

AGREEMENT MAKING

1. What is the proposal?

Agreement-making is a form of recognition. It means that Indigenous peoples and government negotiate and settle agreements on particular issues of mutual importance. They might agree on a set of principles, rights and responsibilities, and mutual terms of engagement to guide future relationships. Agreements can be made with local First Nations groups. They can be at the State or Territory level, or there could be a national agreement.

The Constitution already gives the Commonwealth the power to enter into agreements with Indigenous people. Although to date they have chosen not to. A commitment to enter into an agreement could be a part of a recognition package.

This can be done under section 51 (xxvi), the race power which was amended in 1967; although that might change if the race power is amended. Some important agreements are already being made under Native Title mechanisms. The Victorian government has also entered into treaty talks with Indigenous people in Victoria, South Australia and Northern Territory have also committed.

A treaty making power could be included in the Constitution. Similarly the power to make treaties could be expressly stated in a new or amended head of power.

Part of the package of reforms for Indigenous recognition could involve the establishment of an Agreement-making Commission, to expedite and enhance agreement-making. The Commission could build upon the work of the Native Title Tribunal, to oversee agreement-making with respect to land, culture and language and productivity.

2. Some issues to consider

- Some have suggested there should be a new agreement-making power in the Constitution, to enable the Commonwealth to enter into binding agreements with Indigenous peoples. This proposal was not considered by the Expert Panel because in part Parliament already has power to enter into ordinary agreements but also at the time there was no political will.
- The power to set up an Agreement-making Commission also already exists, and could be part of the package of reforms for constitutional recognition.
- Whether or not agreements will be enacted depends upon governments having the political will to negotiate and agree. This should be taken into account when considering agreement-making as an option.

3. What are some of the arguments in favour of this option?

- Agreements are mutually established through negotiation. They are therefore shared responsibility projects which establish a sense of working together collaboratively in a mutually respectful way.
- Agreement-making is inherently flexible and adaptable, because it is subject to whatever can be negotiated and agreed between the particular parties.

- Local First Nations agreements would enable the articulation of measures, aspirations and mutually agreed principles to be tailored and appropriate to local First Nations groups, allowing for cultural and geographic diversity.

4. What are some of the arguments against?

- There may not currently be sufficient political will across jurisdictions for a national agenda for agreement-making.

5. What do you think?

- Is this option worth considering for the purposes of recognition?
- What needs to be done to build political will?
- What kinds of things should be in the agreements? Give examples.
- Should the agreements be local, or national, or both?
- Is there anything else you need to know about this option?