

## **RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN THE AUSTRALIAN CONSTITUTION – QUALITATIVE RESEARCH**

**FINAL**

Prepared for: **Department of Families, Housing, Community Services and Indigenous Affairs (FAHCSIA) and the Expert Panel on Constitutional Recognition of Indigenous Australians**

Client Contact: **Amanda Doherty (02 6219 7633)**

Prepared by: **Newspoll**

Newspoll Contacts: **Christine Chalmers (02 6249 8706)**

Date: **30 August 2011**

Ref. No.: **110824**

## CONTENTS

<b>1 EXECUTIVE SUMMARY .....</b>	<b>3</b>
1.1 BACKGROUND .....	3
1.2 FINDINGS .....	3
<b>INTRODUCTION &amp; OBJECTIVES.....</b>	<b>6</b>
1.3 BACKGROUND .....	6
1.4 RESEARCH OBJECTIVES .....	7
<b>2 METHODOLOGY .....</b>	<b>8</b>
<b>3 FINDINGS .....</b>	<b>10</b>
3.1 AWARENESS AND UNDERSTANDING OF THE AUSTRALIAN CONSTITUTION.....	10
3.2 PERCEPTIONS ABOUT CHANGING THE AUSTRALIAN CONSTITUTION.....	11
3.3 RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES .....	12
3.4 THE RACE POWER.....	28
3.5 CONSTITUTIONAL AGREEMENTS .....	30
3.6 PROTECTION OF INDIGENOUS LANGUAGES .....	30
3.7 RESERVED SEATS IN PARLIAMENT.....	31
3.8 JUST COMPENSATION FOR LAND .....	31
<b>4 APPENDICES.....</b>	<b>33</b>
4.1 RECRUITMENT SCREENING QUESTIONNAIRE.....	33
4.2 TOPIC GUIDE .....	39

## 1 EXECUTIVE SUMMARY

### 1.1 BACKGROUND

Six focus groups were held in Brisbane, Launceston and Geraldton between 9 and 18 August 2011. The objectives of this exploratory qualitative research were to assess the views of the general Australian voting public in relation to Constitutional recognition of Aboriginal and Torres Strait Islander peoples, including:

1. The level of support for the general concept of Constitutional recognition
2. The level of readiness for change
3. The form of change to the Constitution that may be supported
4. The messages and words that may be used or should be avoided

A national, quantitative survey is planned for September and October 2011.

### 1.2 FINDINGS

Participants were aware that Australia has a written constitution but most knew little about it. Although it was perceived to contain old-fashioned language, there was little concern about the Constitution being 'out of touch' with modern Australia.

There was virtually no awareness of the movement for Constitutional recognition of Aboriginal and Torres Strait Islander peoples. Although respondents were unsurprised to learn that Aboriginal and Torres Strait Islander people were not involved in drafting the Constitution, this generally was not of concern to participants because it was assumed that the Constitution is fair and treats all Australians equally.

Within the focus groups there was a wide range of attitudes towards the idea of Constitutional recognition. Support was based on:

- An empathy with and respect for Aboriginal peoples;
- A view that recognition was not only reasonable but was in keeping with modern Australian values;
- A belief that recognition would help rectify past wrongs; and
- A sense that recognition is a step in establishing Aboriginal and Torres Strait Islander peoples as full Australians.

Reasons for opposition focused on:

- A view that recognition would be a purely symbolic act that would have little to no impact on the 'real' problems facing Indigenous Australians;
- A concern about wasting public money on a symbolic act;
- Fear of long-term and possibly unforeseeable consequences, namely in relation to Indigenous land claims;

- A concern that recognition represents special treatment for a particular group and thereby undermines Australian unity and national ideals such as equality and democracy.

Respondents struggled to spontaneously think of potential benefits of Constitutional recognition. The main perceived benefit was a greater sense of self-respect and belonging among Aboriginal and Torres Strait Islander peoples, but even for Indigenous peoples, the tangible benefits were unclear. Very few respondents perceived there to be benefits 'for me' or for 'average Australians'.

Participants felt no urgency for putting the issue to a referendum at this time.

To help facilitate discussion on the potential benefits of Constitutional recognition, respondents were presented with six potential benefits and asked to rank order them in terms of their perceived importance. Some respondents (mainly Liberal / National Party voters) could see no benefits which genuinely resonated with them. When forced to rank order them, these respondents tended to gravitate towards benefits which were 'inoffensive' or which conveyed universal values, but they did not necessarily believe these were likely benefits of recognition. Benefits specifically for Aboriginal or Torres Strait Islander peoples were ranked low because of resentment about special privileges or rights. Other respondents (mainly Labor Party / Greens voters) wanted the benefits to mean something; bland, 'motherhood' statements were ranked low.

Many respondents from both ends of the political spectrum were concerned about the apparent contradiction between agreeing to Constitutional recognition for one group of Australians and the notion of 'equality' for all Australians. 'Equality' and 'fairness' as a benefit of Constitutional recognition was not necessarily seen as credible or even logical.

Respondents were presented with a series of 'statement of recognition ideas'. *Recognise Aboriginal and Torres Strait Islander peoples' distinct cultural identities* and *Acknowledge that Aboriginal and Torres Strait Islander peoples make a unique and significant contribution to the life of the nation, including through their art, culture and languages* garnered the most positive reactions from all groups.

Potentially inflammatory language, unlikely to be supported, included:

- *their lands and waters*
- *ownership*
- *self-determination*
- *invasion*
- *dispossession*
- *immigration*

Respondents had a poor understanding of the meaning of:

- *stewardship*

- *sovereignty*
- *self-determination*

Several concepts presented in the statements are also likely to be divisive and distracting:

- *first peoples*
- *British institutions*

A statement about Australian people's fundamental values, while acceptable at face-value, did not seem to work together logically with a statement of recognition.

Respondents did not understand why sections 51 (xxvi) and 25 are included in the Constitution (and why they are still there). The specific reference to 'race' was particularly confronting, even shocking, to participants. Participants were open to the idea of some form of Constitutional change in relation to these sections, particularly Section 25. The choice between different options seemed to be a technical / legal issue and there was no strong preference for one idea over another. While generally accepting of any and all ideas for change, participants required reassurance that change should not result in unintended consequences – particularly the potential for manipulation or exploitation by 'other racial groups'.

The concept of Constitutional Agreements was favourably received. However, respondents were not supportive of recognising Aboriginal languages in the Australian Constitution or of reserved seats in Federal Parliament for Aboriginal and Torres Strait Islander peoples.

### **1.2.1 Conclusions**

Voters would require education about the benefits of and need for a referendum on Constitutional recognition. The need for recognition is not strongly felt at this time and the benefits for 'average Australians' are not obvious.

Voters would need to be made aware of bi-partisan support in Federal Parliament for Constitutional recognition. This could go a long way towards addressing a generally cautious, suspicious approach to the concept of recognition (especially on the part of Liberal / National voters).

Voters would require reassurance that recognition will not result in unintended / unanticipated consequences – this is seen as a major risk. Any wording which mentions or implies recognition of 'ownership' is likely to be rejected.

The 'logical contradiction' between Constitutional recognition for Aboriginal and Torres Strait Islander peoples and other value statements focussing on equality for all Australians would need to be addressed if both concepts are used in a statement of recognition.

The rationale for additional statements about 'values', 'institutions,' 'immigration' etc. would require prior explanation; a clearer link needs to be drawn.

## INTRODUCTION & OBJECTIVES

### 1.3 BACKGROUND

The Australian Constitution in its current form does not formally recognise Aboriginal and Torres Strait Islander Peoples. In addition, there are inclusions based on the concept of “race” that are of questionable relevance to modern Australia. The Federal Government has appointed an Expert Panel to advise on the potential for Constitutional recognition of Indigenous Australians.

The Expert Panel has been holding a series of public consultations in every state. In general, members of the public who are participating in the consultations tend to be Indigenous people and already supportive non-Indigenous people. Public consultations are publicised through direct invites, use of local networks and, where available, community newsletters, but apart from a small amount of relatively positive coverage in the national media, the issue has maintained a low profile. Public consultation has made it clear that the Australian people are not well informed about this issue.

