Central Australian
Aboriginal Congress
ABORIGINAL CORPORATION | ICN 7823

Submission to the Referendum Council on constitutional recognition

15 May 2017

Central Australian Aboriginal Congress

Central Australian Aboriginal Congress is a large Aboriginal community controlled health service based in Alice Springs in the Northern Territory. Since its establishment in 1973, Congress has developed a comprehensive model of primary health care delivering quality, evidence-based services on a foundation of cultural appropriateness. Congress is a strong advocate for the rights of Aboriginal people and for approaches to health that take account of the social determinants of health such as poverty, inequality, housing, early childhood development and alcohol and other drugs.

Summary

Congress advocates for constitutional recognition to include the following:

1. **Insertion of an 'agreement making power' in the constitution, to enable agreements to be entered into by the Commonwealth with Aboriginal and Torres Strait Islander nations that would have the force of law. Agreements could be negotiated to cover a range of issues including health, education, the protection of cultural heritage and land rights.**
2. **Guarantees of genuine representation of Australia's First Peoples in the political process and the establishment of a national Aboriginal and Torres Strait Islander body with direct input into the Federal parliament, the power to provide independent review of all policies relating to First Nations, and the power and resources to monitor, review and report on implementation of past and present recommendations of key national inquires and current and future policy commitments by government.**
3. **Repeal of section 25 of the constitution which contemplates that certain races could be banned from voting in State elections.**

Sovereignty

Aboriginal peoples were sovereign prior to colonial invasion. Aboriginal sovereignty was not ceded to the colonisers during or after invasion. We retain our sovereignty. Through the exercising of our cultural practices and through the establishment of our community-controlled organisations, such as Congress, we daily express this sovereignty and our right to self-determination.

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Aboriginal health in Aboriginal hands.

No formal treaties or agreements were made with Aboriginal people about land ownership or governance. Each colony took the land by force with the support of the false legal doctrine of *terra nullius*, and claimed to impose its governance over Aboriginal people. At the time of Federation in 1901 only the settler population was involved in the drafting of the Constitution and establishment of the Commonwealth.

The sovereignty rights of First Nation peoples is recognised in the *United Nations Declaration of the Rights of Indigenous Peoples* (UNDRIP) [1], as ratified by Australia in 2009. The exercise of sovereignty rights is an act of self-determination, as recognised in the UNDRIP (Article 3).

Health and Treaties

Other developed countries with Indigenous peoples, such as New Zealand, the United States and Canada, have recognised treaties between their First Nations and their national governments. No such treaties have been negotiated in Australia.

In the contemporary Australian context, a treaty or treaties could include a recognition of sovereignty and the right to self-determination, including through Aboriginal community-control of services such as health services and core partner status for Aboriginal sectoral peak bodies in Aboriginal policy and planning under national, state and territory agreements.

A treaty or treaties can be expected to have positive health and wellbeing effects for Aboriginal peoples, as documented for those Indigenous peoples internationally where treaties have been negotiated and are the basis for policy making [2, 3]. These positive effects operate through two processes.

First, there is a strong relationship between disempowerment and poor health and wellbeing: there is now good evidence that the consistent exposure to stress associated with lack of ability to exercise control in life can profoundly undermine physical and mental health [4, 5]. The formal recognition that a treaty embodies – and the self-determinant policies and practices that flow from it – would increase Aboriginal people's control over their own lives and can be expected to lead to better health and wellbeing outcomes.

Second, treaties are able to provide enduring and effective institutional arrangements for the provision of health (and other) services, and contribute to overcoming the frequently adversarial nature of State and Territory government relations with Indigenous nations. This can be expected to contribute to a more effective, stable and sustainable policy and service delivery systems [6].

Congress therefore advocates for constitutional recognition to include the insertion of an 'agreement making power' in the constitution, to enable agreements to be entered into by the Commonwealth with Aboriginal and Torres Strait Islander nations that would have the force of law. Agreements could be negotiated to cover a range of issues including health, education, the protection of cultural heritage and land rights.

Political representation and accountability

Relative to their numbers, Aboriginal and Torres Strait Islander people are politically marginalized in Australia. The seventy years following Federation saw not a single First Nations representative elected to any Australian parliament, only ending in 1971 when Neville Bonner entered the Australian Senate. Since then only 38 Aboriginal and Torres Strait Islander people have been elected to any of the State, Territory or Federal parliaments; 22 of these have been in the Northern Territory. Even today, with an unprecedented four Aboriginal and Torres Strait Islander representatives in the national parliament, this represents only 1.8% of representatives when Aboriginal and Torres Strait Islander people make up 3% of the Australian population and rising.

This systemic under-representation of Aboriginal and Torres Strait Islander people is mirrored in senior decision-making roles within public services across Australia. It is a powerful contributor to the lack of an accountable, informed, and sustained approach to policy making and implementation in Aboriginal and Torres Strait Islander affairs.

This is evidenced by the extremely poor record of implementation of the recommendations of numerous inquiries into issues surrounding the health and wellbeing of the nation's First Peoples. Over the last three decades these have included most significantly the *National Aboriginal Health Strategy* (1989), the *Royal Commission Into Aboriginal Deaths In Custody* (1991) and the *Bringing Them Home* report (1997). There have also been many parliamentary inquiries into issues surrounding Aboriginal disadvantage [7].

Congress therefore advocates for constitutional recognition to include guarantees of genuine representation of Australia's First Peoples in the political process and the establishment of a national Aboriginal and Torres Strait Islander body with direct input into the Federal parliament, the power to provide independent review of all policies relating to First Nations, and the power and resources to monitor, review and report on implementation of past and present recommendations of key national inquires and current and future policy commitments by government.

Repeal of Section 25

Section 25 of the constitution contemplates the possibility that state governments might preclude citizens from voting in a state election on the basis of race. These powers have never been used but should be repealed so that they never can be used. A modern state should not allow such powers to continue in the constitution.

Congress therefore advocates for constitutional recognition to include repeal of section 25 of the constitution which contemplates that certain races could be banned from voting in State elections.

References

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