vote of indigenous Australians would settle which position was most deeply held by Aboriginal Australia.

She said that unless Aborigines could vote first to determine their preferred model for constitutional recognition, the discussion would be dominated by people backing

the position of the indigenous person with whom they most agreed.

“If you have this vote first you can't have politicians claiming to know what the indigenous position is,” she said. “If we do this, it means indigenous people can't be used as political pawns.”

Mr Pearson said that, for the referendum to be successful, people such as former Aboriginal and Torres Strait Islander commission chairwoman Lowitja O'Donoghue and conservative former prime minister John Howard would have to agree on the issue. Ms O'Donoghue yesterday declared she could envisage agreeing with Mr Howard. “Why not?” she said. “Yes we could.”

Ms O'Donoghue said she was not convinced Aborigines should vote first on the referendum question because it could cause divisions with the mainstream community.

A new research paper with federal government funding by indigenous lawyer Megan Davis, who is also on the expert panel, explains the different models that may emerge.

The paper by the Indigenous Law Centre at UNSW says the models “most likely to succeed at a referendum” include a non-discrimination provision, a new preamble, amendment or deletion of the race power and deletion of section 25.

Section 25 is a provision that contemplates discrimination on the basis of race by state governments. It envisages that a state parliament can pass a law disqualifying a particular race from voting at elections for that state's lower house of parliament.

FOUR MOST LIKELY OPTIONS FOR CONSTITUTIONAL CHANGE

1. Inserting a non-discrimination provision into the Constitution

This would entrench indigenous rights (and the rights of Australians of all racial backgrounds) and shut off the possibility of legislatively invalidating the Racial Discrimination Act 1975, as happened with the NT intervention

2. A new preamble

There is bipartisan support for this form of recognition of indigenous people although any change to the preamble would be symbolic only, conferring no actual rights

3. An amendment or deletion of the race power

The race power is contained in Section 51 (xxvi) and empowers parliament to make laws with respect to the “people of any race for whom it is deemed necessary to make special laws”. The 1967 referendum amended this section so that the words “other than the aboriginal race in any state” were deleted from the sentence. This gave the commonwealth more expansive powers to make laws to protect the welfare of indigenous people, but it is also thought to increase the power of the commonwealth

to enact laws that adversely discriminate against indigenous people. The race power could be deleted, replaced or amended

4. Deletion of Section 25

S 25 is a provision that allows state governments to deny a racial group the right to vote in the state lower house (the penalty is that, if enacted, this would reduce the state's population and entitlement to federal lower house seats). Deletion of the section has already been attempted in two referendums