

## **Why the proposed recognition of indigenous peoples in the Australian constitution will not go anywhere**

- bill of rights; legislation; whole point of BOR is to protect powerless against powerful, majority; koori courts
- Summary

The calls for constitutional change to get a better deal for Aborigines have been around for some time. The most well known is the successful 1967 referendum that gave the Commonwealth power to pass special laws for Aborigines. In the 1980's the NAC (forerunner to ATSIC) advocated a treaty or Makarrata be entrenched in the constitution. The Constitutional Commission in 1988; the Constitutional Convention of 1998; the Council for reconciliation in 2000; the Australia 2020 summit in 2008 and the House of Representatives Standing Committee on Legal and Constitutional Affairs in 2008 have all considered reform on the general topic of Aboriginal recognition. Now Prime Minister Julia Gillard wants advice on how to 'recognise' indigenous peoples in the constitution, and she has established an expert panel to so advise her. Their report is due in December 2011.

As can be seen from the various attempts at reform listed above, altering the constitution is seen as an attractive proposition. The Constitution establishes a federal system of government, with powers distributed between the Commonwealth and the six States. It also confers the legislative, executive and judicial powers of the Commonwealth on three different bodies established by the Constitution – the Parliament, the Executive Government and the Court.<sup>1</sup> The Constitution is not a Bill of Rights but the legal and political foundation for the smooth operation of the Commonwealth of Australia. Accordingly, care should be taken in expecting an insertion of words dealing with Aboriginal rights to produce the intended result.

Take the famous 1967 referendum. Clearly the campaign and the overwhelming vote by Australians to alter the race power was meant to produce a positive result for Aborigines. In many respects it did. Yet the High Court has stated that the original purpose of the race powers was not affected by the 1967 referendum.

The original purpose of the race power in s51 (26) was to enable the Commonwealth to pass special laws for the benefit or detriment of aliens, such as Chinese and Kanaks entering Australia, to confine their movements and occupations and to secure their return to their countries of origin. It was a power enabling racist laws. In its original form s51 (xxvi) prevented the Commonwealth from passing such special laws on Aboriginal people, not for any gratuitous reason but because Aborigines were a matter for the States.

When the 1967 referendum deleted the words 'of the Aboriginal race', the Commonwealth acquired the constitutional right to pass laws dealing with Aborigines. Undoubtedly the nation believed that from thence on, the Commonwealth were authorised to pass laws 'for the

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<sup>1</sup> Commonwealth Solicitor General

benefit of Aboriginals'. This was precisely the argument advanced by counsel in *Kartinyeri*. An Aboriginal group had sought to prevent construction of the Hindmarsh Bridge in South Australia because the bridge would destroy a sacred area. The Commonwealth passed a law allowing for the building of the bridge which would destroy the Aboriginal spiritual heritage. Ironically the Commonwealth relied on the acquired race power to pass the law. Lawyers for the Aborigines pointed out that while the original purpose of the race power authorised racist laws against non-whites, that times had changed and the people of Australia no longer would accept such laws. Kirby J accepted the argument noting the 1967 referendum reflected a changing world with changing values.

Gummow and Hayne JJ believed the particular meaning at Federation of the race power was unaltered by history since, and that the 1967 referendum had done nothing to alter the meaning of the original power: *'it is as well to recall that it is the constitutional text which must be controlling.'*<sup>2</sup>

This result would no doubt come as a shock to those who so celebrated the 1967 referendum vote. It is not what they fought or voted for. Which is precisely why we need to be guarded against well intentioned amendments to the Constitution that might result in something quite different from that which was intended.

The pre-existing negative possibilities of s51 laws for Chinese and South Pacific Islanders were still there and could now be applied to Aboriginals as well. Consistent with this historical understanding of the race powers the High Court<sup>3</sup> has ruled that the express power to make laws 'for' the Aboriginal people also means laws could be passed 'against'. The only limitation on Commonwealth laws that are racist towards Aboriginals is the Racial Discrimination Act 1975. As we saw in the NT Intervention, a racist Commonwealth law can exclude the operation of the safety net of the RDA leaving Aborigines vulnerable to the full weight of the Commonwealth legal regimes, backed by police, army and bureaucracy.

What does 'recognition' mean, and what is it that is meant to be recognised?

