



Reconciliation Australia: Perspectives on the 1967 Referendum

INTRODUCTION

Perspectives on the 1967 Referendum is a series of brief essays produced as part of Reconciliation Australia's program to mark the 40th anniversary of the Referendum. The series is coordinated by Dr Lenore Coltheart.

The range of perspectives includes personal memories of campaigning, assessments of what the Referendum did – and didn't – do, insights into how unity was built across political divides, stories about how the campaign achieved what it did, and about the roles of governments, of churches, and of people all around Australia.

Perhaps most important of all, the authors introduce us to some of the people who helped make history by changing Australia's Constitution.

We hope these essays will inspire others to contribute their own perspectives to this ongoing series. And that they will inspire Indigenous and non-Indigenous Australians of today to use the 40th anniversary of the referendum to work together for positive change.

As the first essay '*In the footsteps of Fred Maynard*' shows, history stretches much further back than we might think, with John Maynard revealing how his grandfather had raised the same issues 40 years before the Referendum.

In '*We learned to listen*', Jack Horner recalls how he and Jean Horner became involved the very night the campaign was launched, and some of the highlights – and embarrassments – that followed.

In a recollection of his parents, Gordon and Pat Bryant, '*Growing up with the Referendum campaign*', one of the youngest campaigners, Robin Bryant, observes the uniting of political opponents.

Election analyst Malcolm McKerras summarises how Australia voted for the idealists and defeated the cynics in his essay, *'One of our most important days ever'*.

'The Referendum campaign reaches New York' is insider Tony Eggleton's intriguing account of how a prime minister began to understand something of Indigenous lives in the unlikely setting of the Waldorf Astoria Hotel.

Sue Taffe tells the surprising story of how two women came to work together in *'Gladys O'Shane and Pauline Pickford'*.

Larissa Behrendt argues that it is only by *'Facing the facts'* on what the Referendum didn't do, that we can meet our own challenges today.



In the footsteps of Fred Maynard

JOHN MAYNARD

Professor John Maynard is Chair of Wollotuka, the School of Aboriginal Studies at the University of Newcastle. He draws attention here to the long history of Aboriginal activism in Australia in the extraordinary story of his grandfather, Fred Maynard, and the Australian Aboriginal Progressive Association in the 1920s.

'Brothers and sisters, we have much business to transact so let's get right down to it'. So Fred Maynard began his inaugural address as President of the Australian Aboriginal Progressive Association (AAPA) in April 1925, opening the first Aboriginal civil rights convention, held in the hall of St David's Church, on the corner of Arthur and Riley streets in Surry Hills, Sydney.

Many of the issues the AAPA challenged were still high on the agenda 30 years later when the campaign for the Referendum began. Many are still there, despite the achievement of that Constitutional change in 1967. Why? One reason has to do with the forgetting of history.

The AAPA made front page news in 1925 with headlines trumpeting:

On Aborigines Aspirations – First Australians To Help Themselves – Self Determination

Aborigines In Conference – Self Determination Is Their Aim – To Help A People

These headlines are proof that self-determination was a platform of Aboriginal activists five decades before the Whitlam Government's policy, usually seen as the first expression of self determination for Aboriginal people. Over 200 enthusiastic Aboriginal people attended that meeting and 'heartily supported the objectives of the association' outlined by Fred Maynard:

We aim at the spiritual, political, industrial and social. We want to work out our own destiny. Our people have not had the courage to stand together in the past, but now we are united, and are determined to work for the preservation for all of those interests which are near and dear to us.

In 2002 Aboriginal and Torres Strait Islander Social Justice Commissioner Bill Jonas stressed:

We need to adopt a rights approach that does have the capacity to transform social, economic and political relations in Australia.¹

That the same call was made almost 80 years later shows how little genuine progress has been achieved. Aboriginal voices for decades have stated the obvious needs and answers but have largely been ignored. Though Fred Maynard pointed to many objectionable government policies, arguing 'if we can awaken the public conscience we hope to have them removed', it seems that wider white Australia was not ready for such insight, particularly from an Aboriginal perspective.²

Newspaper coverage of that first conference quoted Maynard's declaration that 'Aboriginal people were sufficiently advanced in the sciences to control their own affairs' and indicated the large enthusiastic cross-section of the Aboriginal community present:

The old and young were there. The well-dressed matronly woman and the shingled girl of 19. The old man of 60 and the young man of athletic build. All are fighting for the preservation of the rights of Aborigines for self-determination.³

Among the Aboriginal activists of the 1920s were articulate, eloquent and educated statesmen and women, far removed from misconceptions that portrayed Aboriginal people as belonging to the Stone Age, unable to be educated, a dying race. For four remarkable years the AAPA held annual conferences in Sydney, Kempsey, Grafton and Lismore, before they were apparently hounded out of existence, targeted by police implementing the directives of the NSW Aborigines Protection Board.

The AAPA attracted widespread support from Indigenous communities, eventually establishing eleven branches with a membership exceeding five hundred at a time when the Protection Board reported the entire Aboriginal population of NSW as less than 7000. When we remember that the greater majority were confined on restrictive reserves with denied mobility, the AAPA's achievement was amazing. They even opened their own offices in Crown Street Sydney with the phone connected. News of the AAPA spread rapidly through an active Indigenous community network and the

¹ *Daily Guardian* 24 April 1925; *The Australian* 22 May 2002

² *Daily Guardian* 16 July 1925

³ *Daily Guardian* 7 May 1925

formation of the organization filled Aboriginal people with hope and inspiration with the knowledge that some of their own were now speaking out against the oppressive policies that confronted Aboriginal people and communities. One old man 'wrote from a far back settlement, asking that someone should come and tell them about the 'Freedom Club'.

So how were the AAPA, Fred Maynard and this extraordinary era of Aboriginal political activism forgotten and just about erased from history?

It is obviously a mistake to assume early Aboriginal political mobilisation was largely led by white humanitarians and Christian influences but there were powerful outside influences and the figure of African-Jamaican activist Marcus Garvey looms large over the political platform and direction of the AAPA. The logo, the motto and much of the political rhetoric of the AAPA were drawn from Marcus Garvey's Universal Negro Improvement Association in the USA. Its clarion call, 'One God! One Aim! One Destiny!' later became that of the AAPA.⁴ Featured on the AAPA logo was the declaration 'Australia for Australians', echoing the line in Garvey's poem 'so Australia for Australians, and Africa for the Africans'- with the added impact of affirming who was Australian in this context.

At the first AAPA conference Fred Maynard encouraged Aboriginal self-respect through 'spiritual, political, industrial and social ideals'; Marcus Garvey had earlier written in his manifesto 'We are organised for the absolute purpose of bettering our condition, industrially, commercially, socially, religiously and politically.'⁵ Both men were powerful public speakers, with newspapers referring to Maynard as an

orator of outstanding ability . . . [who] in the not far distant future will loom large in the politics of this country for the reason that the aboriginal question is becoming a very important one.

As young men both had always carried dictionaries in their pockets, working tirelessly to expand their vocabulary and improve their understanding of the English language. Both were great admirers of transcendentalist philosopher Ralph Waldo Emerson, active in opposing slavery, as well as the expropriation of Native American lands. Both were drawn to Emerson's mystic appreciation of the unity of all things, not least of man with nature and his emphasis on a self-reliance by which people freed themselves from conventional ideas to seek the life best worth living.

