

## **Linda Burney calls for end to 'archaic' race powers alongside Indigenous voice to parliament**

*While the idea of an Indigenous voice to parliament is huge and important, it is limiting to consider it as the only option, Labor MP says*



*Linda Burney said the Indigenous voice plan would be 'contentious in some quarters'.*

Gabrielle Chan and Helen Davidson  
18 July 2017

Indigenous Labor MPs have raised doubts about a plan for an Indigenous representative voice to parliament and questioned the Referendum Council's failure to recommend removing the race powers from the constitution.

Linda Burney said the recommendation from the prime minister's Referendum Council would be "contentious in some quarters" and said Australians would be shocked that any proposal would not deal with the race powers.

These powers, s.51xxvi, were inserted into the constitution as part of the 1967 referendum and give the commonwealth power to make laws for "the people of any race for whom it is deemed necessary to make special laws".

That allowed for the construction of laws such as native title and Aboriginal heritage laws but it also allowed the federal government to make discriminatory laws.

Burney said while the idea of an Indigenous voice to parliament was huge and important, it was limiting to consider it as the only option.

“I think that is very limiting,” Burney told the ABC. “I think that is more of a minimal approach when ... they don’t want us to address the issues of the race powers and recognition of first peoples in the constitution.

“I think the Australian community would be shocked to think that we are not going to deal with the archaic race powers in the constitution but that is what the Referendum Council is instructing the parliament.”

Burney underlined that it was unclear what the Indigenous voice would do, its structure or how people would be elected.

She said the Coalition and Labor needed to consider the report. Labor’s Indigenous caucus meets on Wednesday. She warned that any idea needed to be passed in the parliament and the idea of enshrining a national body would be a “challenge for some people”.

“I think it will be contentious in some quarters,” Burney said. “I think it is perfectly right that there be an Aboriginal national body advising the parliament.”

Pat Dodson has also supported removing the race powers and said the Referendum Council’s one recommendation failed to deal with the heads of power in the constitution, particularly surrounding race.

*We do not want to embark on some sort of exercise in heroic failure*

**Malcolm Turnbull**

He said said there was no clear line of site” for constitutional change and underlined that it was critical to get bipartisanship to change the constitution. “Unfortunately we are going in circles a bit at the moment,” Dodson told the ABC.

“I don’t think we have got a clear line of site as to where any constitutional change, whether it is going to take place or not. Certainly on our side, we’re open to that.

“I’m not sure whether the government side is as quite open as we are to the proposition but that is going to be critical because you need bipartisanship if you are going to change the constitution.”

Their comments come after the prime minister’s Referendum Council recommended that an Indigenous representative voice be enshrined in the constitution.

The council’s final report, presented to Malcolm Turnbull and Bill Shorten on Monday, accepted calls from the Uluru talks which rejected the original proposal of constitutional recognition in its “statement from the heart”.

It recommended a referendum asking that a representative body giving Aboriginal and Torres Strait Islander first nations a voice to the commonwealth parliament be included in the constitution. It called the voice a “modest” proposal with structure and functions established by parliament but it would not interfere with parliamentary supremacy.

The co-chairs of the council urged federal parliament to act on their recommendations or drop Indigenous constitutional recognition entirely.

Turnbull warned that political deals and cross-party compromises alone could not deliver constitutional change.

“To do that a constitutionally conservative nation has to be persuaded that the amendments respect the fundamental values of the constitution and will deliver precise changes clearly understood that would benefit all Australians,” Turnbull said. “We do not want to embark on some sort of exercise in heroic failure.

“We need to ensure that any changes that are proposed are ones that meet both the expectations of first Australians but will bring together all Australians.

Rod Little, co-chair of the National Congress of Australia’s First Peoples, said his organisation was already providing a voice for Indigenous people to government, and could become the constitutionally enshrined Voice to parliament.

“There’s no doubt it already exists and I can’t understand for the life of me why that fact is overlooked,” Little said. “We give advice with confidence and the hope that government would listen to the advice. We know if it’s either followed or not followed through.”

But Little also expressed concern about the freedom of operations for a body which sat within government.

“If it’s a placement [of a voice] in the constitution, then that will be significant, but at the end of the day I believe it is still under the control of government.”

He said the congress was formed in response to the removal of the Aboriginal and Torres Strait Islander Commission.

“Congress came about exactly because our people didn’t want our government to remove a body which was elected by the peoples for the peoples to inform the government and progress matters for the Aboriginal and Torres Strait Islander peoples,” he said.

George Williams, dean of law at the University of New South Wales, said he favoured a convention of the Australian people because it had proven the most successful way to lead up to a referendum.

He said while people could be appointed to take part in the discussion about such a convention, the only people voting at the convention should be chosen by the Australian people. He said it would be a way of educating people on the proposal.

“That’s a way of testing these ideas across the community to see if it is going to get the support that’s needed as I hope it might if it is going to actually pass muster at a referendum,” Williams said.