To supplement findings from the public consultation process, evidence from nationally representative public opinion research is needed to inform the Expert Panel on best strategies for, and likely success of, a national referendum on the issue. The Panel must advise the Government by 1 December 2011 on possible options for change and the level of support among Indigenous people and the broader community for each option.

The work of the Expert Panel is guided by four principles:

1. It must contribute to a more unified and reconciled nation
2. It must be of benefit to and accord with the wishes of Aboriginal and Torres Strait Islander peoples
3. It must be capable of being supported by an overwhelming majority of Australians from across the political and social spectrums
4. It must be technically and legally sound

The role of Newspoll, working with other agencies supporting the Panel, is primarily focused on gathering evidence in relation to the third principle.

As a first step, in February, 2011, Newspoll placed a question on its National Telephone Omnibus Survey asking, “If there was to be a referendum to recognise indigenous Australians in the Australian constitution, based on what you know now would you vote in favour of it or against it?” The survey found that 75% would vote in favour at a time when the issue was low profile and there was no organised, vocal, opposition to it. There was majority support in all demographic sub-groups examined; however, people living in metropolitan areas, people living in Victoria and South Australia, and Labour and especially Green party voters were the most in favour. People living in non-metro areas, in Queensland, Tasmania, NT or Western Australia, as well as Coalition voters, were the least supportive. There was also a moderate relationship with socio-economic status, with the university-educated and “white collar” workers the most supportive.

As a next step, in March 2011, Newspoll tested four logo concepts for the campaign using its online research panel (1,200 people aged 18 to 64 years). A first round of research found the “Step Forward” logos garnered the most support overall (followed closely by “You Me Unity”),

while the “Equality for all Australians” tagline tested best. The favoured logos reinforced the concepts of unity or equality, did not suggest differential treatment and were understandable. A second and third round of logo testing was undertaken in late March and April 2011. This continued to show relatively strong support for the “Equality for all Australians” tagline, and the “You Me Unity” and “Step Forward” logos continued to test best overall, although the “Common Culture” logo tested well among non-supporters of Constitutional recognition.

In August 2011, Newspoll then conducted exploratory qualitative research intended to gauge readiness for Constitutional change on this issue, perceptions of the benefits of Constitutional recognition, reaction to different ideas for a statement of recognition, and reaction to language that might be used in a statement of recognition and in communications generally. The results of this exploratory research are reported here.

Following on from this exploratory qualitative research, two waves of nationally representative, quantitative research are planned. The first (scheduled for September) will be used to test and quantify some of the hypotheses raised through this qualitative research, and the second (scheduled for October) will be used to test actual proposed wording of referendum questions as formulated by the Expert Panel.

#### **1.4 RESEARCH OBJECTIVES**

The objectives of the research are to assess the views of the general Australian voting public in relation to Constitutional recognition of Aboriginal and Torres Strait Islander peoples, including:

5. The level of support for the general concept of Constitutional recognition
6. The level of readiness for change
7. The form of change to the Constitution that may be supported
8. The messages and words that may be used or should be avoided

## 2 METHODOLOGY

This research was conducted in compliance with ISO20252, the international quality standard for market, social and opinion research. Please note that the results of qualitative research such as that reported here cannot be projected onto the wider population, due to sample selection procedures, interviewing methods and sample size.

Focus groups were moderated by Maggie Wilkins.

Six focus groups were held in Brisbane, Launceston and Geraldton, as outlined in Table 1.

**Table 1: Methodology summary**

Target group	Methodology	Location	Date	Number groups	Number participants
Labor / Greens voters	Focus groups (90 minutes)	Brisbane	9 August 2011	1	8
		Launceston	15 August 2011	1	8
		Geraldton	18 August 2011	1	9
Liberal / National voters	Focus groups (90 minutes)	Brisbane	9 August 2011	1	8
		Launceston	15 August 2011	1	8
		Geraldton	18 August 2011	1	9
<b>Total</b>				6	50

EKAS were sub-contracted to recruit respondents for focus groups. The recruitment screening questionnaire can be found at Section 5.1.

Respondents were screened for:

- Voting intention
- Socio-economic status (with quotas set for lower socio-economic status)

There was a mix of men and women and a range of ages represented within each group.

Participants were paid an incentive of \$80. Upon receipt of an incentive, respondents signed a validation report. Focus groups were video-taped in Brisbane and audio-taped in Launceston and Geraldton.

The final topic guide can be found at Section 5.2.<sup>1</sup>

---

<sup>1</sup> The appended topic guide was used in Launceston and Geraldton. The stimulus material was modified and simplified after the first two groups (in Brisbane).

### 3 FINDINGS

#### 3.1 AWARENESS AND UNDERSTANDING OF THE AUSTRALIAN CONSTITUTION

Focus group participants were aware that Australia has a written constitution. However, most said they did not know much about the Constitution and, in fact, had learned little about it in school. Unlike the American Constitution, participants noted, it features little in popular culture. Although films such as *The Castle* had 'educated' some participants about the Australian Constitution, some felt they knew more about the American Constitution than they did about their own. Ignorance of the Australian Constitution was seen as 'embarrassing' but 'excusable'.

Those who knew something about it believed that the Australian Constitution is primarily a description of, or formula for, federalism; that is, the respective roles of the states and the Federal Government, and not a statement of beliefs or ideals. Respondents believed it to be different in tone and content from the American constitution in that it cannot be described as 'a bill of rights'.

*'It came in with Federation and it's about the states, not the rights of individuals'*

*'It only becomes an issue when you have a problem, and it's usually a major problem between the States and the Commonwealth'*

*'Doesn't it define the division of funds between Commonwealth and states?'*

Without knowing much about it, participants assumed that the Constitution is functional and fair, and that it does a good job of what it set out to achieve. The general view was that the Constitution has 'served us well' since Federation.

*'You don't hear much bad about it'*

*'It's been a very durable document'*

However, people who knew something about the Constitution also thought it contained 'old fashioned language' which is dense, formal and hard to read or understand.

*'It's an old document written in a different time'*

*'I read it and it's torture'*

A few respondents also believed that it would contain biases inherent to the period in which it was written.

*'It would have been paternalistic. Men sitting around trying to do the right thing by people'*

Although respondents were unsurprised to learn that Aboriginal and Torres Strait Islander people were not involved in drafting the Australian Constitution, there was no spontaneous concern about the Constitution being 'out of touch' with modern realities, and no spontaneous awareness or concern about the Constitution potentially discriminating against particular segments of Australian society. Although respondents assumed that Aboriginal and Torres Strait Islander peoples would not have been involved in drafting the Constitution, this was

generally not concerning because the Constitution was assumed to be 'fair' to all Australians and to treat all Australians equally.

There was no spontaneous awareness of sections 25 and 51.

### **3.2 PERCEPTIONS ABOUT CHANGING THE AUSTRALIAN CONSTITUTION**

The need for change to the Constitution was not top-of-mind, although, when prompted, a few participants felt that the Constitution should probably be reviewed and brought up to date 'on a regular basis'.

Respondents believed that it would not be easy to change the Constitution and this was seen as appropriate.

*'It's not set up to be changed easily - for a reason'*

Awareness that Constitutional change requires a referendum was fairly high, particularly among older respondents. Most respondents knew that the Constitution cannot be changed simply through a vote in Federal Parliament; this requirement was seen as an important and appropriate check on the power of legislators. Some respondents were aware that the Constitution is open to interpretation and mentioned that legal challenges concerning the Constitution are referred to the High Court. A few respondents were aware of a challenge to the role of chaplains in schools going before the High Court.

There was a general belief among participants that a majority is needed to pass a referendum but no agreement on how much of a 'majority' (51%, 60%?, 75%?) is needed. Virtually no one knew that a referendum needs to be accepted by a majority in a majority of states, although several participants knew that a referendum needs the support of an absolute majority in both houses of the Federal Parliament.

Awareness of previous Constitutional change was poor, although greater among older participants who may have voted in previous referenda. Participants guessed that prior Constitutional change would have included 'giving women the vote' and 'giving Aboriginals the vote'. A few participants vaguely recalled a draft preamble authored by former Prime Minister John Howard at the time of the referendum on the Republic, but no one could remember specifically what this was about or why it did not proceed.