⁴ LW Levine *The Unpredictable Past* New York, Oxford University Press, 1993, p.112

⁵ M Garvey 'Philosophy and Opinions' in George Ducas and Charles Van Doren (eds) *Great Documents in Black American History* New York, Praeger Publishers, 1970, p.55

Self-educated and a voracious reader who continued to educate himself, Maynard's awareness of international – particularly black – issues and events is clear in his correspondence, like a letter attacking the repressive regulations of the NSW Aborigines Protection Board:

What a horrible conception of so-called legislation, re any civilized laws, I say deliberately stinks of the Belgian Congo.⁶

His links to the Garvey movement and other African American influences may have triggered the NSW Aboriginal Protection Board's attempts to discredit and defame his character and even to deny his Aboriginal background. In 1927 the Board reported to Premier Jack Lang that his representations

should not be allowed to unduly occupy the Premier's time. Mr Maynard is a full blooded black (either American or South African) whose voluble manner and illogical views are more likely to disturb the Australian Aborigines than achieve for them improvement of conditions.⁷

The AAPA manifesto, distributed to newspapers and State and Federal politicians asked for 40 acres of land to be granted to each and every Aboriginal family in the country; the Protection Board policy of removing Aboriginal children from their families stopped; and the Board itself to be scrapped and replaced by an all Aboriginal body to oversee Aboriginal affairs. The manifesto asked for citizenship within their own country; a Royal Commission into Aboriginal affairs; for the Federal government to take charge of Aboriginal affairs; and the right to protect a strong Indigenous cultural identity.

If the AAPA demands for enough land for each and every Aboriginal family in the country had been met back in 1925, we would have had Aboriginal opportunity to build on a solid base of economic independence. Had the demand to stop the Board's practice of removing Aboriginal children from their families been met then, we would not have endured another five decades of that horrific practice. If a rich Aboriginal cultural base had been recognised and protected then, we would not now be entwined in the slow process of putting together a fragmented jigsaw puzzle with many of the important cultural pieces, including language and story, missing.

⁶ M Maynard-Kondek 'Charles Fredrick Maynard, Vision for Justice for Aboriginies' in Suzy Baldwin (ed) *Unsung Heroes and Heroines* Victoria, Greenhouse Publications, 1988, p.1975; F Maynard letter to Aboriginal girl, 1927, NSW Premiers Department Correspondence Files A27/915

⁷ NSW Premiers Department Correspondence Files 9/11/1927, A27/915

Are we left today just to ponder and lament on what might have been? Or might all Australians instead, recognise how the events, people and voices of our history can inspire and lead this country to a new shared future of prosperity, where we are truly reconciled.

I'll leave the last word to my grandfather, who 80 years ago closed the AAPA conference in Kempsey with a powerful resolve, one worthy of the 40th anniversary of the Referendum:

As it is the proud boast of Australia that every person born beneath the Southern Cross is born free, irrespective of origin, race, colour, creed, religion or any other impediment, we the representatives of the original people, in conference assembled demand that we shall be accorded the same full rights and privileges of citizenship as are enjoyed by all other sections of the community.



'We learned to listen': remembering the Referendum

JACK HORNER

Jack Horner and his wife Jean were at the launch of the Referendum campaign in Sydney's Town Hall on 27 April 1957. Both joined the Aboriginal-Australian Fellowship soon after, Jack serving as secretary from 1958 until 1966 and Jean as treasurer. Both also held office in FCAATSI, where Jean was treasurer and Jack vice-president in 1959-60, and general secretary in 1969. Jack here introduces us to some fellow campaigners who seem to live again in his vivid recall of the 10 years of the Referendum campaign.

We had seen the posters about the Town Hall meeting the Aboriginal-Australian Fellowship (AAF) was holding, they were in all the Sydney shops. We didn't really know any Aboriginal people at all until that day, but half the crowd of about 1 000 were Sydney-based Aboriginal people. Later we realised this was largely due to the efforts of Pearl Gibbs, making sure there were buses to get people there and making sure they knew it was important. It was an exciting atmosphere as people surged in and even before the program began, strangers sitting next to each other were chatting like old friends.

It was a fateful day for us, and pretty much for everyone there. On the platform with Pastor Doug Nicholls, Bert Groves, the tenor Harold Blair and the great orator on civil rights, Bill Onus, along with Jessie Street and Dame Mary Gilmore. It was a terrific launch of the petition to change the Constitution and we were among those in the audience who took away blank petition forms. We distributed them among our Turrumurra neighbours, explaining what it was all about. Then in June we joined the AAF and began to learn a bit more of what life was like for Aboriginal Australians.

After we bought our first car, a brand new Morris Minor, Jean and I set out to see for ourselves some of the reserves where Aboriginal people lived. We went to nearby La Perouse first, and than on a trip north went to Caroon Reserve near Quirindi, to Tamworth, and Armidale. On other trips we went to Tingha and Tenterfield, and to Kempsey and the Kinchela Boys' Home. Like many other non-Aboriginal people who got involved in the Referendum campaign, we wanted to help improve housing,

education, health, hygiene and above all the forced removal of children – urgent problems that could not wait for Constitutional change. We knew that to be effective our actions needed to be based on knowledge, and we kept finding out just how ignorant we were. One of the practical things the AAF did was to organise weekly dances in the Redfern Town Hall and they were very popular and a good fundraiser for AAF activities.

But I think we really began to learn to listen at the annual national conferences of the Federal Council for Aboriginal Advancement (later FCAATSI). Jessie Street had been a driving inspiration behind the formation of a federated organisation, implemented by Shirley Andrews in Victoria, Ada Bromham in Queensland, Faith Bandler in New South Wales, and Don Dunstan in South Australia among many others. The founding conference was in Adelaide in February 1958. The second, in Melbourne in February 1959, focussed on the 1957 ILO Convention 107 on Indigenous populations. There was a close reading aloud of each Article, with delegates discussing Australian examples related to each one. That room was abuzz with debate, especially about Articles 11-14 on land rights. It was Jessie Street who pointed out that Australia had to ratify the Convention before it could apply here, and that this meant each state would have to approve. We knew that was an impossible barrier at that time.

I worked at the Law Book Company's shop in Phillip Street in those days and used to talk to any interested customer about the AAF and FCAA. When Gough Whitlam came in one day, just before the third FCAA conference in February 1960, I invited him to be guest speaker and explain the details of the changes to the two Constitutional clauses, Sections 51 and 127, we were requesting in the petition. He agreed, driving his car up from his Point Piper home – the conference was held at the WEA Summer School at Newport. He had just been nominated as deputy leader of the ALP but more importantly, he was there as a member of the 1956-59 Parliamentary Joint Select Committee on the Constitution. He had a calm, easy and tolerant manner and his speech took less than an hour – there was a big crowd and the place was pretty basic, so the meetings had to be on the big wide verandah.

The question time on that verandah was a turning point for the Aboriginal advancement movement. Asked how we could best achieve the changes to the Constitution, he explained why it wasn't likely we could get all the states to agree and how difficult it was to get the Constitution amended. An agonising silence followed, before the most fascinating open exchange took place between Len Fox, Doug Nicholls and Gough Whitlam. Doug Nicholls said that an Aboriginal person travelling across state borders wouldn't know he was breaking the law unless he took a surveyor, a lawyer and a politician with him. Len Fox said that the problem of the

states' agreement would be solved if the Federal government were responsible for Aboriginal people, like all other Australians and asked Whitlam if he thought that could happen. When Whitlam answered, there was a marked change in the tone of his voice. It was as if, listening to the two of them, he had glimpsed something that caught his imagination.