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<sup>2</sup> (1998) 152 ALR 540, 570. Brennan CJ and McHugh J arrived at the same result by a different method. They ruled that if the Commonwealth had the power to pass a federal law protecting Aboriginal heritage (Aboriginal & Torres Strait Islander Heritage Protection Act 1984) then it also had the power to repeal it. I am deeply grateful to Alexander Reilly for the analysis in *Reading the Race Power: A Hermeneutic Analysis*, 1999 MULR 19. See also Justin Malbon, *The Race Power under the Australian Constitution: Altered Meanings* [1999] Syd LR 3; (1999) 21 (1) SLR 80.

<sup>3</sup> The federal parliament may pass any law deemed by the Parliament as necessary for a particular race- see *Koorwarta v Bjelke Peterson*; *Tasmanian Dams case*; *Kartinyeri*- although the authority is not unlimited.

The submission by the Central Australian Aboriginal organisations to the Two Hundred Years Later enquiry stated *'We have never conceded defeat and will continue to resist this ongoing attempt to subjugate us. The Aboriginal people have never surrendered to the European invasion and assert that sovereignty over all of Australia lies with them. The settler state has been set upon Aboriginal land. We demand that the colonial settlers who have seized the land recognise this sovereignty and on that basis negotiate their rights to be there'*.<sup>4</sup>

## **The background**

The Final Report of the Royal Commission into Aboriginal Deaths in Custody Inquiry considered the historic context within which too many aborigines were overrepresented in the prison system. The report read, *'That Aboriginal people were dispossessed of their land without benefit of treaty, agreement or compensation is generally known... little is known [of] the amount of brutality and bloodshed that was involved in enforcing on the ground what was pronounced by the law. The loss of land meant the destruction of the Aboriginal economy... threatened the Aboriginal culture.*

*Having reduced the original inhabitants to a condition ... of abject dependency the colonial governments decided on a policy of protection.'*<sup>5</sup>

This had two distinct consequences for Aboriginal people, Commissioner concluded, the first *'the systematic disempowerment of Aboriginal people starting with dispossession from their land and proceeding to almost every aspect of their lives.'*<sup>6</sup>

In his address to the Melbourne Institute of Applied Economic and Social Research in 2003, Chairman of the Productivity Commission Gary Banks, lamented:

*'It is distressingly apparent that many years of policy effort have not delivered desired outcomes; indeed in some important respects the circumstances of Indigenous people appear to have deteriorated or regressed. Worse than that, outcomes in the strategic areas identified as critical to overcoming disadvantage in the long term remain well short of what is needed.'*<sup>7</sup>

The Productivity Commission reported in 2005 that the life expectancy of Aboriginals is 17 years less than that of others. The rate of infant mortality is commonly viewed as an indicator of the general health and well being of a population. A low infant mortality rate is a major

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<sup>4</sup> cited in Senate Report, AGPS, 1983 at p 10

<sup>5</sup> National Report 1991 AGPS Vol 1, p7

<sup>6</sup> ibid p8

<sup>7</sup> Overcoming Indigenous Disadvantage Report 2005, Commonwealth of Australia, p xix

contributor to increased life expectancy for a population, and conversely a high infant mortality rate indicates a lower life expectancy. While there has been a dramatic decline in infant mortality rates in Australia generally, the indigenous rate has only marginally improved, with some jurisdictions showing indigenous rates as being up to three times higher than for others.<sup>8</sup>

According to the Productivity Commission the death rate of infants from infectious and parasitic diseases among Aboriginals is between twice and ten times that for others; the rate of children on care and protection orders is 5 times higher for Aboriginals than others; students are half as likely to finish year 12 of school; household incomes were lower for Aboriginals than others and home ownership was 1/3<sup>rd</sup> that of others; suicide rates were higher for Aboriginals and on the increase whereas for others the rate was steady; and Aboriginals are 11 times more likely to go to gaol and there have not been any improvement in imprisonment rates which have actually increased. By any standard these statistics are alarming and indicate a state of crisis exists within the Aboriginal communities.

*'But running through all the proposals that are made for the elimination of these disadvantages is the proposition that Aboriginal people have for two hundred years been dominated to an extraordinary degree by the non-Aboriginal society and that the disadvantage is the product of that domination. The thrust of this report is that the elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands.'*<sup>9</sup>

The proposals from the

Australian constitution is a powerful instrument

PM Julia Gillard has established an expert panel to advise her about the best way to give constitutional recognition to the indigenous peoples. The expert panel has its own principles, one of which is that the proposal must 'contribute to a more unified nation'<sup>10</sup>. The panel goes on to explain that it is looking at a range of options from a set of words in the preamble; amending the 'discriminatory' parts of the constitution; or giving the federal parliament power to make an agreement with indigenous peoples.