Participants were aware that few referenda have succeeded in Australia. Participants believed this is due to factors such as voters' caution, confusion, resentment, distrust of politicians or general reluctance for change, but they also blamed a flawed referendum process. The failure of the 1999 referendum on the Republic was attributed to an overly complex and poorly worded referendum question. This, in combination with the outcomes from recent referenda in Western Australia, has resulted in suspicion and distrust about how the wording of referendum questions is decided.

*'Referendums are rigged.... They set the question to get the answer they want'*

*'It's all about how the questions are asked'*

*'Parliament has to agree to the wording and it's usually a controversy. That's what happened with the Republic'*

*'We voted against daylight saving (in WA) but they went ahead and trialed it anyway'*

Holding a referendum was believed to be 'expensive' (although less so if combined with a general election) and therefore should only be undertaken for matters of pressing need.

### **3.3 RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES**

#### **3.3.1 Awareness**

Among participants there was virtually no awareness of the movement for Constitutional recognition of Aboriginal and Torres Strait Islander peoples. In Launceston, several respondents were vaguely aware of a consultation meeting scheduled on the same day as the focus groups.

Some respondents recalled or knew about the 1967 referendum and believed it had been passed by a very significant majority. The 1967 referendum was generally seen (incorrectly) as having been about 'giving Aboriginals the vote'. It is important to note that for some respondents the 1967 referendum and its successful outcome suggested there was no further need for recognition of Aboriginal and Torres Strait Islander people in the Constitution.

Respondents were somewhat surprised to learn that there are demands for Constitutional recognition, and some questioned how much support for recognition there is among Aboriginal and Torres Strait Islander peoples themselves. Several wondered whether a referendum on the issue would be seen as further evidence of white Australians 'patronising' Indigenous Australians, for example.

Respondents were not aware that there is bi-partisan support in the Federal Parliament for Constitutional Recognition (and many simply did not believe it when told).

*'We would have heard. There's been nothing in the news about it'*

#### **3.3.2 Attitudes towards recognition**

Within the groups there was a wide range of attitudes and reactions to the idea of Constitutional recognition. Reactions varied by demographics, political leaning, existing attitudes towards Aboriginal and Torres Strait Islander peoples and personal exposure to Indigenous people. Labor Party / Greens voters were somewhat more open to the idea of Constitutional recognition, but this view was not unanimous within Labour / Greens groups. Conversely, while many participants in the Liberal / National Party groups were opposed to the idea, this was not universal. Overall, women and younger people seemed somewhat more open to the idea than men and older people but, again, this was not universal.

Towards the end of the focus group discussions in Launceston and Geraldton, respondents were asked to 'vote' in favour or against recognising Indigenous Australians in the Australian

Constitution. All participants in the Launceston Labor / Greens group voted in favour, while six out of nine in the Geraldton Labor / Greens group voted in favour. Reasons for support included:

- an empathy with and **respect** for Aboriginal people;

*'Because of my respect for Aboriginal people. I grew up in rural NSW and had Aboriginal friends and I think self-worth needs addressing'*

*'They were here 40,000 years and didn't manage to stuff the place up before white men got here '*

*'Will it give them pride?'*

- a view that Constitutional recognition was not only reasonable but in keeping with modern Australian **values**;

*'Because of current values. I'm surprised it's not (already) in the Constitution'*

- a belief that recognition would help **rectify** past wrongs;

*'Because of obligation and guilt'*

*'To try to make up for the past'*

- and a sense that Constitutional recognition is a step in establishing Aboriginal and Torres Strait Island peoples as **full Australians**.

*'As Australians, they should be regarded as Australians. All should be represented'*

In Liberal / National party groups, five out of eight participants in Launceston and only two out of nine in Geraldton voted in favour. Reasons for opposition focused on four broad factors.

First, some dismissed recognition as a purely **symbolic** act with no substance and that would have little impact on the 'real' problems facing Indigenous Australians.

*'It may go in the Constitution but nothing may improve for Aboriginal people'*

*'If you fix the problems, there'd be no need to change the Constitution'*

*'I'm not convinced that it's not simply a 'housekeeping' exercise'*

*'What difference would it make?'*

Related to this, there were concerns about '**wasting**' money and resources on the effort.

*'On the management side, the people who are trying to drive this, they just blew millions of dollars and nothing has changed'*

Third, for a number of participants, the idea of Constitutional recognition was 'scary' primarily due to concerns about long-term and possibly unforeseeable **consequences**, especially in

relation to Indigenous land claims. The idea triggered widespread concern about ‘opening the floodgates’ to future demands for land rights or compensation for lost land. It was suggested that since mining companies and pastoralists would potentially have most to lose if Constitutional recognition went ahead, they might mount powerful opposition to it. There were also serious concerns that legal challenges about land ownership ‘might tie up the High Court for years’.

*‘I’d like to know more about the flow on effect and what would happen especially about land entitlements’*

*‘It takes years to go to the High Court’*

*‘It would strengthen their claims for land rights’*

*‘They’ve already given them land and stuff. Will they be asking for more?’*

*‘It depends what is meant by’ recognition’. It gets tricky because that is a legal document and you become liable for the consequences stretching back. It’s the reason John Howard would not say ‘sorry’. If he did, he’d be liable for restitution’*

Related to this, there was also an underlying suspicion that the wording of the referendum question or, if the referendum is successful, the interpretation of the new section in the Constitution, may be open to manipulation and unexpected consequences.

*‘You may be voting ‘blind’ and may not fully understand what you’ve voted for’*

*‘You can’t predict the chain of events that may happen after’*

Finally, some were concerned that recognition represents **special treatment** for a particular group and thereby undermines Australian unity and national ideals such as equality and democracy.

*‘I’d be worried about two governments: one for Aboriginals and one for everyone else. Can the country cope with two systems?’*

*‘I’m in two minds about this... Is recognition the same as being treated differently?’*

*‘It means ‘two different types of Australians’*

*‘If they are recognised in the Constitution it should be for everyone, not one group’*

*‘Does this favour one lot of Australians over others?’*

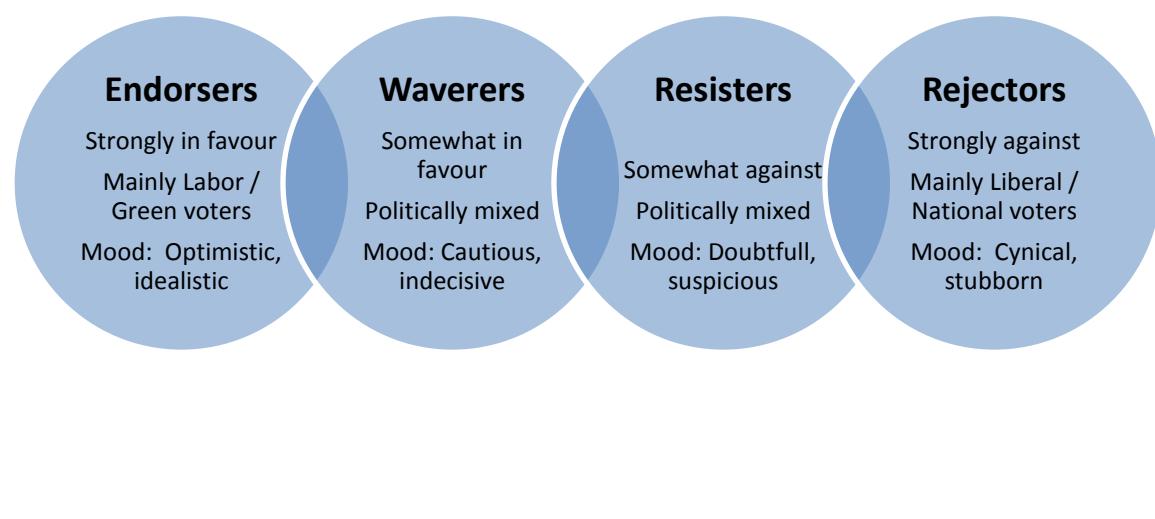
Recent negative publicity about the ‘failure’ of government programs aimed at assisting Aboriginal and Torres Strait Islander peoples was also a factor affecting attitudes. Some participants took this as evidence that it may be time to change Government strategy via a form of recognition. However, others seized upon this report as evidence that ‘nothing ever works’.

Asked to estimate the percentage of the Australian population who would support some form of Constitutional recognition, responses ranged from 10% to 85% in favour, with most estimates

in the range of 40% to 60% in favour, suggesting respondents expected this to be a divisive issue. This also reflected the range of opinions and attitudes in the focus groups themselves.