The Newport conference reignited the Referendum campaign, and also reinforced the central importance of land in Aboriginal affairs. That had come sharply into focus in 1956, when the British nuclear tests started at Maralinga in South Australia, Pitjatjantjarra country. From its foundation FCAATSI had protested, and continued to protest until the tests were finally suspended in 1963.

That 1960 conference added something new too, the closed council of Aboriginal leaders that became a permanent feature of the annual conferences. Each year the FCAATSI executive met in Canberra, with delegations to Parliament and officials. As treasurer, one of Jean's tasks was getting the funds for delegates to travel to Canberra – it meant airfares for the most distant, while Victorian and New South Wales people came by any old vehicle, on the bad old roads that led to Canberra in those days. The 1960s were pretty busy times for everyone – we letterboxed, interviewed and were interviewed for the papers, radio and TV; there were feature articles written, full of the hope expressed by Aboriginal leaders. There were circular letters sent to municipal and shire councils, to the rural press and to all the churches. Jean used to say that the only room in our house not taken over with campaign files, boxes, books, leaflets and posters was the bathroom. There was good support from the country papers and from even the more conservative church bodies and we began to get a sense of the awakening popular opinion.

Most importantly, the campaigning made us white Australians so much more aware of Aboriginal needs and aspirations, – and had the effect of developing the leadership skills of the Aboriginal people involved. Joe McGinness, Phillip Roberts and Kath Walker were in the first deputation Prime Minister Robert Menzies agreed to meet, in the Cabinet room in 1963. Young Indigenous people were prominent in the 1965 FCAATSI conference in the great hall at Telopea Park High School in Canberra and very active in the campaigning in Adelaide, Melbourne and Sydney. But we were still getting it wrong at times – I'll never forget my embarrassment that year, when Kenya's Minister for Justice Tom Mboya was here campaigning for sanctions against South Africa's policy of apartheid. He agreed to meet our delegation at Kirribilli House, but made his feelings very plain when he was confronted with our exclusively white faces. It was a crushing but well-deserved lesson.

It took just on 10 years to get the Federal Government to agree to hold a Referendum and then only after 15 months of petitions being presented in the Parliament on every single sitting day. Prime Minister Harold Holt announced the decision, on Wednesday 15 March 1967. The FCAATSI conference, nine days later in the Albert Hall in Canberra, was a jubilant one as all attention turned from working for a Referendum to be held, to campaigning for people to vote 'Yes'.

On the night of 27 May 1967 Jean and I were in the tally room at Circular Quay in Sydney and we couldn't believe it as the results were consecutively dropped onto the calculating machine. Those results exceeded our greatest expectations, and everyone's – it was the triumph of an appeal to the sense of justice. It was a great time to be Australian. We celebrated again when the Act changing the Constitution became law on 10 August 1967.

Those 10 years seemed like a long journey. The much longer road to a just Australia also remains one we can only travel together.



Growing up with the Referendum campaign

ROBIN BRYANT

Robin Bryant was just a small boy when his parents, Gordon and Pat Bryant, first became active in Indigenous issues in Victoria. By the time the Referendum was won in 1967, he was 20 years old. Here Robin recalls his boyhood as a member of a campaigning family.

When Gordon Bryant was elected to Parliament as the Federal Member for Wills in 1955, Aboriginal issues were not on the community radar. Australia was rebuilding after a war, looking for reds under the bed, and starting to ride on the back of an economy driven by another war. Aboriginal people were not even counted in the census.

Memories of my youth came flooding back a few years ago when, in the Great Hall of Parliament House, Lowitja O'Donohue spoke of my parents' role in the campaign for the 1967 Constitutional Referendum. I felt such gratitude, knowing that for them this would be the greatest and most satisfying honour, that a leader of such standing offered this recognition.

I began to wonder what drove a recently elected Member of Parliament to take on such an issue as their most important cause. In those early days my parents were probably not thinking reconciliation, they were thinking dignity and basic human rights. My father had an acute social conscience and an earnestness and zeal that drew on his experiences of the Depression, his 20 years as a school teacher (many at a small school in the Victorian Mallee), and of wartime. Just days before his wedding, he had been blown up by a hand grenade; he landed in Borneo with the second wave of Australian troops; he had been Commanding Officer of a prisoner-of-war camp. During the war he always carried a book in his pack to read, against the day he eventually was able to study at the University of Melbourne.

Pat, my mother, was a girl from the bush. Her father, a 1914-18 war veteran, died not long after and her widowed mother raised the family with great strength and organisational skill. Of course my father's public role deserves credit, but my

mother's energy and determination was essential. They belong together in the story of the Referendum campaign.

Of course I didn't always appreciate what was happening. In 1956 I was only 9, and my brother 5, when they dragged us out to a cold church in the Melbourne suburb of Ivanhoe, to see films and hear a talk from Stan Davey, about the plight of the Warburton Ranges Aborigines. This lives in my memory as the start of a lifetime trail for our family. My brother and I trekked with my mother all over Victoria, while she built understanding and established relationships, while my father did the same in the rest of Australia.

After Pastor Doug Nicholls invited my father to a meeting in Melbourne's Assembly Hall, he became president of the newly formed Aborigines Advancement League (AAL). So many people became part of our family life, Doug Nicholls, Stan Davey, Faith Bandler, Jessie Macleod, Sol Encel, Kath Walker, Alick Jackomos, Jack Horner, Barry Jones, Lowitja O'Donohue, Doris Blackburn, and Joe McGinness, to name just a few. Our family grew with the campaign. Pat with neighbour and author Jessie Macleod arranged the first national appeal for the AAL, a great success. Ringing in my ears I still have the jingling of thousands of donation tins we carried around Victoria and shipped interstate.

Gordon and Pat unashamedly used all the resources at their disposal – and that included us – to build networks and cajole people into helping serve the Aboriginal cause and change the framework of discrimination. Gordon was appalled to discover that for example an Aboriginal person in WA could not travel south of the 23rd parallel without a health clearance because of the concern about leprosy. He discovered a myriad of issues embedded in State laws that in his view were no different to the apartheid Australians so abhorred in South Africa.

The campaign for a referendum started in 1957, the first step building community awareness of the issues. Building relations with the churches and missionaries throughout Australia, and with municipal and shire governments was very important. So were the conferences in Canberra, especially as the numbers of Aboriginal participants grew into hundreds coming into the capital. The petitions asking parliament for a referendum were also significant means of people talking about the issues.

In 1957 Gordon's group of friends included many parliamentary colleagues, like Les Haylen, Les Johnson, Tom Uren, Jim Cairns, Doug Everingham, Jim Keefe, Kim Beasley senior, and Gough Whitlam. They were lobbied by Jessie Street, who

persuaded them that the ambitious goal of changing the Constitution was an essential step. The petitions were launched that year, the first was I think presented in the House of Representatives by Les Haylen. From then on, Gordon ran the operation like a military machine.

Instead of one big petition presented only once and then filed, he ensured that there was a petition on the business paper every sitting day. Gordon's aim was to make Aborigines the first item of business of Parliament every day it met and 'the receipt of a petition to change the Constitution on Aborigines' did indeed become the first order of the day. He organised his parliamentary colleagues to present the petitions, and not only those from his own Party. As representatives of their electorates, they convened public meetings that attracted influential people, like Alderman Clem Jones in Brisbane. A meeting in Sydney had representatives from every political party, including the Communist Party.