This last option is curious for the federal parliament can make an agreement at any time with indigenous peoples through legislation. Even stranger is the panel's suggestion that a new constitutional provision could deal with education, cultural heritage or land. There is no reason to believe the Commonwealth lacks powers to act on these matters now.

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<sup>8</sup> ibid par 5.8

<sup>9</sup> Final Report of Royal Commission, Vol 1. para 1.7.6

<sup>10</sup> youmeunity.org.au , p16

The panel does not explain what it means by having to unify the nation but in the context of their other remarks it seems the panel is strongly against proposing any recognition of Aboriginal independence. There is no mention of an Aboriginal government to take over from advisory bodies like the Congress. Sovereignty is not mentioned but the anti-Aboriginal sovereignty phrase ‘indigenous Australians’ is used throughout by the panel to describe Aboriginal people. Time and time again with ridiculous monotony the ideology of ‘one nation’ dominates the panel’s approach so that self determination is understandably ignored completely. What an irony it is that the panel would all have opposed Pauline Hanson’s ‘One Nation’ only to wind up adopting the same ideology as its platform for reform. The ‘youmeunity’ website slogan says it all.

The Aboriginal rights cause has taken some beatings in recent times. Those who advocate forcing Aboriginals to work for welfare are rewarded by the Gillard government while others who recently scoffed that ‘Aborigines could not eat rights’ are now on the panel dealing with Aboriginal rights. Many black leaders have capitulated under the sheer weight of assimilation. I observe that where they have abandoned principle for personal gain and showing that endless resistance exacts a harsh toll.

Well documented in the Two hundred Years Later Senate report<sup>11</sup> are the demands made by Aboriginal representatives during the period leading up to 1983, which makes interesting comparisons with today. The report cites NAC Chairman of the Makarrata sub-committee, Cedric Jacobs, stating the NAC priority was for Aboriginal ownership of the Australian continent, self government in ‘tribal territories’; 5% of GNP.<sup>12</sup>

The panel looks set to recommend a reform that is assimilationist in nature. That is hardly surprising given many personalities on the panel are prisoners of their own ideology and have often advocated coercive assimilation in welfare and law. If Julia Gillard takes up the proposals she will endorse the trivialising of abuses meted out to Aborigines since the invasion. Apparently forgetting that the Australian constitution was racist in its inception, and forgetting its own proposals to get rid of racist provisions, the panel openly promotes the inherent goodness of constitution that served well the ‘free and democratic’<sup>13</sup> Australian nation.

How then does the panel reconcile this assimilationist push with another of its principles that any recommendation must benefit Aboriginals? The Royal Commission into black deaths in custody made the profound observation that Aborigines had been dominated for over 200 years and that the disadvantage was a product of that domination. Now the panel wants even more of the same.

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<sup>11</sup> Report by the Senate Standing Committee on Constitutional and Legal Affairs on the feasibility of a compact or ‘Makarrata’ between the Commonwealth and Aboriginal people, AGPS, Canberra, 1983

<sup>12</sup> *ibid* p 19

<sup>13</sup> *ibid* p10

Aborigines will be offered 'equality'. The individual and collective views of the 'expert panel' is

### **The preamble**

Queensland, Victoria and NSW already have amended their constitutions to recognise Aboriginal people.<sup>14</sup>

### **Equality**

In short, the proposals will go no further than the Queensland and NSW constitutional preambles that give their versions of 'recognition' of indigenous peoples. The preambular reforms have not provided a single practical benefit for Aboriginals in NSW, or indigenous peoples in Queensland.

Unlike the NSW and Queensland failures, the weakness in the Commonwealth proposal is planned to be hidden behind other proposed changes, all based on the recurrent theme of 'equality'.

In my opinion, the whole exercise is doomed to failure and even if an amendment to the constitution got up, it would be so weak and insignificant that nothing material would turn on it.

including ...any reform portrayed as being beneficial to Aboriginal people must give back some of which was taken from us or protect that which we have. The Gillard constitutional reform offers neither.

Ignoring self determination and land rights and cultural protection, the Gillard proposal will aim to remove so-called discriminatory provisions from the constitution that are more at appeasing middle class lawyers who want their nation to have a more presentable face than at providing a benefit to Aboriginals.

Aborigines are entitled to much more than equality with those who invaded our lands and established their nation. To restrict Aboriginal entitlements to notions of equality is itself discriminatory. The whole exercise has quickly become farcical, predictable and a waste of time.