Attitudinally, there were four clear segments among participants, as illustrated below.

**Figure 1: Segmentation of research participants**




---

Resisters and Rejectors were asked what could convince them to support Indigenous recognition. The main requirement was reassurance that this would not result in special, unequal and privileged treatment of Aboriginal and Torres Strait Islander peoples.

*'If you can recognise them and (still) make us all equal'*

*'As long as there is no hidden agenda'*

*'It's like Sorry Day. It did help people who had skeletons in the closet'*

*'If Aboriginal people did not receive any more benefits than anyone else'*

Some respondents were willing to accept limited recognition.

*'If they were recorded as the 'first nation of Australians'- no more and no less'*

*'Maybe (only) something about their art and culture'*

A few required reassurance that this is indeed something that the majority of Aboriginal and Torres Strait Islander people need and want.

*'Do they (Aboriginal and Torres Strait Islanders) want a change to the Constitution?'*

---

One participant would be convinced if he knew that recognition had broad, bi-partisan support.

*'If both houses and all parties agree on the questions'*

### 3.3.3 Perceived benefits of recognition

Respondents struggled to spontaneously think of potential benefits of Constitutional recognition.

*'It is the right thing but I can't think of a tangible benefit'*

The main perceived benefit was a greater feeling of self-respect and belonging among Aboriginal and Torres Strait Islander peoples.

*'It might give closure to them, give respect back to them'*

*'Maybe (make them) not so separate from white people?'*

*'Lose that chip on their shoulder'*

*'It might give them more sense of belonging to Australia's future'*

Even for Aboriginal and Torres Strait Islander peoples, however, the tangible benefits were unclear for participants.

*'At a personal level, I can't understand why they want recognition. I'm not sure what it would give them other than restitution for prior loss'*

Very few respondents perceived there to be benefits "for me" or for "average Australians" on an unprompted basis.

At best, recognition was accepted because 'it can't do much harm'.

*'It seems to me that it's important to Aboriginal people that they are acknowledged. I can look at it and say 'what does it matter' but it's very important to them. And personally, I would think it's not harming anyone else'*

Respondents generally saw no particular pressure or urgency for going to a referendum on Constitutional recognition at this time.

*'Why do it? There doesn't seem to be any big issue driving this'*

*'We have bigger things to worry about'*

To help facilitate discussion on the potential benefits of Constitutional recognition, respondents were presented with six potential benefits and asked to rank order them in terms of their perceived importance. Results from the rank ordering exercise are shown in Table 1.

The first point to note about this exercise was that some respondents (mainly Liberal / National voters) could see no benefits on the list that genuinely resonated with them. When forced to rank order them, these respondents tended to gravitate towards benefits that were 'mild' or 'inoffensive' or conveyed universal values such as equality, democracy, fairness and non-discrimination as simply being the least problematic.

The second point to note is that the Labor / Greens voter rankings are quite different from those of the Liberal / National voters. Benefit #4 (reconciliation) was ranked as most important by Labor / Greens voters, but second least important by Liberal / National voters. In general, Liberal / National voters ranked poorly any benefits that were specifically for Aboriginal and Torres Strait Islander peoples. This flowed from resentment about Aboriginal and Torres Strait Islander people receiving 'extra' or 'special' privileges and rights not available to other Australians. Labor / Green voters generally held the reverse viewpoint. They wanted the benefits to mean something; the benefits that ranked lowest were bland or 'motherhood' statements.

**Table 2: Rank ordering of benefits**

	Benefit Statements	Labor / Greens voters	Liberal / National voters
4	<i>Reconciliation:</i> Constitutional recognition can improve the bonds between Aboriginal and Torres Strait Islander peoples and other Australians, progress efforts at reconciliation, and help us move on.	1	5
6	<i>Democracy and fairness:</i> Constitutional recognition demonstrates that Australians value equality, democracy and fairness.	2	1 (by a large margin)
2	<i>International image:</i> Constitutional recognition tells the rest of the world that Australians take pride in the unique cultures of Aboriginal and Torres Strait Islander peoples.	3	6
3	<i>Mental health:</i> Constitutional recognition can have a positive effect on the self-esteem of Indigenous Australians and can improve their mental health.	4	4
5	<i>Racial equality:</i> Constitutional recognition demonstrates that we do not accept racial discrimination in the Australian Constitution.	5	2
1	<i>Cultural heritage:</i> Constitutional recognition demonstrates the importance of protecting our cultural heritage.	6	3

- Statement #1 (*cultural heritage*): This benefit was judged to be least important by Labor / Greens voters. This was because it was seen as 'bland' and meaningless. It was relatively well rated by Liberal / National voters because of its 'inoffensiveness'.

*'Cultural heritage is just a lot of words. I'd rather look to the future not the past' (Labor voter)*

- Statement # 2 (*international image*): This statement was not perceived to be important by either group, and was in fact ranked last by Liberal / National voters. Although there was some awareness that Australia's treatment of Indigenous peoples has been negatively portrayed in the world's media, Liberal / National voters, in particular, defiantly rejected this as a valid concern.

*'Australia's reputation has taken a beating overseas about this'*

*'Who cares about the rest of the world!'*

- Statement #3 (*mental health*): This statement was, on average, ranked as less important by both groups. However, the average ranking masks the fact that this statement did tend to be polarising, with respondents either ranking it very high or very low. Those who ranked it as important liked that it was stating a tangible benefit that would result in material improvements in Aboriginal and Torres Strait Islander peoples' lives. However, it was not credible; many respondents simply did not believe Constitutional recognition would have this effect.

*'This is tangible, actually something in them. All this other stuff, it's more about everyone. which is good but this is pointing out how this would actually help'*

*'It will not have that effect on mental health'*

- Statement #4 (*reconciliation*): This statement was judged to be the most important by Labor / Greens voters, but among the least important by Liberal / National voters. Labor / Greens voters liked it because it was stating a relatively tangible benefit, and appealed to their desire for a better relationship between Indigenous and other Australians. Some Liberal / National party voters rejected the statement because it reminded them of 'the Apology', which they had not supported.

*'It might help them feel more positive about their place in society'*

*'It's important, the least soft and fuzzy of them all'*

- Statement #5 (*racial equality*): This was ranked as relatively unimportant by Labor / Greens voters but ranked as second most important by Liberal / National voters. The latter group liked the universal value it was conveying and that it did not suggest radical change and, as noted earlier, it was perceived as 'better' by default than any statement that made claims about special benefits specifically for a particular group. However, it is important to note that although the broad value was perceived to be important, it was not necessarily *credible* as a benefit of Constitutional recognition. Labor / greens voters failed to see the link.

*'It reinforces what we are doing now'*

*'It recognises all people'*

- Statement #6 (*democracy and fairness*): This was ranked as relatively important by all voters, but especially by Liberal / National voters. All liked the universal values it communicated (democracy, fairness, equality), and for Liberal / National voters this was a convenient default choice. Again, however, as with Statement #5, it lacked credibility as a clear benefit of Constitutional recognition.

*'This is what we should be, everyone equal'*

*'It includes everyone'*

Many respondents, and from both groups, were concerned about the apparent contradiction between agreeing to Constitutional recognition for one group of Australians (Aboriginal and Torres Strait Islander peoples) and the notion of 'equality' for all Australians. In other words, 'equality' and 'fairness' as a benefit of Constitutional recognition (as conveyed by Statements #5 and #6) was not necessarily seen as credible or even logical.

### 3.3.4 Reaction to statement of recognition ideas

Respondents were presented with a series of 'statement of recognition ideas'. These are shown in Table 3, along with reaction to each.