One night I was waiting for my father in the Parliamentary Library, looking at the newspapers. Standing opposite me, also reading the papers, was the very visible and well known Bill Wentworth. I was still a child, but I was aware as my father walked up that here were two mortal political enemies. But they immediately began talking in animated and friendly fashion across the newspapers about the progress of the campaign. I asked my father about this later and he said that beyond Bill's fear of his leftish politics was a common ground of deep mutual respect they had discovered through their work for Aboriginal issues. There were other opponents my father respected and worked with on these issues, for instance his papers have frequent mention of Malcolm Fraser, including in his maiden speech.

My mother worked with the AAL on projects including a hostel for Aboriginal children working in the city and a Holiday Centre on a donated block of land at Queenscliff, on Port Phillip Bay. She cajoled a portable building from the State government, arranged transport for free by the Country Roads Board and had it restored and erected by volunteers – including the inmates of Geelong Prison, after she convinced the Warden of the cause. Just how Pat, a very determined woman, overcame much intolerance is an intriguing story of educating people and organisations. Branches of the AAL were formed throughout Australia, creating the means of involving communities in understanding the plight of the Aboriginal people. This was the essential work of changing minds and building mutual respect across racial as well as political divides.

Though my father was a dyed-in-the-wool socialist and chose to travel by the government-owned TAA, Ansett Airlines earned his gratitude at their response to his

unique scheme. He assured the Ansett manager in Canberra that for every seat they gave an Aboriginal delegate to come to Canberra for the annual conferences, he would make a trip with Ansett. The strategy worked – he might even have been the first frequent flier!

Despite their dedication, like so many others neither Gordon nor Pat sought credit or recognition for the years of determined work. They saw it as a broad effort – while maybe 15 or 20 people could be identified as the heart of the campaign for the successful Referendum in 1967, many more helped, and it wouldn't have happened without them. The trade union movement always pitched in for instance - if you went down to the wharves, wharfies like Curly O'Rourke would always toss in coins and offer help.

My father and mother worked on many ways to get the message out about the deplorable conditions in Central Australia and outside the New South Wales, Queensland and western Australian towns. The AAL journal *Smoke Signals* was an example – Gordon bought huge printing presses to produce this and other papers. I remember another, *Voices of Hate*, that helped draw the parallel with South Africa to people's minds.

By 1967 the groundswell had turned into a tsunami of support for change. My father was a fervent believer in the role of the Parliament and the need to get the Constitution right – it was one of the first things he raised in his maiden speech to Parliament in February 1956. My parents both recognised that the Referendum campaign and the change to the Constitution were just a foundation though. Their work continued when my father became the first Minister for Aboriginal Affairs in the Whitlam Government in 1972, and for the rest of their lives.



'One of our most important days ever'

MALCOLM MACKERRAS

Malcolm Mackerras has studied elections for more than 40 years and is a regular commentator on voting behaviour. Currently a visiting fellow in political science at the University of New South Wales' Australian Defence Force Academy in Canberra, Malcolm comments here on how, and why, Australia voted in the 1967 Referendum.

Saturday 27 May 1967 goes down in Australian history as one of our most important days ever. On that day 90.8% of votes were cast in the affirmative at the Referendum that resulted in the *Constitution Alteration (Aboriginals) Act 1967*.

On that day the ballot paper asked each elector:

Do you approve the proposed law for the alteration of the Constitution entitled . . .
'An Act to alter the Constitution so as to omit certain words relating to the People of the Aboriginal Race in any State and so that Aboriginals are to be counted in reckoning the Population'?

In Australia's federal constitutional history voters have been asked 44 times if they approve a change to the Constitution. Only 8 were approved and those 36 rejections prompt a view of Australia as the frozen continent, constitutionally speaking.

Of the eight approvals, the Aboriginal Referendum was by far the most successful, with a 90.8% 'Yes' vote. A trivial amendment to the Constitution (relating to Senate elections) cast in December 1906 comes second, approved by 82.7% of voters.

In 1967, every state and every electorate voted 'Yes', with Victoria setting the 94.7% top and Western Australia the low, still with 80.9% approving the changes.

This historic record has prompted myths like the 1967 Referendum giving Aboriginal people the right to vote, or bestowing citizenship. Neither is correct, as Aboriginal people already had the right to vote and were citizens.

The importance of the 1967 Referendum lies more in its symbolism than in its actual wording. While many believe this was an act of great idealism on the part of the Australian people – and there certainly were idealists, even among the politicians involved – the full story is more complicated.

The other successful referenda amended (or inserted) only one section of the Constitution. This was the only one to amend two, Sections 51 and 127.

Section 51 gives our Parliament power to make concurrent laws and begins:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to . . .

Until 1967 the powers listed included xxvi:

The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws.

This 'race power', as it became known, was originally there to enable Parliament to make laws discriminating against racial groups like the Kanakas in Queensland. The words 'other than the aboriginal race in any State' were intended to exempt Aborigines from discrimination. But this meant the Commonwealth also had no power to make laws for the benefit of Indigenous people.

Section 127 originally read:

In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

Why was this provision included in our Constitution in 1900? Communications in inland Australia were at best poor, and frequently non-existent. There were practical difficulties in counting Aboriginal people dispersed across remote areas and living a nomadic life.

Fifty years later things had changed. The petition launched in 1957 was for a Referendum on the repeal of Section 127 and the change to Section 51.xxvi. The following year, Prime Minister Robert Menzies responded to a strong body of opinion in Parliament and set up a Joint Committee on Constitutional Review, with members and senators from all parties.

The Committee reported in November 1959, proposing many amendments, including the repeal of Section 127 and a change to Section 24 which provided that:

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

When Menzies first considered the Report his reaction was to disparage it. There were so many recommendations, most totally unnecessary. His instinct was to do nothing. But a few years later he had a problem when there was a proposed redistribution of seats to which the Country Party raised strong objections. At that point he realised the political value in the idea of changing the Constitution to get rid of the requirement that the number of members be twice the number of senators and expanding the House of Representatives.

On 28 April 1965 he announced Bills would be introduced for a referendum to amend Section 24 and repeal Section 127. When the House of Representatives debated the Bills that November, there was much objection to the exclusion of the amendment to Section 51 set out in the 1957 petition, but not mentioned in the Joint Committee's Report.

The objectors were quite right. The 1965 Constitution Alteration (Repeal of Section 127) Bill was essentially useless. From the point of view of Aboriginal people and their fellow campaigners it was scarcely worth having.

After Menzies retired in January 1966 the new Prime Minister, Harold Holt, decided to defer a referendum until after the general election of November 1966.

In the autumn session of 1967, Holt promptly moved for the Referendum, with the change to Section 51 included.

A booklet explaining the proposals was posted to every elector. The case for a 'Yes' vote on the Aboriginal question began:

The purposes of these proposed amendments to the Commonwealth Constitution are to remove any ground for the belief that, as at present worded, the Constitution discriminates in some ways against people of the Aboriginal race, and, at the same time, to make it possible for the Commonwealth Parliament to make special laws for the people of the Aboriginal race, wherever they may live, if the Commonwealth Parliament considers this desirable or necessary. . . .

The Commonwealth's object will be to co-operate with the States to ensure that together we act in the best interests of the Aboriginal people of Australia.

The case concludes with comments on Section 127:

Our personal sense of justice, our commonsense, and our international reputation in a world in which racial issues are being highlighted every day, require that we get rid of this out-moded provision.

Its modern absurdity is made clear when we point out that for some years now Aboriginals have been entitled to enrol for, and vote at, Federal Elections. Yet Section 127 prevents them from being reckoned as 'people' for the purpose of calculating our population, even for electoral purposes!

. . . All political parties represented in the Commonwealth Parliament support these proposals. The legislation proposing these Constitutional amendments was, in fact adopted unanimously in both the House of Representatives and the Senate. We have yet to learn of any opposition being voiced to them from any quarter. . .