Not that Julia Gillard has any particular commitment to the whole process: she is honouring her promise to the Greens to put the issue of recognition up. She has hardly been selling the idea since and, given her current performance, it's just as well she hasn't.

One can more readily understand the need for symbolic gesture where there are none, but not where there have been many symbolic gestures but little changes of substance. The apology,

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<sup>14</sup> see Appendix 1

reconciliation, recognition of the Aboriginal and TSI flags and constitutional recognition in some State's constitutions are but a few examples. It is time to move away from symbolism to substance.

...but when the need for genuine reform is overtaken by the need for getting something, anything, in the constitution, it then becomes constitutional change for the sake of it. Who wins from such an exercise? Certainly not Aboriginal people.

There is a large difference between constitutional reform to secure better treatment of Aboriginals on the one hand, and 'recognition' in the constitution on the other. NSW, Queensland and Victoria are States that have already given recognition to Aboriginals in their constitutions. These formal attempts at recognition have not affected the one-sided relationship between the government and Aborigines. Nor has there been any material gain as a result of the recognition. In fact, after the constitutional recognition, nothing changed at all.

Attempting to 'recognise' indigenous peoples in the preamble to the constitution is a hollow gesture, creating no rights and not providing indigenous peoples with a right to sue on the words. McKenna, Simpson and Williams<sup>15</sup> point out that a preamble is an introductory passage to the operative or enforceable parts of the document. It is often a statement of an ideal, an evocative phrase to convey a sense of sentiment of the time rather than as support for a particular legal conclusion. One judge described words in the constitutional preamble as '*pious aspirations of unity*'<sup>16</sup>. The authors examined the cases and could not find any where the preamble played a significant part in the reasoning or conclusion by a Judge. The authors noted the preamble played a symbolic or rhetorical part in judgements 'but hardly a legally important one'<sup>17</sup>. The authors conclude that there is limited value in having a preamble that cannot be used as a legal tool and that at any rate, '*a legally sterile preamble would not retain the symbolic potency intended for it*'<sup>18</sup>.

The 1967 referendum was different. It was about making a difference to the lives of Aboriginal people. Rightly or wrongly, the referendum was painted as being about citizenship, the right to vote and federal control of Aboriginal affairs, in general promoting the idea that a majority yes vote would lead to formal equality and a new deal for Aborigines<sup>19</sup>.

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<sup>15</sup> First Words: the preamble to the Australian constitution, Mark McKenna, Amelia Simpson and George Williams, 2001 UNSW Law Journal, Vol 24 (2), 382

<sup>16</sup> Isaacs J speaking of the 'indissoluble Federal Commonwealth' in *Federated Saw Mill & Employees of Australasia v James Moore & Son* (1909) 8 CLR 465, 535

<sup>17</sup> op cit p 389

<sup>18</sup> op cit p 400

<sup>19</sup> see *The 1967 referendum*, Uni Queensland Library.

The 1967 referendum outcome was a result of a very public campaign that had widespread support from governments, churches, unions, students and human rights activists. The general political climate was more conducive to change with the anti-racism, anti-war movement, womens liberation and gay rights in full swing alongside new generational music. Change was very much in the air. Today, everyone wants to be the same. And with notable exceptions, the movers behind 1967 are now part of mainstream Australia, as evidenced by the push for one nation.

made the change more conducive reached into the hearts and minds of Australians recognition of inalienable rights, based on current experience anyway.

## Section 25

The arguments that apply to section 25 equally apply to the 'race power' in s.51 (26).

If the unrealised negative potential section 25 offends, why too does section 51 (26) not equally offend?

The only reason we could support constitutional change is if the the proposed changes have the potential to benefit Aboriginals and TSI's in a substantial way. Before examining the potential benefit, are the changes proposed likely to be substantial- to make a real difference?

Although nothing has yet been finalised, a sense of what is likely to be put up can be gleaned from the work of the expert panel that must '*report to the Government on possible options for constitutional change to give effect to Indigenous constitutional recognition,*' by December this year. That date is not far away. Commonsense tells us that that time does not allow for the Panel to make a sudden departure from the general direction they are currently steering. So where are they headed?

The whole thing is a scam. Constitutional recognition of indigenous peoples can be significant, or unimportant. Gillard's comitment to the reform began and ended with her comitment to the Greens to put the thing up. She has not uttered a word on the topic since, indicating it is not high on the government's list of priorities. So no leadership from the top. . Recent public policy towards Aborigines has hardly been encouraging either.