**Table 3: Statement of recognition ideas**

	Benefit Statements	Reaction	Key issues
1	<b>Recognise Aboriginal and Torres Strait Islander peoples' distinct cultural identities</b>	This received widespread uncritical support from most participants in all groups.	
2	<b>Recognise Aboriginal and Torres Strait Islander peoples' ongoing connection to their lands and waters</b>	Participants generally liked this, but disliked the use of the word "their" in the context of lands and waters as it implied ownership and raised concerns about future claims for restitution. Several respondents said this reminded them that Aboriginal people 'belong to the land and not vice versa'. The most critical respondents argued that a legal case for ownership might also be implied in the word 'connection'.	"Their" was inflammatory

	Benefit Statements	Reaction	Key issues
3	<b>Recognise Aboriginal and Torres Strait Islander peoples' original ownership of their lands and waters</b>	<p>Any statement which mentioned or implied 'ownership' was unpopular and seen as unlikely to be approved in a referendum. Many respondents believed that acceptance of this type of statement in the Constitution would open 'a can of worms' vis-à-vis land rights, claims for compensation and protracted legal arguments in the High Court (with some people mentioning the intensity of the debate around the issue of 'terra nullius').</p> <p><i>'It comes down to what are we trying to achieve with this - land rights or just recognition?'</i></p> <p><i>'It won't get up. This would open the floodgates'</i></p>	"Ownership" was inflammatory
4	<b>Recognise Aboriginal and Torres Strait Islander peoples' custodianship or stewardship of their lands and waters</b>	<p>Participants generally liked this, but disliked the use of the word "their" in the context of lands and waters as it implied ownership and raised concerns about future claims for restitution. Some respondents did not know what 'stewardship' meant. The most critical respondents also argued that a legal case for ownership might be implied in the words 'custodianship' and 'stewardship'.</p>	<p>"Their" was inflammatory</p> <p>'Stewardship' was poorly understood</p>

	Benefit Statements	Reaction	Key issues
5	<b>Acknowledge that Aboriginal and Torres Strait Islander peoples were Australia's first peoples</b>	These two statements seemed to raise more questions than they answered. Respondents (particularly those against any form of recognition) became argumentative when presented with them and disputed their truth. In this sense, these statements were more distracting than helpful.	'First peoples' and 'oldest living cultures' lacked credibility for some; the language was potentially distracting
6	<b>Acknowledge that Aboriginal and Torres Strait Islander peoples have the oldest living cultures in the world</b>	<i>'Anthropologists say they are ancient people but not the first people'</i>	
7	<b>Acknowledge that Aboriginal and Torres Strait Islander peoples make a unique and significant contribution to the life of the nation, including through their art, culture and languages</b>	Respondents generally liked this but several felt that the word 'significant' was too strong.	
8	<b>Acknowledge that Aboriginal and Torres Strait Islander peoples have a unique and special place in Australia</b>	This statement was acceptable but, for some, 'bland' and 'meaningless', potentially even patronising.  <i>'Too generic'</i>  <i>'It makes them sound like house guests'</i>	'Blandness' can go too far

	Benefit Statements	Reaction	Key issues
9	<b>Acknowledge that Aboriginal and Torres Strait Islander peoples are sovereign peoples and by virtue of that status have the right to self-determination</b>	<p>Many respondents admitted that they did not know what 'sovereign people' or 'self determination' actually means. Some thought that 'self determination' may mean living according to different laws from other Australians (hence being given special treatment or special privileges). However, others thought that 'self-determination' simply means the freedom to live a traditional life on traditional lands.</p> <p><i>'Sovereign means the Queen to me'</i></p> <p><i>'A nation within a nation?'</i></p>	<p>'Sovereign' and 'self-determination' were poorly understood</p> <p>'Self-determination' was a potential flashpoint if clearly explained</p>
10	<b>State that the invasion of Aboriginal and Torres Strait Islander peoples' lands resulted in dispossession</b>	<p>This was seen as too combative and inappropriate for inclusion in the Constitution, even by those who accepted the truth of it.</p> <p><i>'This will stick like a fish bone in people's throats'</i></p> <p><i>'It's a no-brainer. It did, but it wouldn't be warmly received (in a referendum)'</i></p>	<p>'Invasion' and 'dispossession' were unacceptable</p>

	Benefit Statements	Reaction	Key issues
11	<b>Also describe Australian people's fundamental values (e.g. commitment to democracy; rule of law; gender equality; freedoms, rights and responsibilities)</b>	<p>The 'logic' of this statement, as well as for statements #12 and #13, was not obvious. Many assumed the intention was to 'soften' any potential negative reaction to the first ten statements. If so, respondents wondered, how would that work? Wouldn't the final statements compete with or override the earlier statements? They did not seem to work together logically and in some ways were seen as actually contradictory.</p> <p><i>'It's not even along the same lines and that's the reason most referendums fail because it's hard to narrow it down to 'yes' or 'no'</i></p>	Not logical, failure to see a clear link
12	<b>Also acknowledge the contribution of British institutions to modern Australia</b>	<p>The 'contribution of British institutions to modern Australia' evoked a mixed response. While some were receptive, others pointed out that not all British institutions or traditions have been admirable or helpful for Australia. The statement was controversial and divisive, and felt inappropriate for some participants.</p> <p><i>'Which institutions...rum, sodomy and the lash!'</i></p> <p><i>'Sending young orphan kids here to be mistreated?'</i></p>	'British institutions' was divisive

	Benefit Statements	Reaction	Key issues
13	<b>Also acknowledge the contribution of immigration to modern Australia</b>	<p>This raised new questions and concerns especially in relation to asylum seekers and 'Muslims'. Some were concerned that a statement of this kind in the Constitution could be mis-used by 'racial' groups such as 'Muslims'. Others felt threatened by and uncomfortable with the suggestion that Australia was changing, that 'core values' and 'traditions' were in danger of being subsumed.</p> <p><i>'I would hate to see Australia change completely because of all the different nationalities. There is potential for that'</i></p> <p><i>'There is a danger of Australia losing its core values'</i></p>	'Immigration' was inflammatory

### 3.3.5 Placement in the Constitution

Many people in this study conceded they were unaware of the difference between a 'preamble' and the 'main body' of the Constitution and of what a preamble might entail.

*'I need help. What's a preamble?...It's an introductory paragraph. It can shape things'*

Those with some awareness of the Constitution suggested that the contents of a preamble would probably be mainly symbolic and would not have as much authority (not be as legally binding) as the main body of the Constitution

*'Is the preamble more of a cultural statement than the nuts and bolts? Is it a précis or a synopsis of the Constitution?'*

*'Does the preamble have as much weight if it's a statement up front?'*

*'It's not the same as passing a law if it's in the preamble. If it's in the body, it has force in a legal context'*

*'It's less important if it's in a preamble... something fluffy'*

Among those who had a preference, respondents were divided on whether Constitutional recognition should go in the preamble or in the main body of the Constitution.

This sometimes depended how highly the participant valued recognition, but it was not as straightforward as a simple preference for including it in the main body if the idea was supported. For example, some who were in favour of recognition thought it may have more chance of being accepted if in the preamble because this would be less threatening to the general population.

*'A lot of this can go in a preamble. It doesn't need to have clout. It's a cultural perspective'*

*'The preamble is the appropriate place, just some background information'*

*'But if you mean it, it needs to go in the preamble'*

*'If it's in the body (of the Constitution), it can get lost. I don't think they should bury it in the body'*

*'With all that expense, why not put it in the body and make it legal?'*

Overall, there was no consensus on this issue. Many respondents remained undecided or ambivalent on where a statement of Constitutional recognition should be placed, mainly because they felt they did not understand the implications.

### 3.4 THE RACE POWER

#### 3.4.1 Reaction to its inclusion in the Australian Constitution

Respondents were shown Section 51 (xxvi) (the ‘race power’) and Section 25 of the Constitution.

There was no spontaneous awareness of these sections of the Australian Constitution.

Once educated, many respondents were surprised (often shocked) to learn that these sections are in the Constitution. Respondents struggled to understand how and why these sections had been included (and why they are still there).

*‘I thought we were trying to get rid of racism, not constitutionally solidify it’*

*‘They’re hideous... archaic’*

*‘You’re telling us these are actually in the Constitution?’*

*‘Why would we ever be choosing a particular race to be doing anything positive or negative for? It’s different groups of people (like poor people), not race, that matters’*

*‘How would you use no. 51 in this day and age?’*

Section 25 was particularly shocking and confusing. Many respondents questioned its continued existence in the Constitution and felt a collective guilt about its existence.

The specific reference to the word ‘race’ was particularly confronting. There was a great deal of confusion about the word ‘race’ and how it could be applied, with many participants assuming there could be potential future applications to other ‘racial groups’ such as ‘Muslims’, including for their benefit.

*‘They may try to cash in on this’*

On reflection and after discussion, Section 51 was assumed to be the basis for justification of ‘the Intervention’ and as such, was assumed to have been put into place for the benefit of communities affected.

