

Constitutional recognition will make this nation whole

By Noel Pearson



Cape York Indigenous leader Noel Pearson.

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Let me start with the question of “what?” What is it that we are engaged in, and have been ever since John Howard made the commitment at the beginning of the 2007 federal election campaign. He told the Sydney Institute:

“The Australian people want to move. They want to move towards a new settlement of this issue. I share that desire which is why I am here tonight. I announce that, if re-elected, I will put to the Australian people within 18 months a referendum to formally recognise Indigenous Australians in our Constitution — their history as the first inhabitants of our country, their unique heritage of culture and languages, and their special (though not separate) place within a reconciled, indivisible nation.”

The then opposition leader Kevin Rudd made a similar commitment in response. Then just before election day Rudd deferred constitutional recognition to Labor’s second term.

A second term never materialised for Rudd, but prime minister Julia Gillard established the Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution co-chaired by Patrick Dodson and Mark Leibler, which reported in late 2011.

It is now a decade since the expert panel. I won't rehearse this long journey with its numerous inquiries and processes, except to answer the question of "what" that I raised at the beginning.

What this process has been about since prime ministers Howard in 2007 and Gillard in 2011 is the recognition of Indigenous Australians: the Aboriginal and Torres Strait Islander peoples of Australia. The imperative was recognition, and it was acknowledged by our most conservative prime minister and our first woman prime minister. It has been such a long road with many twists and turns and seemingly endless miles of procedure and process that we can be forgiven for having sometimes lost sight of what we are doing. Let me refresh our memories and identify what this is all about: it is about recognition.

It was and is not about the legislative enactment of a voice to parliament by itself. It is about the recognition of Indigenous Australians in the Constitution, which empowers the parliament to legislate the voice to parliament as the means by which Aboriginal and Torres Strait Islander people are recognised in the nation.

The next basic question is "why": why recognition? The answer is straightforward: because the Indigenous peoples of Australia have never been recognised. There was no recognition when Lieutenant James Cook claimed possession of the continent on behalf of the crown, apparently contrary to his secret instructions, which spoke of the need for the consent of the natives, in 1770.

There was no recognition when the First Fleet asserted British sovereignty in Sydney Cove in 1788. There was no recognition when each subsequent colony was established across the continent.

There was no recognition when those colonies federated to form the Commonwealth of Australia in 1901. Indeed, peoples of the Aboriginal race were excluded from being counted as citizens in the new federation and from the national parliament's legislative power.

The necessity of recognition still remained well after the centenary of federation. This lacuna still remains today. We are a nation that does not recognise its Indigenous peoples. And this was a failure that needed to be addressed according to governments led by the Liberal and National parties, as well as by Labor, in the first decade of the 21st century.

The milestone years 1770, 1788, 1901 and 1967 all failed to recognise Australia's Indigenous peoples. If not then, why not now?

The next question concerns "where" recognition is to be effected. This question was answered in 2007 by the Liberal National party led by Howard and by the Labor Party led by Rudd in precisely the same way: recognition was to be effected in the Constitution. In other words, it was to be reflected in Australia's most supreme legal instrument. That is why this process we are embarked upon is called constitutional recognition.

It is not merely recognition in some extra-legal declaration or proclamation, or by legislative enactment of the national parliament. It is the constitutional recognition effected by amendment to the nation's Constitution.

What form that amendment takes is a secondary question about "how" recognition is to be effected. Proponents of recognition may differ on the form of constitutional amendment, but everyone agreed that it was recognition within the Constitution.

Howard proposed recognition in a preamble to the Constitution. He said in 2007: "My goal is to see a new Statement of Reconciliation incorporated into the Preamble of the Australian Constitution. If elected, I would commit immediately to working in consultation with Indigenous leaders and others on this task."

We turn now to the question of "who": who is sought to be recognised in the nation's supreme law, its Constitution? The simple answer is that category of people whom the terms of reference for the expert panel described as Indigenous Australians.

The answer to the question of who is the subject of recognition may seem straightforward, until you consider that recognition is a mirror. When the descendants of the British colonists, the Italians, the Greeks, the Vietnamese, the Congolese, the Sudanese and the Indians, the Lebanese and the Chinese are recognised by the Indigenous there is mutual recognition and we see ourselves in each other's eyes. There can be no unilateral recognition of a part without mutual recognition of the whole.

The final question is "when": when will there be recognition? Indigenous advocacy in respect of recognition goes back to the 19th century. We see behind us a long, storied and unrequited campaign for recognition and justice. Are we destined for this forlorn history to continue for a third century?

We are engaged in a phase that represents our best chance to achieve recognition sought by our old people. Australia doesn't make sense without recognition. Australia is incomplete without recognition. How could there be an Australia without its Aboriginal and Torres Strait Island Indigenous peoples? As long as its Indigenous peoples remain unrecognised then Australia is an absurdity. A nation missing its most vital heart.

This is an edited version of a speech Noel Pearson delivered to the National Museum on Wednesday night.