The last decade of policy debate has consisted of black-bashing. The ATSIC experiment was replaced with the tired old hand-picked advisory bodies. While some individual black leaders were persecuted others were rewarded for blaming the Aboriginal victims of discrimination, dispossession and powerlessness. Aboriginal communities were forced to use food stamps, threatened with compulsory sexual medical checks of their children and were generally painted by politicians and media alike as less than human. No land rights, customary law recognition are dirty words, and still the disadvantage continues.

Made up of the most conservative bunch the Aboriginal nation could spew out, they have hijacked the debate about the political relationship between Aboriginals and Australians and morphed it into a policy shift to formal assimilation.

The terms of reference given by Prime Minister Gillard to the Panel encouraged/left room for ideas and vision over pragmatism. PM Gillard said 'give me the options' which is encouragingly open minded- she did ask that options needed broad electorate support, enough to kill any decent discussion. the terms of reference do not use 'indigenous Australians' to describe the status of the Aboriginal and TSI's peoples which would have limited the options.

Use of the phrase 'indigenous Australians' is an anti-Aboriginal sovereignty statement. If Aboriginals are Australians, then like Greek Australians or Chinese Australians, we are mere citizens of Australia with no more rights than any other citizens. Any rights Aborigines have are gifted by the parliament or acceptable to the white's common law. Any rights granted or recognised will necessarily be less than the rights that arise by virtue of Aboriginals or TSIs being sovereign people because those rights are inherent, not gifted by someone else. And here the constitution confirms this to be so.

The High Court recognises there is a single sovereign people in Australia- the Australian people. Not two or three sovereign peoples, just the one. The parliament is unable to give this right away for the parliament has no power to do so under the constitution. Nor can a constitutional amendment create a right of sovereignty in the indigenous peoples. It either exists independently of the constitution or cannot exist at all.

Constitutional change is able to *acknowledge* or *recognise* Aboriginal sovereignty, but it cannot create it. An insertion into the body of the constitution of the words:

*'Aboriginal and Torres Strait Islander peoples are sovereign peoples and by virtue of that status have the right to self determination'*.

might do the trick. The words are still generalThe High Court is likely to interpret the above insertion as meaning the right to self determination must mean 'within the life of the nation' because of two factors: one, the constitution provides the political framework for the institutions that run the nation with a focus on the separation of powers doctrine. Essentially, the constitution sets out and seaprates the powers and functions of the executive government, the parliament and the court. Fitting a statement that Aborigines are a sovereign people with the right of self determination among the separation of powers provisions is unlikely to encourage the High Court to rule it has no jurisdiction over Aborigines without consent, or that...

Second, the UN Declaration of Friendly Nations that does not authorise cession.

Had that happened, indigenous peoples could sue governments for interfering with indigenous sovereignty by laws that did not have indigenous consent. It would also create an entirely new political framework for negotiations with governments on resources, laws, land returns, culture and language and so on. Advisory groups would be a thing of the past-

outcomes would be negotiated between equals on a indigenous government to Australian government level.

None of these type of rights arise by virtue of who Aboriginals are: they are gifted by the parliament or recognised by common law.

In the context of constitutional reform, a lot turns on which words are used to describe the indigenous peoples. This is no Alice in Wonderland conversation where words can mean anything we want them to mean- the constitution is a legal document where words have a particular meaning.

Aboriginals and Torres Strait Islanders were sovereign peoples before the white invasion. By force, these peoples lost their capacity to express sovereignty which, as a matter of reality, has been exercised by the white people who invaded and set up their nation called Australia.

France, Poland and Holland also lost their ability to exercise their sovereignty during the Nazi occupation although no-one doubted they remained sovereign during the occupation. Once these countries were freed, they were once again able to exercise their sovereign powers through government, laws etc. Why would it be any different for Aborigines and TSI's? If the indigenous peoples are sovereign peoples but frustrated from acting it out by the force and power of occupation, like other occupied peoples (Palestinians, Afghans, Iraqis) they still retain their sovereignty. That being so, the rights and entitlements of these such peoples includes the political right to self determination.

A sovereign people may relinquish some of their rights, or indeed all, but only where the people concerned do so without coercion and do so in an informed way. It follows that any 'recognition' in the constitution must take the sovereign status of the two indigenous peoples into account so that there is no unintentional attempt to dispossess them of their sovereignty and self determination by sleight of hand.