Despite this, respondents felt a strong need for change to these sections of the Constitution. Respondents were very open to the idea of some form of Constitutional change in this area. Some spontaneously suggested ‘getting rid of it’.

*‘When you read this, you can see why they want change’*

### 3.4.2 Reaction to equality and non-discrimination ideas

Three ideas for dealing with the ‘race power’ and Section 25 were discussed in focus groups.

**Idea 1:** Amend the “race power” (Section 51 (xxvi)) so that it can only be used to make laws for the benefit of racial groups.

**Idea 2:** Insert a new guarantee in the Constitution of non-discrimination and racial equality for all Australians.

**Idea 3:** Have a new requirement to regularly review any laws made under the “race power” to ensure they are based on need and consistent with non-discrimination principles.

People were unsure which of these ideas would be most fair and overall, did not have any strong preference for one idea over another. The choice seemed to be a legal / technical issue. In general respondents did not mind the idea of making laws for the ‘benefit’ of racial groups, as long as there is no chance that this power will be abused in future. Some respondents showed a preference for idea #2 because it spoke of ‘equality for all Australians’; however, others wondered whether such a guarantee was really feasible.

*‘I can see that ‘the benefit’ is there to replace ‘peace, order etc.’*

*‘I like no. 2 because it’s ‘all Australians’*

*‘Can you really ‘guarantee’ non discrimination and racial equality?’*

While generally accepting any or all of the ideas, participants required reassurance that if any of these ideas were adopted that they should not result in unintended consequences (particularly manipulation or exploitation by ‘other racial groups’).

*‘Would this mean that the Intervention would go out the window?’*

*‘Does this give Muslims the right to wear the burka in the bank?’*

### 3.4.3 Reaction to addressing Indigenous recognition and the ‘race power’ in the same referendum

Respondents were asked whether combining Constitutional recognition of Aboriginal and Torres Strait Islander peoples and reforms of the race provisions could and should be combined in one referendum.

Many respondents believed that voters could be easily confused if presented with a long agenda, with the likely outcome that the referendum would fail. There was also a strong belief that any complex question (especially if it has more than one idea contained within it) is likely to be rejected. As noted earlier, a number of participants recalled the referendum on the Republic and believed it had failed for this reason.

*‘It all depends on the wording’*

*'For people like me, it's got to be simple, to be able to read straightforwardly what you're voting for'*

Also, as noted earlier, respondents did not readily see a logical connection between Indigenous recognition and the removal or amendment of race-based clauses; in other words, the concepts were quite separate in their minds. It is worth noting, however, that in the Brisbane groups, where respondents were shown the 'You Me Unity' video,<sup>2</sup> respondents felt that the 'argument' made by Alison Page connecting the two concepts did make sense.

### 3.5 CONSTITUTIONAL AGREEMENTS

The concept of Constitutional Agreements was favourably received.

Many respondents believed that these types of agreements are already in place but were unsure if they have been enshrined in the Constitution. Some went on to query why would it be necessary or desirable to include them in the Constitution.

It was helpful that the wording specifically mentions 'Aboriginal and Torres Strait Islander communities' so there were then fewer concerns about 'unintended consequences' in relation to 'other racial groups'.

Some respondents suggested that adoption of this concept may obviate the necessity to dramatically amend the Constitution in other ways.

*'I quite like it. There's a lot more flexibility and it's encouraging self-determination. Some communities work well and could relate to Government on a tribal basis'*

*'It's agreements between the parties, not top down, which is good'*

*'In places like Cape York and Arnhem Land, it could work there'*

### 3.6 PROTECTION OF INDIGENOUS LANGUAGES

Respondents were told that another idea that is being discussed is to recognise Aboriginal languages in the Constitution, and to have legislation to encourage the use of Aboriginal languages.

The concept of recognising Aboriginal languages in the Constitution was generally opposed. This was for several reasons:

- It was not seen as practical or achievable when there are so many different Aboriginal languages
- It was seen as desirable to preserve Aboriginal languages but this was not appropriate or sufficiently fundamental for inclusion in a document like the Constitution

*'This is a policy issue, not a Constitutional issue'*

---

<sup>2</sup> The video was not played in Launceston and Geraldton groups because of time constraints.

*'The Constitution would be huge if we agreed to let things like that in'*

*'It personalises it too much to have this in the Constitution, which needs to be a more general statement'*

In addition, some participants worried that 'legislation to encourage the use of Aboriginal languages' might lead to compulsory language lessons for all Australians (indigenous and non indigenous).

*'We speak English as Australians....are we all going to learn these languages?'*

### **3.7 RESERVED SEATS IN PARLIAMENT**

There was almost no support for the concept of reserved seats in Federal Parliament for Aboriginal and Torres Strait Islander persons. This was because:

- The idea was seen as undemocratic
- The idea was seen as impractical in terms of representation
- There was concern that it could lead to 'token' Members of Parliament who were ill-equipped for the job

*'You've got to do the hard yards if you're interested in running for Parliament'*

*'I don't believe in a quota system. It's not merit based'*

- There was concern that it could lead to pressure from other minority groups for similar guarantees of representation

*'Other nationalities could demand the same'*

- There was a view that it is unnecessary

*'They have a political voice already'*

### **3.8 JUST COMPENSATION FOR LAND**

Respondents were told that another idea that is being discussed is to have a guarantee in the Constitution that State Governments could not acquire land without "just terms" compensation. They were told that this would apply to all land, regardless of who owns it.

This topic generated a lot of discussion and confusion. Respondents remained unsure how this would apply to Indigenous and non-Indigenous owners. Many were aware that compensation for compulsory land acquisition already exists and so were unsure about how this would be different. There was no awareness of differences in between the Federal and state levels of government in terms of land acquisition.

*'If there is compulsory acquisition, you get compensation now'*

A few participants also questioned whether this was something that needed to be enshrined in the Australian Constitution.

*'If this law exists, does it need to be in the Constitution?'*

And finally, as on other matters discussed in the focus groups, participants were concerned and cautious about how the requirement could be interpreted or manipulated.

*'This needs caution... what constitutes 'just terms?'*

## 4 APPENDICES

### 4.1 RECRUITMENT SCREENING QUESTIONNAIRE

#### Introduction

Good morning / afternoon / evening. My name is [RECRUITER], and I am calling on behalf of the Department of Families, Housing, Community Services and Indigenous Affairs, and Newspoll Social Research.

We are conducting a research project about public support for changes to the Australian Constitution.

People do not need any special knowledge to participate in the research – we want to speak to a cross-section of Australians.

If you meet certain criteria, we would like to include your views in our research. It will involve taking part in a focus group discussion at [location] during [time frame]. This interview or focus group will take around 90 minutes and you will be reimbursed \$80 to thank you for your time.

All comments made in the interview or focus group will be treated as confidential and anonymous. The interview or focus group will be run by an independent researcher from Newspoll, who are conducting the research on behalf of the Department of Families, Housing, Community Services and Indigenous Affairs.

Information and opinions you provide will be used only for research purposes.

1. Are you available to and interested in participating in this research?

Yes	1	
No	2	<i>Thank &amp; terminate</i>

#### Screening questions

I just need to ask you a few questions to find out if you are eligible to take part in this research.