It was the amendment to Section 24 that some rebel Coalition and minor party senators, who saw the motive as cynically political and the effect as weakening the power and prestige of the Senate, had opposed.

When the two questions were put at the Referendum, the first went down badly. The second was carried massively and made voting history. As one commentator put it at the time 'the voters learnt how to take the bait but not the hook'.

To the extent politicians were being cynical, that cynicism came in the first question. To the extent they were being idealistic, that idealism came in the second question.

The voters knew how to choose between the two.



The Referendum campaign reaches New York

TONY EGGLETON

Press Secretary to four prime ministers, Robert Menzies, Harold Holt, John Gorton and William McMahon, Tony Eggleton here recalls some of the ways Harold Holt's understanding of Indigenous issues came to change, including one memorable meeting at New York's Waldorf Astoria Hotel.

Looking back through a prism of 40 years of politics, the 1967 Referendum and the resulting *Constitution Alteration (Aboriginals) Act 1967* is a highlight that comes readily to mind.

It was an outcome to savour, politically and socially. Not only was it Australia's best ever referendum result, it also raised the prospect of a better deal for Aboriginal Australians.

Reflecting on the past four decades, there is cause for disappointment that the road has been so slow and tortuous. Nonetheless, at the time, the Referendum result was a refreshing and encouraging pointer to a fairer and brighter future for the first Australians.

Harold Holt had succeeded Sir Robert Menzies in 1966, and among the new Prime Minister's priorities were closer relations within our region and relaxation of the 'White Australia' policy. Referenda were on the agenda, but Harold decided to postpone these until the following year. There is always scepticism about constitutional changes, and the record of success in Australia was not encouraging. Before engaging in a referendum campaign, he decided it was more prudent to settle into his new role and to cope with the 1966 federal election.

The need for action in respect of Aboriginal people was being strongly and effectively promoted, but initially Harold and many of his cabinet colleagues were cautious and sometimes ambivalent. The Prime Minister was not overly confident about the likely outcome of the Referendum.

He did not express public concern but privately, reflected on the difficulty of overcoming public antipathy to constitutional reform.

The PM began expanding his contact with Aboriginal representatives and assessing the Federal initiatives that would be of most value to the Aboriginal people.

While on a mission to New York, he took a keen interest in an Aboriginal delegation visiting the United States. He asked me to arrange for Charles Perkins and his colleagues to call on him at the Waldorf Astoria Hotel. I had the pleasure of escorting the visitors to the PM's suite and, after the meeting, it was evident that Harold's focus on Indigenous issues had been further sharpened.

In the event, the Referendum on 27 May 1967 returned a 'Yes' vote of over 90 percent and it remains Australia's most successful referendum result.

Harold Holt was surprised and pleased by the degree of support, and began looking in more detail at ways in which the Federal Government could most constructively and positively move forward. He set out to extend further his first-hand knowledge of Indigenous issues and to expand his personal appreciation of Aboriginal history, culture, and aspirations. There were visits to Aboriginal communities and more consultations with Indigenous leaders, including Charles Perkins.

As a concrete step, he established a Council for Aboriginal Affairs, and decided to take direct responsibility by placing the Office of Aboriginal Affairs in his own Department.

Over a period of just a few months, Harold Holt had come a long way in crystallising his thinking on Aboriginal policies, and in his personal commitment.

We discussed this many times as we travelled around Australia and internationally. In the second half of 1967, he actively sought the advice of public servants and politicians with closer knowledge of Aboriginal people like Nugget Coombs, the Director of the new Office of Aboriginal Affairs Barrie Dexter, and MHR Bill Wentworth.

In planning the Government's programs for 1968, Indigenous affairs was moving up the list of domestic priorities, alongside international concerns such as Australia's role in the world, the Vietnam War, and engendering a renewed British and European interest in the Asia and Pacific regions.

Harold rang me from his Portsea house on the morning of Saturday 16 December to confirm arrangements for a news conference to be held in Melbourne the following week. He intended using this as a forum to reflect on the past year and to outline his agenda for 1968.

Sadly, this chapter was not to be written. His accidental drowning at Portsea the following day, Sunday 17 December, meant that it was to be left to others to build on the opportunities flowing from the Referendum.

In referring to the PM's attitude to Aboriginal affairs, Bishop Tom Frame wrote in *The Life and Death of Harold Holt*:

Whatever Holt's reasons, and genuine concern and empathy were among them, he had taken the initiative and shown his determination to improve the well-being of Aboriginal people.

Harold would be disappointed that, after 40 years, there is still so much that needs to be done.



Gladys O'Shane and Pauline Pickford

SUE TAFFE

Dr Sue Taffe's history of FCAATSI, Black and White Together, was published by University of Queensland Press in 2005. Here Sue tells how two women of very different backgrounds became firm friends in the fight for Aboriginal rights.

In 1958, the first year of the Referendum campaign, Gladys O'Shane, an outstanding champion of Aboriginal rights,ⁱ addressed the Sydney conference of the Waterside Workers' Federation (WWF) Women's Committees about how Queensland's *Aboriginals Preservation and Protection Act* affected the lives of Aboriginal people. Quoting sections of the Act, she explained how Aboriginal people could be removed from any district to a reserve and kept there indefinitely; how their private property, including personal letters, could be seized; how they could not marry without the consent of authorities; and that they were not even the legal guardians of their children. In what was possibly her first public speech to a large gathering, she concluded:

All right-thinking Australians must join with us in our struggle for a better way of life... The power is in your hands, if you will but realise it. Ladies, in closing I would like to say this. The Aboriginals' struggle for recognition has been a long and bitter one but until recent years they have not had a medium by which to let the world know of these struggles. I want to thank you for giving me this opportunity of speaking on behalf of my people.ⁱⁱ

21-year-old Gladys Davies had married Paddy 'Tiger' O'Shane in 1940, when the fiery Irishman was cutting cane near Mossman. Mixed racial marriages were frowned upon in those days, making it hard for them to rent a house for their growing family – their five children were born by 1950. Tiger was then working on the Cairns wharf and a member of the WWF, while Gladys was a member of the WWF Womens' Committee. Both were active members of the Communist Party of Australia, at that time the only political party with an Aboriginal policy. Gladys was also a member of the Union of Australian Women (UAW), a well-organised left-wing organisation also campaigning for a better deal for Aboriginal people.

The Cairns Aboriginal and Torres Strait Islander Advancement League was formed in 1959, with Gladys O'Shane the founding president. An early campaign was to black-ban a taxi company in Cairns found to be discriminating against an Aboriginal driver on racial grounds. The sacked driver was re-instated. Strong labour bodies – the Trades and Labour Council and the WWF – supported the new League. The next year Gladys travelled to Sydney to represent the League at the annual conference of the Federal Council for Aboriginal Advancement (FCAA), an umbrella organisation of the state bodies working for Aboriginal rights across the country. At this conference, Gladys' networks widened when she met Pearl Gibbs, Bert Groves and Faith Bandler from the NSW Aboriginal-Australian Fellowship, the non-Aboriginal Melbourne activists Dr Barry Christophers and Shirley Andrews from the Victorian Council for Aboriginal Rights (CAR), and many other activists, black and white, from all over the country.