The Panel have ignored the warning.

Whether deliberate or not, rather than close down the debate about Aboriginal sovereignty, the PM's terms of inquiry leaves it open for discussion. Why the panel the chose to shut it down defies logic.

Indigenous recognition in the constitution

The FAcSHIA website uses the term 'indigenous Australians' and so does the official website of the Panel, *youmeunity*. The Discussion paper uses the term 'indigenous Australians' at every opportunity. Is this a mere slip of the tongue or is the Panel pushing a particularly narrow position?

Assuming the 'recognition' attempt is not to be used to quash indigenous sovereignty...

In its statement of the issues the Panel makes no mention of sovereignty or self determination. The Panel was more concerned about abstract notions such as needing to clean

up the face of the constitution so it no longer looked discriminatory, somehow mention indigenous peoples in the constitution and as a result, *'constitutional recognition would serve as a powerful symbol of the nation's desire to embrace Indigenous Australians as a full and equal part of the Australian nation'*. The Panel is pushing political assimilation. If there was any doubt, the title of its official website *'youmeunity'* says it all.

If the Panel intends to recommend Aborigines and TSI's be formally assimilated into the Australian nation, why is constitutional change needed to do it? The answer is it is not needed. Indigenous people can freely vote and stand for elections; pay taxes and receive benefits; are able to travel on an Australian passport and are deemed by law to be citizens. Many Aborigines openly identify as Australians, willingly nominate for Australian of the Year and other such titles, and respect parliamentary sovereignty and the legitimacy of white law.

Just as peculiar is the Panel's plans to implement their assimilation scheme. The preamble should say something about Aborigines and Islanders existing (surely we are past that stage) along with a statement of values, probably like John Howard's 'mateship' idea. Even stranger is the call for equality in the constitution. To deny Aboriginal people;

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goes on to suggest any constitutional change is limited to acknowledging the special place of indigenous people within the Australian nation..

*'The options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights'*. McLelland TOR

It is hypocritical to accept that the circumstances of Aboriginal people are so serious as to warrant changing the most powerful source of political power in the country only to turn around and promote minimal change. No doubt the panel would claim political realities justify taking the weak approach to constitutional reform. Putting up something that is bound to fail gets nowhere, they will argue. But putting up something that produces no real change also gets us nowhere. On the contrary, proposing minimal change is an acceptance of the very inequality the reform is meant to address.

In many respects the panel was set up to fail anyway. At present, Julia Gillard couldn't sell a dollar for 50 cents, so there is little chance she could sell strong or weak reform. The integrity of reform proposals should not undermine or belittle the seriousness of the situation, especially where the reason for doing so is personal gain favour with government. It is not to be commensurate with the extent of the problem, not beneath it.

equal to the level Aboriginal That is a political reality. The drawn out process of constitutional reform also provides the Gillard government with a distraction from scrutiny of failed Aboriginal policy. None of those matters excuse any of us from conduct that trivialises the extent of Aboriginal disadvantage. Promoting inessential reform at the expense of more fundamental proposals does exactly that.

## Recognition of Aboriginal people

### 2 Recognition of Aboriginal people NSW Constitution Act 1902

(1) Parliament, on behalf of the people of New South Wales, acknowledges and honours the Aboriginal people as the State's first people and nations.

(2) Parliament, on behalf of the people of New South Wales, recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales:

(a) have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and

(b) have made and continue to make a unique and lasting contribution to the identity of the State.

(3) Nothing in this section creates any legal right or liability, or gives rise to or affects any civil cause of action or right to review an administrative action, or affects the interpretation of any Act or law in force in New South Wales.

## Preamble to the Constitution of Queensland

*The people of Queensland, free and equal citizens of Australia:*

- *intend through this Constitution, to foster the peace, welfare and good government of Queensland; and*
- *adopt the principle of the sovereignty of the people, under the rule of law, and the system of representative and responsible government, prescribed by this Constitution; and*
- *honour the Aboriginal peoples and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share; and pay tribute to their unique values, and their ancient and enduring cultures, which deepen and enrich the life of our community; and*
- *determine to protect our unique environment; and*
- *acknowledge the achievements of our forebears coming from many backgrounds, who together faced and overcame adversity and injustice, and whose efforts bequeathed to us, and future generations, a realistic opportunity to strive for social harmony; and*
- *resolve in this the 150th anniversary year of the establishment of Queensland, to nurture our inheritance, and build a society based on democracy, freedom and peace.*