2. Are you currently eligible to vote at elections? **DO NOT READ**

Yes	1	<i>Continue</i>
No	2	<i>Thank &amp; terminate</i>
Don't know/refused	3	<i>Thank &amp; terminate</i>

3. Now thinking of **federal** politics. If a **federal election** for the **House of Representatives** was held today, which one of the following would you vote for? **READ OUT**

Labor Party	1	<b>Recruit for Group 1, 3 or 5</b>
The Greens	2	
Nationals ( <b>WA &amp; TAS</b> )	3	
Liberal Party ( <b>WA &amp; TAS</b> )	4	<b>Recruit for Group 2, 4 or 6</b>
Liberal National Party (LNP) ( <b>QLD</b> )	5	
Another party	6	<b>Go to Q4</b>
Or, an Independent ( <b>SPECIFY</b> )	10	<b>Check with Newspoll as to group allocation</b>
<b>DO NOT READ</b> Don't know \ swinging	11	
<b>DO NOT READ</b> Informal \ none	12	<b>Go to Q5</b>
<b>DO NOT READ</b> Refused	13	<b>Thank &amp; terminate</b>

**PROG NOTE: ASK IF VOTE FOR ANOTHER PARTY IE CODE 6 IN Q3.**

4. Is that...? **READ OUT**

Family First	7	<b>Recruit for Group 2, 4 or 6</b>
Christian Democratic Party	8	
Or, another party ( <b>SPECIFY</b> )	9	<b>Check with Newspoll as to group allocation</b>

**PROG NOTE: ASK IF DON'T KNOW OR INFORMAL IN Q3 IE CODE 11-12 IN Q3. OTHERS GO TO Q0.**

5. To which one of these do you have a leaning? **READ OUT**

Labor Party	1	<i>Recruit for Group 1, 3 or 5</i>
The Greens	2	
Nationals (WA & TAS only)	3	
Liberal Party (WA & TAS only)	4	<i>Recruit for Group 2, 4 or 6</i>
Liberal National Party (LNP) (QLD only)	5	
Another party	6	<i>Go to Q6</i>
Or, an Independent ( <b>SPECIFY</b> )	10	<i>Check with Newspoll as to group allocation</i>
<b>DO NOT READ</b> Refused	13	<i>Thank &amp; terminate</i>

**PROG NOTE: ASK IF LEAN TO ANOTHER PARTY IE CODE 6 IN Q5. OTHERS GO TO Q0.**

6. Is that...? **READ OUT**

Family First	7	<i>Recruit for Group 2, 4 or 6</i>
Christian Democratic Party	8	
Or, another party ( <b>SPECIFY</b> )	9	<i>Check with Newspoll as to group allocation</i>

7. **DO NOT READ RECORD GENDER**

Male	1	<i>Continue, need good distribution <u>within</u> each group</i>
Female	2	

8. To make sure we're speaking to a cross-section of people, please tell me if you are aged...?

1	18-24	<i>Continue, need good distribution <u>within</u> each group</i>
2	25-34	
3	35-44	
4	45-54	
5	55-64	
6	40-44	
7	65+	
12	<b>DO NOT READ</b> Refused	<b>Thank and terminate</b>

9. Are you an Aboriginal or Torres Strait Islander person? **DO NOT READ**

Yes	1	<i>Continue (“Yes” to be terminated later)</i>
No	2	
Refused	3	

**10.** Is your household's combined annual income from all sources, before tax...**READ OUT**

1	Under 40 thousand dollars	<i>Minimum 6 respondents per group</i>
2	40 to 79	
3	80 to 120	
4	More than 120 thousand dollars	
5	<b>DO NOT READ</b> Refused	
6	<b>DO NOT READ</b> Don't know	

**11. What is the highest educational qualification you have completed?**

1	University degree or higher (including postgraduate diploma)	
2	Undergraduate diploma or associate diploma	
3	Certificate, trade qualification or apprenticeship	<b>Minimum 4 per group</b>
4	Highest level of secondary school	
5	Did not complete highest level of school	<b>Minimum 3 per group</b>
6	Never went to school	
7	Still at secondary school	
8	Other ( <b>SPECIFY</b> )	
9	<b>DO NOT READ</b> Refused	

**12. DO NOT READ DID RESPONDENT INDICATE IN Q0 THAT THEY ARE OF ATSI ORIGIN?**

Yes, said they were an Aboriginal or Torres Strait Islander person	1	<i>Thank and terminate. Do not disclose specific reason for termination unless asked. If asked say, "The group will be discussing issues related to the recognition of Aboriginal and Torres Strait Islander peoples in the Australian Constitution. As all Australians will be voting in the referendum, we need to understand what non-Indigenous attitudes to this issue are. The Expert Panel on Constitutional Recognition of Indigenous Australians is holding separate discussions with people of Aboriginal and Torres Strait Islander origin. Please go to <a href="http://www.youmeunity.com.au">www.youmeunity.com.au</a> for more information about this."</i>
No, did not say they were an Aboriginal or Torres Strait Islander person	2	<i>Continue</i>

**Close**

Thank you for your patience in answering these questions.

I would like to invite you to take part in a focus group discussion at [location] on [date].

**If focus group:** This focus group will take 90 minutes and you will be reimbursed \$80 to thank you for your time.

Before you provide us with your consent to participate, I would like to advise you of some more details regarding this research.

This research has been commissioned by the Department of Families, Housing, Community Services and Indigenous Affairs.

Your household was randomly selected for contact.

The focus group will be relaxed and informal, and you will probably find it quite interesting. If you use them, please remember to bring your reading glasses.

Please be assured that all information you give to us will be completely confidential and will only be used for research purposes.

The focus group will be conducted by an independent researcher from Newspoll called Maggie Wilkins.

The focus group will be audio or video-recorded. However, Newspoll protects its respondents' rights by abiding to National Privacy Principles and your comments will remain anonymous.

### 13. Are you still available and interested in participating in this research?

Yes	1	
No	2	<i>Thank &amp; terminate</i>

### RECORD PERSON'S ADDRESS AND TELEPHONE CONTACT DETAILS.

We look forward to seeing you at the focus group discussion on [Date] at [time]. I will send you a letter confirming the location, time and date and will also reconfirm by telephone closer to the date.

### Final termination

Thank you for your cooperation in answering these questions. If you have any queries regarding this research, you can call the Australian Market & Social Research Society on their free Survey Line number 1300 364 830 or contact Christine Chalmers at Newspoll in Canberra on (02) 6249 8706.

## 4.2 TOPIC GUIDE

Draft 7: 15 August 2011

<b>1. Introduction</b>	<b>5 minutes</b>
<ul style="list-style-type: none"> <li>• Subject: Making changes to the Australian Constitution</li> <li>• Client: Department of Families, Housing, Community Services and Indigenous Affairs</li> <li>• Observation (if applicable), audio/video-recording</li> <li>• Strictly confidential and anonymous</li> <li>• Do not work for Government, independent researcher</li> <li>• 90 minutes</li> <li>• No right / wrong answers</li> <li>• Roundtable introductions</li> </ul>	
<b>2. Constitutional awareness / need for change</b>	<b>10 minutes</b>
<p><b><i>THIS SECTION EXPLORES PERCEPTIONS OF THE AUSTRALIAN CONSTITUTION, PERCEIVED LEGITIMACY OF ADMENDING THE CONSTITUTION, AND AWARENESS OF NON-RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES.</i></b></p> <ul style="list-style-type: none"> <li>• How much do we know about the Australian Constitution? How familiar are we with it?</li> <li>• Does the Australian Constitution reflect today's society? <ul style="list-style-type: none"> <li>○ IF NO, How might it be "out of date"?</li> <li>○ Is this a problem? Why? Why not?</li> </ul> </li> <li>• Is the Constitution something that needs to change to keep up with changing times? In what ways?</li> <li>• Do we believe the Australian Constitution is fair to all Australians / recognises all Australians equally? <ul style="list-style-type: none"> <li>○ IF NO, what groups does it not recognise equally?</li> <li>○ Probe awareness of Aboriginal and Torres Strait Islanders' lack of involvement in drafting / voting for Australian Constitution, exclusion of Aboriginal and Torres Strait Islander peoples from the wording of the Australian Constitution.</li> <li>○ Knowing this has occurred, how does that make us feel?</li> </ul> </li> </ul>	

- Probe awareness of sections in the Constitution which refer to 'race' (Section 25 and Section 51(xxvi)) in Constitution.
- How can the Australian Constitution be amended?
  - Probe awareness of referendum, double majority

**3. Benefits of constitutional recognition**

**15 minutes**

***THIS SECTION EXPLORES PERCEIVED LEGITIMACY OF THE DEMAND FOR CONSTITUTIONAL RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES, AS WELL AS PERCEIVED BENEFITS AND DRAWBACKS OF RECOGNITION.***

- Constitution does not recognise Aboriginal and Torres Strait Islander peoples as the nation's Indigenous peoples. Does this *matter* today? Why / why not?
- Many Aboriginal and Torres Strait Islander peoples place great importance on being recognised in the Constitution as the nation's Indigenous peoples.
- Do we share this concern? Why / why not?
- **Exercise 1:** Respondents are asked to guess the % of Australians overall they believe currently support some kind of constitutional reform to recognise Aboriginal and Torres Strait Islander Australians and to write this down on a piece of paper. [The specific question was: *Thinking now about indigenous Australians. If there was to be a referendum to recognise indigenous Australians in the Australian constitution, based on what you know now would you vote in favour of it or against it?*]
- Go through responses, asking each respondent why they guessed that percentage.
  - Why would some Australians support constitutional recognition?
  - Why would some Australians oppose it?
- Explore potential benefits and drawbacks of constitutional recognition.
  - Who would benefit from constitutional recognition?
  - Probe: Other beneficiaries besides Aboriginal and Torres Strait Islander peoples.
  - How might constitutional recognition benefit Aboriginal and Torres Strait Islander peoples?
  - How might constitutional recognition benefit other groups?
  - How might constitutional recognition benefit Australian society more generally?
  - What drawbacks, if any, might there be from constitutional recognition?