Two years after Gladys' speech on the *Aboriginals Preservation and Protection Act* a graphic example of the effects she had outlined occurred on the Hopevale Lutheran Mission, nearly 400 kilometres north of Cairns. A young Aboriginal couple, Jim Jacko and Gertie Symon, had gone to the local football match together. The Mission rules did not allow unmarried men and women to go out unchaperoned, even though Gertie's parents had given permission for Jim to court her. When one of the mission staff reported seeing them at the match, both were ordered to work without pay for two weeks, including Saturdays. Outraged at this injustice, they ran away together instead, returning some days later. As punishment for this, Pastor Kernich, the Superintendent, gave Jim twelve lashes with a lora cane, while Gertie was forced to have her long hair shorn in public into a short, rough haircut, with all the other young women made to watch her humiliation. As a further punishment, they were separated, with Jim sent under police escort to Cairns. He was to be sent to Palm Island but one of the Cairns League members managed to smuggle Jim into hiding, to give the League time to act on his behalf.

Flogging was not an unusual Mission punishment at the time, but the reaction to this case was. The story was reported in the newspapers and sympathetic unions like the WWF sent around the hat to raise funds to support a campaign. In Victoria, Pauline Pickford had just taken over as secretary of CAR to enable former secretary, Shirley Andrews, to focus on fighting for the right of Aboriginal workers to get equal pay. It was Pauline who now wrote an official letter from CAR to the Queensland Minister for Native Affairs, expressing their concern at the flogging. Under continued pressure the Minister agreed to hold an open magisterial inquiry.

The Cairns League engaged barrister Fred Paterson, former MHR for Bowen and member of the Communist Party, as Jim's legal counsel. A contingent of eleven people formed to travel to Hopevale for the inquiry included Pauline Pickford who came from Melbourne to represent CAR, Labor MHR Tom Uren, and a number of unionists. The Indigenous representatives were Gladys O'Shane as president of the Cairns League; Joe McGinness as secretary of the Cairns League and newly elected president of FCAA; and Fred Walters, a Torres Strait Islander leader.

A warm, friendly woman, Pauline Pickford brought emotional intelligence to her work in Aboriginal affairs. Her mother had friends in Victoria's Coranderrk community and Pauline recalled meeting Aboriginal people like Bill and Eric Onus and Margaret Tucker, who were good at educating white Australians about the impoverished and difficult conditions of Aboriginal lives under punitive and controlling laws. As secretary of CAR, Pauline developed her own friendships with Aboriginal people from Lake Tyers and she was also a member of the UAW, which encouraged and supported Aboriginal women to speak out in its forums.

Meeting in Cairns, Gladys O'Shane and Pauline Pickford were friends even before they arrived at Hopevale. There they talked long into the night, sharing ideas and strategies on campaigning for justice for Aboriginal people. Gladys helped Pauline realise that as a white woman, she could not be effective until she understood how Aboriginal people thought, the depth of their mistrust of whites, and how they lived. Communities had been broken up and people forced to move; they were controlled by repressive laws and faced deep racial prejudice when they came in contact with whites. In turn Pauline helped Gladys, distressed that the women at Hopevale seemed wary and frightened of her – it was Pauline who found out that Mission staff had warned people against the contingent of 'Godless Communists'.

The remote Hopevale Mission, accessible only by a four-wheel-drive track, was a world where the word of the Missionary Superintendent had been law. The inquiry's finding that Pastor Kernich was in breach of the *Aboriginals Preservation and Protection Act* was ground-breaking; the publicity signalled that no Mission was too remote to be brought to account. In 1961 FCAA was only three years old and just beginning to win the trust of Aboriginal people and after the Hopevale case, such episodes were more frequently reported to it.

The friendship of Pauline Pickford and Gladys O'Shane fuelled their work for Aboriginal rights for four busy years. In Victoria Pauline publicised the role of the Cairns League in bringing to court a case against police constables at Mareeba, after a rampage of bashing and brutality. Tiger O'Shane thought this was the first time a

Queensland police officer had been found guilty of an offence against an Aboriginal person, and told Pauline the guilty verdict gave the Mareeba Aboriginal community a glimmer of hope. Gladys travelled from Cairns to Gippsland to address the UAW about the campaign to save the Lake Tyers Aboriginal Reserve from being sold.

Gladys O'Shane began writing of her experiences, sending her writings to Pauline as a way of conveying the experience of being Aboriginal. One piece began:

My skin is brown and smooth textured. My hair is black and curly and I have dark brown eyes. I am tall for a woman, 5 foot 7 inches built in proportion. People have said to me that I walk as though I own the place. Can it be wondered at? My ancestors were the first people of this land.

She then told how a man had recoiled when she told him she was of Aboriginal background, while another had said, comfortingly, that she could pass for Melanesian. She concluded with her response to them:

The story of the murder, rape and plundering of the Aborigines is a blot on Australia's history. That blot can only be wiped out when all right-thinking people unite in the struggle for the emancipation of the Aborigines.

AND I AM PROUD TO BELONG TO A RACE OF PEOPLE WHO, IN SPITE OF EVERYTHING, CAN COME UP FIGHTING.

Pauline Pickford sent this article to the editor of the *Sydney Morning Herald*, known for his sympathy for the Aboriginal cause, suggesting publication. His rejection displayed the very prejudice the article attacked:

it is difficult to believe not only that she wrote it, but that these highly reasoned thoughts came from her mind and not from that of some collaborator. After all, she left school at twelve and apparently has her time fully occupied rearing a considerable family . . .ⁱⁱⁱ

This rejection suggests how Aboriginal history can go unrecorded, but fortunately the article was eventually published, in the anniversary issue of the UAW journal *Our Women*. Pauline Pickford also wrote her own account of the events at Hopevale, published and circulated through church and trade union networks. Ironically, such work can become part of the public record – Gladys O'Shane's article was carefully transcribed into the file kept on her by the Australian Security Intelligence Organisation.^{iv}

Gladys O'Shane's life was cut short in 1965, two years before the success of the Referendum, but she continues to inspire others, especially in Cairns. Pauline Pickford remained firm friends with the O'Shane family, who carry their mothers' legacy proudly in their own contributions to the ongoing work for justice for Indigenous Australians.



Where is the caring spirit? Faith Bandler's challenge

FAITH BANDLER

A key figure in the Referendum campaign 1957-1967, Faith Bandler spoke to Reconciliation Australia about those years and issued a challenge for Australians today. This is an edited transcript of that conversation, at Faith's home on Australia Day 2007.

It was a great campaign – 10 years! At the start we had no idea it would take so long. We just kept working at it. There were very few of us fulltime workers, and hardly any Aboriginal people could give the time needed. They couldn't even move around their own country freely because the laws in each state differed. They had far more urgent concerns than meetings, like getting food on the table every day. People like Pearl Gibbs and Doug Nicholls were so rare. It wasn't that Aboriginal people didn't care, they used to say 'What is Faith on about, with this referendum?' it appeared miles away from them. Really, the first and foremost concern for most Aboriginal people then was food for their families.

In the 1950s whatever was done for the first Australians was a form of charity, as if they would never be able to look after themselves. There were some committee people I knew in Sydney who thought they were doing their part by taking Aboriginal children in for a holiday. They could not understand that acts of charity like that actually set Aboriginal people back in their desire to gain their independence. For that to happen meant others had to give up their charitable acts. And you couldn't have that! That outlook was an obstacle in those days.

But those who became involved in the campaign, who thought about the issues and who brought about the successful result – they had a very different outlook. A real caring spirit flourished in that campaign, and was nourished by it.

And what workers we had. Jessie Street – what an amazing woman! I had known her for years but that one morning in 1957 she started something that was shocked even me. It was Saturday, in autumn, and I had the whole day before me. I was sitting

outside looking at the garden when the phone rang. She said it was important for me to come into town, to Christian Jollie-Smith's office in Elizabeth Street.

