

Why Constitutional Recognition isn't necessarily the answer to improving Indigenous rights

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Activists prepare for Invasion Day in Collingwood. *Photo: Jason South*

Last Wednesday, about 300 members of the Indigenous community in Victoria attended an open state government forum where they voted unanimously against pursuing Constitutional Recognition on the basis of being "sovereign peoples".

The forum, entitled "[Aboriginal Community Open Meeting](#)", was based around the concept of "[self-determination](#)" for Aboriginal communities. It's the first in a series of consultations between the community and the Victorian Government, organised with an aim to inform the Federal Government on the topic of Constitutional Recognition for Indigenous people.

Constitutional Recognition is a Federal agenda, which so far consists mostly of establishing the '[Recognise](#) campaign' in a bid to educate Australians about the importance on the recognition referendum.



Aboriginal flag mural at Redfern's The Block reads 'sovereignty never ceded'. *Photo: Edwina Pickles*

The exact questions for a constitutional recognition referendum are yet to be determined, though the report from a 2012 [expert panel](#) gave a series of recommendations which provide clues as to how extensive or minimal this recognition could be.

The panel covered everything from a full recognition statement including Indigenous relationship to land, recognition of the importance of our languages and cultures and the need for our advancement; to the removal or amendment of current racist provisions within the constitution (such as the right for states to prohibit members of particular races of people from voting in state elections, and the right to make laws pertaining to particular races of people).

Given the uncertainty around what exactly the referendum would involve, it's unsurprising there is concern that when we finally go to vote, the questions put to the public could be a vastly diluted version of the expert panel's recommendations. This could reduce recognition to a mere symbolic statement in the preamble; a position conservatives like [John Howard](#) supported and even [put to vote in 1999](#).

That the Victorian Indigenous community chose, at the very first of these meetings, to reject Constitutional Recognition outright will be of no shock to those who follow Indigenous politics closely. Nor would it be surprising that the community passed a second motion supporting the exploration of treaty development and a third calling for a council of elders to be set up .

Right now, Australia is the [only Commonwealth Nation](#) which does not have a treaty with its Indigenous peoples. Unlike Constitutional Recognition, a treaty is a process of negotiation between parties leading to a settlement. Provisions contained within a treaty could greatly address the current disadvantages faced by many Indigenous people as the government would have obligations to fill including the obligation to consult the community on proposed legislation affecting us.

Indeed, a recent [Invasion Day rally](#) explicitly stated in its [event](#) summary that "we will not be pacified with bogus corporate-backed constitutional recognition that fails to respect and honour our sovereignty". This pro-treaty stance was backed up in the opening minutes of the consultation by some impassioned speeches from the community participants.

So why is the the Indigenous community rejecting Constitutional Recognition while reiterating the need for a treaty?

For a long time, the public has been told by the government, the media, and a [well-funded campaign](#) that constitutional recognition is important to us. For years, there has been little public awareness that there is Indigenous opposition, or even ambivalence, to Constitutional Recognition at all, never mind what form that opposition takes.

This oppositional space had been dominated by the views of conservative white male commentators such as [Andrew Bolt](#), [Cory Bernardi](#), and [Gary Johns](#). (Bolt is soon to star in an [ABC documentary series](#) on this issue.) The more these views are profiled however, the more [Indigenous arguments](#) about sovereignty and shallow governmental gestures are drowned out.

The intricacies of the original findings from the [Expert Panel on Constitutional Recognition](#) have also been lost. This includes their finding that there is little public will to engage in conversations of Indigenous sovereignty and therefore including this concept in a referendum on Constitutional Recognition would cause the referendum to fail.

It's been this one point which has caused a lot of Aboriginal and Torres Strait Islander people consternation. After all, what's the use of being recognised in the constitution if the concept of us being Original Peoples who never ceded our lands causes the public to withdraw their support? What further education needs to take place before these rights are actually recognised?

It is particularly notable, however, that both the Federal Government and the Recognise campaign have been silent on the outcome of the Victorian community forum.

That the actual grassroots Indigenous community members have outright rejected Constitutional Recognition raises questions on the government's motives for pushing this agenda and committing the funding to ensure its success. It certainly indicates a government who is out-of-touch with the aspirations of the Indigenous community. While this vote is just indicative of opinions in the state of Victoria, I believe meetings in other states would reveal similar community views.

The push for a treaty over Constitutional Recognition is not new. Indeed, many will remember the famous [Yothu Yindi song](#) which criticised the [Hawke Labor government](#) for failing to deliver on a promised treaty with Indigenous people. The fact that 30 years later many remain focussed on our rights rather than our recognition in the Constitution should be of no surprise.

It is encouraging that the Victorian Government is providing an open forum for these discussions to take place. The real challenge, however, lies in whether the Federal Government will follow suit or remain complacent by just providing symbolic acts.

Over to you, Prime Minister Turnbull.