

# Just In Time

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## Indigenous sovereignty

**All State constitutions now recognise Indigenous presence in our land before European settlement.**

**Two states, Victoria and South Australia, have commenced treaty processes with Indigenous nations.**

The treaty processes at state level have important consequences for the national debate on constitutional recognition by demonstrating that such change is not radical.

These developments at state level are intended to deliver meaningful change to Aboriginal peoples that will impact their daily lives.

Governments and Aboriginal and Torres Strait Islander peoples have developed practices and institutions for agreement-making, such as the many state and local agreements under the *Native Titles Act 1993* (Cth).

### Sovereign authority

The Australian Constitution divides sovereign authority between the Commonwealth and State governments. While only the Commonwealth can make international treaties, national and state governments can make a treaty with Aboriginal nations.

Treaties between Indigenous peoples and governments in Canada, Aotearoa/New Zealand and United States of America recognize and give effect to the idea of shared sovereignty in different ways.

### What does a treaty say and do

Treaties are formal agreements that are reached by respectful negotiation under which both sides accept a series of responsibilities including shared responsibilities.

A State government can only agree to what is within its own constitutional powers.

Education, health and housing, land use, civil and criminal law are issues that come under the responsibilities of Australian states.

**Calling an agreement a “treaty” will not make it so.**

### What are the three areas of change for the Australian Constitution?

- ❖ That the Constitution acknowledges the special place of Aboriginal and Torres Strait Islander peoples as the first peoples of this land.
- ❖ That discriminatory provisions that ban people from voting because of their race and permit racial discrimination by Governments are removed.
- ❖ That the languages of the Aboriginal and Torres Strait Islander peoples are acknowledged as the original languages of our modern nation and form part of our cultural heritage.

“What we’re talking about with constitutional recognition is really the next and great part of **truth telling** in our Australian Constitution.” (Linda Burney MP)

Following current regional dialogues, the Referendum Council will outline the steps towards Constitutional Recognition by July 2017. A referendum is likely in 2018.

## Indigenous land rights and sovereignty

Many land use agreements under the Commonwealth's *Native Title Act 1993* and state agreements with Aboriginal and Torres Strait Islanders on land management cover the same ground as treaties in other countries.

Indigenous groups already hold about a third of Australia's land mass under land rights agreements and there are rights emanating from that.

In Western Australia, the largest and most-comprehensive agreement to settle Aboriginal interests in land in Australian history was signed in 2015 by the State government with the Noongar people. The agreement includes the rights, obligations and opportunities relating to land, resources, governance, finance and cultural heritage covering 200,000 km<sup>2</sup>. The 30,000 Noongar people have agreed to surrender all current and future claims relating to historical and contemporary dispossession.

Other notable State government agreements are the *Kungun Ngarrindjeri Yunnan Agreement 2009* between the South Australian Government and the Ngarrindjeri Regional Authority. In Victoria the *Traditional Owner Settlement Act 2010* provides a framework for resolution of native title and compensation claims, plus a package of broader benefits via direct negotiation between the government and traditional owner groups.

"A treaty would give surety and certainty to current agreements, and many overlap; as well as establishing benchmarks for dealing with all the parties – business, local councils, state governments, federal agencies.

Simply signing a treaty will not alleviate the issues the Indigenous community have overnight. There needs to be a commitment to implementing change and for the communities themselves to set their priorities." (*Stan Grant, ABC Interview, Dec 2016*)

### Treaty as Bill of Rights

John Pilger (2014) proposes a treaty as "an effective Indigenous bill of rights: land rights, resources rights, health rights, education rights, housing rights, and more."

## Self-government and sovereignty

Noel Pearson (1993) proposed that the necessary implication of the High Court's Mabo decision against *terra nullius* is that local indigenous sovereignty could exist internally within a nation-state "provided that the fullest rights of self-determination are accorded."

Internal sovereignty in Australia is already divided in the Constitution between the commonwealth and state governments. In Victoria, the process to treaty will consider whether Aboriginal people will manage some things by themselves or in cooperation with federal and state governments.

In Canada, Aotearoa/New Zealand and the United States of America, self-governing Indigenous peoples often have jurisdiction over matters like minor violations of civil and criminal law, family law, local forests and fisheries, natural resource management, sacred sites, language and culture.

Pope Francis, 15 February 2017:

**"Indigenous groups must give prior consent to any economic activity affecting their ancestral lands. The right to prior and informed consent should always prevail."**

**"For governments, this means recognising that indigenous communities are a part of the population to be appreciated and consulted, and whose full participation should be promoted at the local and national level," Francis told Indigenous leaders in Rome.**

God, so much of faith is waiting,  
like a pregnant woman waiting in hope,  
like a people under siege, holding out till relief  
comes,  
like a soul lost in darkness  
unable to see even a glimmer of light,  
yet stumbling through the night because  
somewhere, out ahead,  
day will surely break.  
God be with us in our waiting.  
*Kathy Galloway*

**(A Prayer to mark the conclusion of NAIDOC week and a reminder of the people in our land who still wait for recognition, justice and healing.)**