So I went, and there was Bert Groves from the Australian Aboriginal Fellowship we had just formed, Christian, Jessie and me. Jessie had a bit of paper in her hand and told us she had already had Brian Fitzpatrick in Melbourne look at it, and she began explaining what it was about. I just sat there listening to them talking about something that was totally foreign to me. They kept talking about this Constitution, and I thought well I've vaguely heard of it sometime. I was thinking – I confess – why should I care about the Aborigines? I've got a great life, and I wouldn't change it.

Well, I was thinking differently by the time I left, I can tell you. They had the petition printed and I was supposed to talk to people about it at the Australian Aboriginal Fellowship and other groups. I carried it around a week or more in my bag. I was terrified to take it to the Fellowship because they'd think I was a fool when they realised I didn't have the first idea of what it was about! It might still be in my bag if Jessie hadn't got my friend Irene McIlwraith to ring me and say, listen you, where's that petition? – dear Irene.

It was quite a responsibility those two women, Jessie and Christian gave me – if ever there were two forceful women! Christian was in her 70s then, she was only the second woman admitted as a solicitor in NSW. She was highly intelligent, very political, very effective.

Jessie wasn't far off seventy either. She had a gentle but very firm determination, she reasoned with you and made it plain that she knew what she was talking about. She had a very genuine feeling, very deep, of caring about what was happening to Aboriginal people. She grew up on a property in the bush and her playmates were Aboriginal kids, and she never forgot.

The next step after getting the petition finalised was to launch it and get it circulated. The Australian Aboriginal Fellowship was planning a public meeting in Sydney Town Hall and Jessie thought that was the perfect opportunity. We saw the Lord Mayor and told him we needed the main hall. Nothing less. He asked me did I know how big it was – of course I did, I'd been going to concerts there for decades and knew it like the back of my hand. I told him we were expecting thousands and said we'd fill it.

So then Pearl Gibbs and Bert Groves and I went out to La Perouse – we said you lot are always complaining about being ignored, now you have to come in to the city, we've got the Town Hall and we have to fill it. Pearl chartered a big bus and they

came – just think of what that journey meant to them. In every sense, it was a very long way from La Perouse to the Town Hall.

People like Jack and Jean Horner got involved because of that meeting. The Referendum campaign pretty much took over Jack's life, he was so committed, a great person – and the more he saw of the plight of Aboriginal people the more committed he became. He became such a good listener and was a kind of clearing house for people with problems. In fact he spent so much time helping people he nearly got fired. He and Jean even spent all their holidays going out to communities to spread the word.

And the campaign took over their house too – by the end you could only just open their front door, the papers by then had got into the hall and were stacked all along both sides with only a narrow passage between to walk through. Jack and Jean were two very special, honest and true people – their sense of right went very deep.

From the launch of the petition in 1957 my routine was to get Hans off to work and Lilon off to school and then my own working day began. It was non-stop, I went to so many meetings, thousands, Rotary, Apex, Lions, all the women's organisations, church groups – it was exactly like going to work at a full-time job. But we all believed that talking to people, giving them a chance to think and have their say was essential.

And any day of the week it would be typical of Jessie to ring of a morning and say 'I have an idea, can we have a little lunch today?'. I would always go, we'd just have a sandwich and a cup of tea, the plainest working lunch, but so enriched by her presence and her great sense of humour.

Pearl Gibbs on the other hand would just arrive at our place when we were living in North Sydney at 7am and say 'Right, put the billy on'. Both she and Jessie were quite put out by the inconvenience when our house was built and we moved way up to French's Forest. Pearl was as game as they come. She had great faith in the union movement and in people's potential. She was a woman with vision. It was quite an achievement to do all that she did with her life.

It occurs to me that so much was achieved in that campaign without one paid person, just anyone who could afford the time working for free.

We formed the federal organisation that became the Federal Council for Aboriginal and Torres Strait Islanders (FCAATSI) in 1958, at a conference in Adelaide. Of course I wanted to go but it was too expensive for us to afford – then I opened the

mail one morning to find a cheque and a note from Jessie saying you must be at the conference, we need women to be just as prominent as the men! She was remarkable, she really was and we developed a close bond. I have always maintained people should be seen as people, regardless of any differences and I loved the way Jessie just didn't see colour.

It was extraordinary how we raised the money for the campaign. There were donations and fundraisers, but as well the churches and the trades unions raised money to get delegates from around the country to FCAATSI meetings. There could never have been a national body with representation from the country towns if the unions and the churches had not moved in to help fund it. It wasn't easy. Raising money was a major task – sometimes people would refuse when we asked for contributions, saying 'Leave the Aborigines alone, they're happy as they are'. You couldn't find an answer to that.

We were given free seats by the government airline, TAA. I would go in to the TAA office in Sydney and badger them, and they were very generous. Their support brought people from Perth and from north Queensland and really made FCAATSI work as a national body. And it made a big difference to people in the north like Joe McGinness – everything was at our fingertips here compared with those under Queensland law.

Changing Section 51 so that the federal government took responsibility for Aboriginal people like other Australians was a major task. We really had to educate the politicians about what it meant for people to be subject to different laws in different states. I'll never forget one FCAATSI delegation where we were all sitting around the Cabinet table in the old Parliament House in Canberra. There was one delegate from each state and Joe McGinness was the Queensland delegate. When he told Prime Minister Robert Menzies that under Queensland law they had to prove they could work for six months before they would be paid, Menzies said 'No, that can't be right' and Joe said 'Yes it is, brother'. We all looked at the Prime Minister but he seemed more shocked at the law than Joe calling him 'brother'.

Very few people could be fully aware of the work that went into changing the Constitution – Jessie always said you know if there is anything we don't like, we have to change it. And I thought well, it's very easy to say that and not so easy to make things change!

But that change actually happened. The Referendum campaign was about the future we wanted, not complaining about the past.

The Referendum made life easier for Aboriginal people, as they no longer lived under six state laws. But it wasn't only what the Referendum achieved. The campaign achieved a political voice for Indigenous people, a power not given by the government, but won by their own initiatives.

We can get anything we want if we work for it. There's no question about that. But we have to be prepared to work towards a goal. People who have vision hold the community together. Without vision we fall apart. And vision is about understanding our past as well as looking to our future.

Perhaps young Aboriginal people are not aware of their history and think it has always been like this. It was a great struggle and it should be remembered, even if there is still so much to do.

The times do seem different now, perhaps more selfish.

There are some things you need for political change, like timing and momentum. I think the caring spirit is what charges the momentum and creates great prospects for change. There isn't a caring spirit for the community as a whole. There was once, but it seems so important now for people to have a big car, a big house, material goods. That's not where a caring spirit can grow. This is the way we've made it and are we now teaching our children this, to put ourselves first?

Young people now seem to have a more accepting attitude to difference though and the stark difference between Indigenous and non-Indigenous people is less than it was fifty years ago. Now at least we know that both need to accept each other, that's reconciliation.

They were special people, that small group who were the driving force of the Referendum campaign. They were intelligent people who believed that instead of charity, it was opportunities Indigenous people lacked, opportunities to go forward, to stay on at school, to go on to High School.

The lesson I think is that major changes can be brought about for humanity without the need of lots of funds – that was a miracle that major change could be brought about without one paid servant, not one. Amazing isn't it. It's a great story in itself when you think about our little group, our tiny little group that changed Australia's Constitution.