- **Exercise 2:** These are what *other people* have seen as the potential benefits of constitutional recognition of Aboriginal and Torres Strait Islander peoples. Hand out “Benefits of constitutional recognition” sets (one set per participant). Each respondent is asked to order their sets from “most important benefit” to “least important benefit”.

### BENEFITS OF CONSTITUTIONAL RECOGNITION

- Constitutional recognition demonstrates the importance of protecting our cultural heritage.
- Constitutional recognition tells the rest of the world that Australians take pride in the unique cultures of Aboriginal and Torres Strait Islander peoples.
- Constitutional recognition can have a positive effect on the self-esteem of Indigenous Australians and can improve their mental health.
- Constitutional recognition can improve the bonds between Aboriginal and Torres Strait Islander peoples and other Australians, progress efforts at reconciliation, and help us move on.
- Constitutional recognition demonstrates that we do not accept racial discrimination in the Australian Constitution.
- Constitutional recognition demonstrates that Australians value equality, democracy and fairness.
  - What did we put as our first choice? Why?
  - What did we put as our last choice? Why?
- For there to be constitutional recognition of Aboriginal and Torres Strait Islander peoples, we would need to hold a national referendum. How do we feel about this?
  - Probe perceived benefits, drawbacks, costs of holding a referendum

#### 4. Form of constitutional recognition

25 minutes

**THIS SECTION EXPLORES REACTION TO DIFFERENT POTENTIAL FORMS OF CONSTITUTIONAL RECOGNITION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES.**

- Hand out “Statement of Recognition ideas” worksheet. A “Statement of Recognition” would recognise Aboriginal and Torres Strait Islander peoples within the Australian Constitution. Here are some things that a Statement of Recognition could contain (no statement would contain all).

## **"STATEMENT OF RECOGNITION" IDEAS**

Recognise Aboriginal and Torres Strait Islander peoples'...

- distinct cultural identities
- *ongoing connection* to their lands and waters
- *original ownership* of their lands and waters
- *custodianship or stewardship* of their lands and waters

Acknowledge that Aboriginal and Torres Strait Islander peoples

- were Australia's *first peoples*
- have the oldest living cultures in the world
- make a unique and significant contribution to the life of the nation, including through their art, culture and languages
- have a unique and special place in Australia
- are *sovereign* peoples and by virtue of that status have the right to *self-determination*

State that the *invasion* of Aboriginal and Torres Strait Islander peoples' lands resulted in *dispossession*

Also describe Australian people's fundamental values (e.g. commitment to democracy; rule of law; gender equality; freedoms, rights and responsibilities)

Also acknowledge the contribution of *British institutions* to modern Australia

Also acknowledge the contribution of immigration to modern Australia

- Go through each item and explore reaction to each, especially to italicised phrases.
  - Probe for *specific words* that resonate or alienate, and reasons why
  - Probe reaction to highlighted words / phrases (if not already discussed unprompted):
  - What do these words / phrases suggest?
  - How do we feel about their use?
- The Statement of Recognition could either go into the preamble or the main body of the Constitution. Which is better? Why?

## 5. Race power amendment

10 minutes

### **THIS SECTION EXPLORES REACTION TO SECTIONS 25 AND 51 OF THE CONSTITUTION AND IDEAS FOR AMENDMENT.**

The Australian Constitution contains two provisions that refer to “race”. Hand out “Equality and Non-Discrimination” information sheet. Read through provisions.

#### **EQUALITY AND NON-DISCRIMINATION**

Section 51 (xxvi) (the ‘race power’): 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 the people of any race for whom it is deemed necessary to make special laws.

Section 25: ...if by the law of any State all persons of any race are disqualified from voting at elections...then, in reckoning the number of the people of the state or of the Commonwealth, persons of that race resident in that State shall not be counted.

- Have we ever heard of these before, did we know they existed?
- What could be the potential implications of these provisions in the Constitution / how could they be used?
- Are these provisions concerning? In what ways?
- Constitutional recognition of Aboriginal and Torres Strait Islander peoples could be combined with reforms of the current provisions in the Constitution which refer to “race”. Is it a good idea to combine these in one amendment / referendum? Why / why not?

Hand out “Equality and Non-Discrimination Ideas” worksheet. Here are three ideas for addressing the potential for racial discrimination in the Constitution, which could be pursued *in addition to* recognition of Aboriginal and Torres Strait Islander peoples.

- Discuss Ideas. Are these a good idea? Why / why not? Which is best? Why?

#### **“EQUALITY AND NON-DISCRIMINATION” IDEAS**

1. Idea 1: Amend the “race power” (Section 51 (xxvi)) so that it can only be used to make laws for the *benefit* of racial groups
2. Idea 2: Insert a *new guarantee* in the Constitution of non-discrimination and racial equality for all Australians.
3. Idea 3: Have a new requirement to regularly review any laws made under the “race power” to ensure they are based on need and consistent with non-discrimination principles.

## 6. Agreement-making power

5 minutes

**THIS SECTION EXPLORES REACTION TO THE CONCEPT OF AGREEMENT-MAKING POWER.**

- What do we think an “agreement-making power” might mean?
- Hand out “Constitutional Agreements” worksheet. Here is an idea for an agreement-making power, which could be pursued *in addition to* recognition of Aboriginal and Torres Strait Islander peoples

### CONSTITUTIONAL AGREEMENTS

The Constitution could also be amended to enable the Australian Government to enter into specific agreements with Aboriginal and Torres Strait Islander communities which would have the force and effect of Commonwealth law.

Agreements could apply to a range of issues, such as education agreements, agreements for the protection of cultural heritage, and agreements on rights to land.

A constitutional guarantee could ensure that these agreements could only be modified by further agreement between the parties, not by legislation.

- Is this a good idea? Why / why not?

## 7. Secret ballot

10 minutes

**HAVING HAD A CHANGE TO CONSIDER THE ISSUE FROM ITS DIFFERENT ANGLES, EXPLORE LEVELS OF SUPPORT FOR / OPPOSITION TO CONSTITUTIONAL RECOGNITION.**

- **Exercise 3 “Secret Ballot”:** If there was to be a referendum to recognise indigenous Australians in the Australian constitution held tomorrow, based on what you know now would you vote in favour of it or against it?
- Respondents to write “in favour” or “against” against on a piece of paper and place in ballot box. Facilitator counts returns and discusses with group.
  - If participant says “it depends”, ask them what it depends on and what they would need in order to be in favour
  - For those who said “in favour”, what are some of the reasons why you would say this?
  - And for those who say “against” why do you say this?
  - What would need to change for you to say “in favour”?

**8. Land compensation and protection of languages****5 minutes*****EXPLORATION OF TWO FURTHER IDEAS FOR PROTECTING ABORIGINAL CULTURE AND LAND.***

Another idea that is being discussed is to recognise Aboriginal languages in the Constitution, and to have legislation to encourage the use of Aboriginal languages.

- How do we feel about this?
- Is it something we would support? Why? Why not?

Another idea that is being discussed is to have a guarantee in the Constitution that State Governments could not acquire land without “just terms” compensation. This would apply to all land, regardless of who owns it.

- How do we feel about this?
- Is it something we would support? Why? Why not?

**9. Reserved seats in Parliament****3 minutes*****EXPLORATION OF THE IDEA OF HAVING RESERVED SEATS.***

Another idea that is being discussed is to have a number of seats in Parliament that are reserved for Aboriginal and Torres Strait Islander people.

- How do we feel about this?
- Is it something we would support? Why? Why not?