inexcusable, and it is an admirable move

Support for change welcome

OPINION

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THE support of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) for recognition of Indigenous peoples in the Commonwealth of Australia Constitution Act is a very welcome development in what is yet to become a robust public debate.

The RANZCP has stated that, constitutional recognition would have a positive impact upon the self-esteem of people in communities and, 'it would make a real difference to the lives of Indigenous Australians'.

Bipartisan support for constitutional recognition of Aboriginal and Torres Strait Islander peoples has existed since the failed 1999 Republic referendum and then, John Howard's election policy to hold a referendum on the question if re-elected in 2007.

Advocacy

Still, Indigenous advocacy for constitutional reform has been active for decades; it was a part of the Social Justice Package in 1995 and central to the recommendations of the Council for Aboriginal Reconciliation in 2000.

Public interventions from non-political and non-Indigenous sectors like RANZCP are critical to garnering the required popular consensus in order to realise constitutional reform.

We should not assume for one second that because the human rights industry and the Aboriginal political domain support constitutional reform that a majority of people in a majority of states and a national majority will. Nor can we assume that Aboriginal and Torres Strait communities will support whatever manufactured proposal emerges from any controlled public consultation and/or panel of appointed experts and Indigenous leaders.

Putting these issues to one side, the notion that a successful amendment to our rigid Constitution can be achieved during the next three years already raises a red flag.

The ALP/Greens agreement, signed on 1 September 2010, is to hold a referendum during the 43rd Parliament or at the next election.

It has been 32 years since the Constitution was altered and this is the longest period we have gone without any change to the text.

Given that there is goodwill and political consensus across the board, it is sage advice to place no time limit on the process.

Let us not forget the conservatives are historically better at constitutional reform. The ALP has the worst record when it comes to constitutional reform having proposed 25 of the 44 amendments (and last succeeding in 1946).

Timing is critical when we consider that every imaginable amendment is on the table for discussion: recognition in a preamble; deletion of section 25; amendment of section 51 (xxvi); the possibility of a guarantee of equality; insertion of a new provision in the Constitution.

The evident political openness to all potential options is important because to enter with goodwill, into a transparent and open dialogue based on the principles of free, prior and informed consent and the United Nations Declaration on the Rights of Indigenous Peoples, means that many proposals will emerge and warrant serious national consideration.

For example, in 2008 former Prime Minister Rudd was presented with a communiqué from Yolngu Elders following a community cabinet meeting in Yirrkala. The communiqué calls for constitutional recognition of prior ownership of land and current land rights.

Many communities will have similar proposals regarding rights to land. Any such proposal, if selected by a committee to put to the Australian people, will require a targeted and long term campaign aimed at countering the inevitable feelings of many Australians that change involves giving rights to one group at the expense of another.

Agreed framework

Another example, Noel Pearson speaking at the Sydney Festival this year, proposed that a new head of power be inserted in the Constitution, similar to that proposed by the Senate Legal and Constitutional Affairs Committee in 1983, that would constitutionally entrench an agreed framework or agreement of Aboriginal rights and responsibilities and the means by which the state intends to achieve the goals of reconciliation. All of these options and many more will have to be entertained and debated publicly.

Which is why the statement of the RANZCP is so important: The hearts and minds of the Australian people will not be won over by the human rights ritualism of the Australian Human Rights Commission or national Human Rights Act-style campaign.

Any vague appeal to abstract human rights will fail because ordinary people who have never met an Indigenous person in their life, want to be persuaded not patronised.

The central point of the RANZCP thesis is clear and direct: that human beings need to belong and want to be included.

People want to exercise ownership over the public institutions that govern them. This gives people and communities a sense of control over their lives.

After all, this is fundamentally what section 128 (the provision that establishes the mode of altering the Constitution) provides.

Self-determination is not only a fundamental premise of constitutional democracies, but of health provision.

In many Indigenous communities, depending where you visit, there exist mixed emotions of negativity, anger and hopelessness and the disconnection to the broader Australian polity is palpable.

The RANZCP is drawing a clear picture of the connection between socio-economic disadvantage, depression and anxiety and illness, such as cardiovascular disease and stroke. This is powerful stuff; constitutional recognition can contribute to improving the mental health of Indigenous peoples.

Finally we must keep in mind that the conversation about Indigenous rights and recognition does not end with a successful referendum result. As we saw with the 1967 referendum, there are unforeseen consequences of constitutional reform, and we need to be uptront and realistic about its limitations.

One such limitation is Parliamentary sovereignty. The Australian Constitution is interpreted by the High Court. Constitutional interpretation is undertaken in different ways by different judges. Some judges may favour international legal norms and most remain faithful to the original intent of the framers. Either way, present and future High Court benches will continue to defer to the wishes of a sovereign, democratically elected Parliament.

That will not change.

Beneficial laws

If we consider one of the most frequently suggested proposals: amending the 'race power', section 51(xxvi) to ensure that only beneficial laws are passed with respect to Aboriginal and Torres Strait Islander peoples. With parliamentary sovereignty as a central guiding principle of constitutional interpretation, 'benefit' can mean different things to different political parties. Consider the aims of the Northern Territory Emergency Response legislation: it was viewed by both Liberal and Labor and their successive Parliaments and most Australians as beneficial.

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