Facing the facts

LARISSA BEHRENDT

Larissa Behrendt is Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning, University of Technology, Sydney. In this edited extract from her 2006 Rick Farley Lecture, she points out what the 1967 Referendum didn't achieve – and what this means to us.

Views about the place and role of Aboriginal people in the national consciousness are not just philosophical or psychological – they translate into differences in legal status and resource allocation. The nature of native title and the way in which it has been demonised and weakened since it was first recognised in the Mabo case highlights how so-called 'special laws' for Aboriginal and Torres Strait Islander people can actually provide lesser protection. It seems Indigenous conceptions of rights and political aspirations are tolerated only until they look like upsetting power structures within the legal system.

The reason Aboriginal people and our rights are so vulnerable to whims of the legislature stems from assumptions within our founding legal document, the Australian Constitution, drafted in the Australian colonies and enacted by Queen Victoria in 1900.

2007 is the 40th anniversary of the 1967 Referendum that amended the Constitution. It is a moment to celebrate that this country, sceptical of constitutional change and founded on institutional racism, voted by an overwhelming majority to include Aboriginal people in the census and to empower the federal government to make laws on their behalf. It is a moment to celebrate the people's movement that built over decades to make that historic change.

But it is also time for deep reflection. Forty years later, despite that grass roots call for equality, we still see Aboriginal communities living in conditions far below those of other Australians. We must ask ourselves: why hasn't the Constitutional change and the resources and attention provided since, brought equality to Indigenous people?

One of the defining characteristics of our legal system – as Aboriginal people know all too well – is that its faith in the benevolence of government. The founding fathers of our Constitution agreed that the decision-making about rights protections – which ones we recognise and the extent to which we protect them – were matters for the Parliament. They discussed including these rights in the Constitution, but rejected the idea and our founding document is still silent on human rights.

This document was framed within prejudices like white racial superiority and the subordination of women. A non-discrimination clause prohibiting the state from depriving anyone of 'life, liberty, or property without due process of law' and denying 'any person within its jurisdiction the equal protection of its laws' was proposed by Tasmania. It was rejected by the other colonies on the basis that constitutional rights protection was unnecessary as Parliament could be entrusted to make laws for rights if necessary. This meant of course that Parliament could also make discriminatory laws – and it has used this power from the start.

When we look at the intentions and attitudes of the men who drafted our Constitution, it's no surprise that it offers no protection against racial discrimination today. But the key problem is what is missing from the Constitution, more than any legacy of prejudice embedded in its seemingly neutral text. Our founding document leaves Indigenous people vulnerable by relegating the most fundamental human question of how we value and protect rights to the legislature.

Though people often think the 1967 Referendum gave Aboriginal people citizenship rights, or the right to vote, it didn't. We already had those. The 1967 Referendum did two things:

- It enabled Indigenous people to be included in the census, and
- It enabled federal parliament the power to make laws in relation to Indigenous people.

In her biography of Faith Bandler⁸, Marilyn Lake explains something of the aims of the campaigners for this Constitutional change. Supporters saw including Indigenous people in the census not just as a body-counting exercise, but as a nation-building exercise. Their vision was of a symbolic coming together into an imagined inclusive community that could transcend an 'us and them' mentality.

Their arguments for giving the Federal government power to make laws in relation to Aboriginal people, rather than leaving it to each state, reveal a belief that the Commonwealth would use the power to protect Indigenous people. This has not

⁸ Marilyn Lake *Faith: Faith Bandler, Gentle Activist* Sydney, Allen & Unwin, 2002.

been the case. Look at policies like taking Aboriginal children from their families, or removing heritage protections to preserve Aboriginal culture, or extinguishing native title. Or how a law recognising a right is followed by another that closes the door again. Look, for instance, at how the Native Title Amendment Act 1998 (Cth) prevented the Racial Discrimination Act 1975 (Cth) from applying to certain sections of the Native Title Act 1993 (Cth).⁹

The failure to protect rights and the false reliance on government benevolence has a heavier impact on Aboriginal people. In 1997 the High Court considered for the first time the legality of the policy of child removal in the case of *Kruger v The Commonwealth*. The plaintiffs' case argued that the effect of the relevant Northern Territory Ordinance violated human rights, including the implied rights to due process before the law, equality before the law, freedom of movement and the express right to freedom of religion contained in S.116 of the Constitution. That they lost on each count was a dramatic demonstration of Australians' lack of rights protection and of the disproportionate impact on Indigenous people.

But the *Kruger* case does serve to show how the harms of child removal, as a particularly Indigenous experience and a particularly Indigenous legal issue, connect to what we hold as fundamental – the right to due process before the law, equality before the law, freedom of movement and freedom of religion. It is a chilling demonstration of how few of the rights we assume as inherent, are actually guaranteed us. It spotlights the intended silences in our Constitution about rights and reveals the rights violations that can result.

While we celebrate the achievement of the Referendum campaigners we must also face the facts today. The hopes for social justice that inspired them, and united such a large proportion of the Australian electorate in 1967, did not translate into federal action to create the necessary mechanisms. Neither has the added federal government power always been used to benefit Indigenous people. No more has inclusion in the census count overcome divisive 'us and them' thinking on Indigenous issues.

Indeed, the Federal government power has itself been employed as a barrier to effective policy-making, with key areas of government responsibility shared with the states and the now self-governing Northern Territory and Australian Capital Territory. Instead of cooperating for success, the two levels of government more often blame

⁹ In addition, we have seen the High Court avoid the question of whether the races power can only be used to promote the rights of Indigenous people in *Kartinyeri v. Commonwealth* (the *Hindmarsh Island Bridge* case) (1998) 195 CLR 337.

each other for failure. A recent example was the response prompted by negative media coverage of findings of high incidence of sexual assault in some communities and gang violence in others.

Federal Minister for Aboriginal Affairs Mal Brough blamed the Northern Territory Government for not putting police into communities where violence was endemic. While he was absolutely correct that any community of 2500 people with no police force would have law and order issues, it was a simplistic response focused only on blame (and cost) shifting. Many other factors contribute to the cyclical poverty and despondency within some Aboriginal communities that create, over decades, the environment in which the social fabric unravels and violence, sexual abuse, substance abuse and other anti-social behaviour is rife. Just as unhelpful was the response of Northern Territory Chief Minister Claire Martin in asserting that the problem was the Federal government's failure to provide adequate housing and health and education services.

Both were of course correct. Governments, federal, state, and territory all continue to underfund the most basic Aboriginal community needs like health services, educational facilities and adequate housing services. Forty years ago it was precisely the same unjust conditions that made Australian voters direct the Commonwealth to take responsibility for the good government of Indigenous people, just like all other Australians.

The 40th anniversary of this historic referendum is a time to reflect on what it really achieved and how much further we still have to go to achieve social justice for Aboriginal people, otherwise we fail to learn the lessons of that extraordinary campaign. Facing the facts so we can meet our own challenges today is the way we can truly honour those ordinary, everyday Australians all around the country who changed our Constitution in 1967.

ⁱ Ruth Hennings (Wallace), Personal communication, Cairns, 13 March 2006; 'Gladys O'Shane Dies in Cairns', *Queensland Guardian*, 19 January 1966.

ⁱⁱ Fourth session, Second Conference of WWF Women's Committees, 25 September 1958, Noel Butlin Archives ANU: Women's Committee file, Z248 box 109

ⁱⁱⁱ Gladys O'Shane, in *Our Women 1963*

^{iv} Gladys O'Shane ASIO file, National Archives of Australia: A6119, 2760; Pauline Pickford ASIO file, National Archives of Australia: A6119, 2575