Factsheet

The 1967 Referendum

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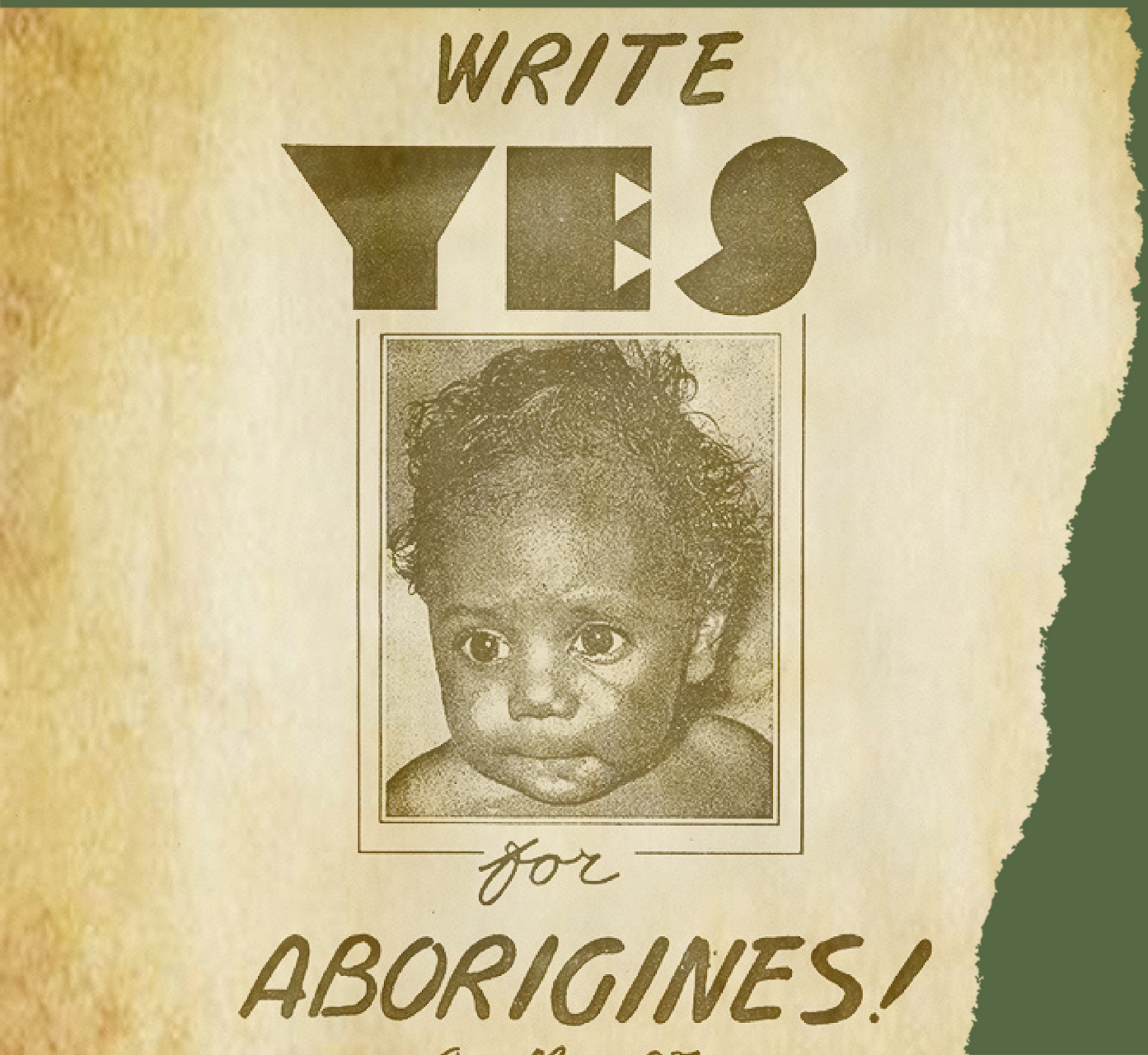

The 1967 Referendum

On 27 May 1967, two questions were put to the Australian people in a Referendum. One concerned the balance of numbers in the Senate and the House of Representatives. The other question – the one most people refer to and remember about the historic 1967 Referendum – concerned two references in the Australian Constitution which discriminated against First Nations peoples. It was asked as such:

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'?[1]

It was the most successful referendum outcome since Federation. Voter turnout was strong, with almost 94 percent of eligible Australians voting in the referendum.[2] The result was an emphatic 'Yes' to the above question, with an overall majority of almost 91 percent.[3] The Constitution was thus changed by the Constitution Alteration (Aboriginals) 1967 (Act No 55 of 1967), which received assent on 10 August 1967.[4]

There were some common misconceptions that the 1967 Referendum gave First Nations Peoples the right to vote or was the moment in which they became citizens. In fact, the Referendum amended two sections of the constitution that discriminated against First Nations people, Section 51(xxvi) and Section 127.

[1]Parliament of Australia, 'The 1967 Referendum'.
[2]Australian Electoral Commission, 'Voter turnout - previous events'
[3]'The 1967 Referendum'
[4]National Archives of Australia, 'The 1967 Referendum'.

The Proposed Changes

Two particular paragraphs in the Australian Constitution were under scrutiny in the 1967 referendum. They were:

51. 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:-
...(xxvi) The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws.

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

After the referendum, the words '... other than the aboriginal people in any State...' in section 51(xxvi) were removed, while the whole of section 127 was excised. Let's dig a little deeper into those changes.

Section 51: 'The Race Power'

Before the changes, Section 51 (xxvi) gave the Commonwealth the power to make laws with respect to the people of any race in any State for whom it is deemed necessary to make special laws *except* Aboriginal peoples. But why were First Nations peoples excluded from this passage in the drafting of the original Constitution, and to what effect?

Authorship of Section 51(xxvi) is attributed to Sir Samuel Griffith who outlined its purpose as follows: "The intention of the clause is that if any state by any means gets a number of an alien race into its population, the matter shall not be dealt with by the state, but the commonwealth will take the matter into its own

hands".[5] Griffith went on to say that what he had in mind was the immigration of low-wage labourers from South Asia and the Pacific[6] who were "subject to civilised powers".[7]

The racist underpinnings of Section 51(xxvi) were numerous. Many of the constitutional drafters were very concerned about the immigration of non-White individuals into the states, with the Commonwealth management of such immigration being widely discussed and debated throughout the constitutional conventions. For instance, during the 1898 convention, Edmund Barton, who later became Australia's first Prime Minister, stated that 'the race power' was necessary to enable the Commonwealth to "regulate the affairs of the people of coloured or inferior races who are in the Commonwealth".[8]

By contrast, the second clause of Section 51(xxvi) – the exclusion of Aboriginal peoples from Commonwealth authority – was "at no time debated".[9] The failure to discuss and debate the notable and explicit exclusion of First Nations peoples has its roots in another set of racially discriminatory factors: a) the lack of any reliable count of Aboriginal and Torres Strait Islander peoples, which led to a significant underestimation of the First Nations population; and, b) the widespread view that First Nations peoples were a 'dying race' whose futures were unimportant.[10]

Eualeyai/Kamillaroi academic Larissa Behrendt points out that in 1891, two beliefs were widely held; firstly, that Aboriginal peoples were "a dying race" and secondly, that the White races were unequivocally superior.[11] Given this expressly racist context, it is clear that the exemption of Aboriginal and Torres

[5] Convention Debates, Sydney, 1891, pp.702-703 as quoted in 'An investigation of the origins and intentions of Section 51, placitum xxvi, and Section 127 of the Constitution of the Commonwealth of Australia', 7.
[6] It should be noted that many of these labourers were forcibly removed and brought to work against their will in British colonies
[7] 'An investigation', 7.
[8] 1898 Australasian Federation Conference (27 January 1898) 228-229, cited in George Williams, 'Race and the Australian Constitution', (2013) 28(1) Australasian Parliamentary Review 4, 5.
[9] 'An investigation', 9.
[10] Royal Commission on the Constitution (1927-1929), Minutes of Evidence, 488
[11] Larissa Behrendt, 'What Did the 'Yes' Vote Achieve? Forty Years after the 1967 Referendum'. Papers on Parliament, No. 48 (January 2008)

Strait Islander peoples from Section 51(xxvi) was not for the purpose of protecting Aboriginal people from discriminatory laws to be passed by the Commonwealth, but rather "for the purpose of ensuring that laws passed by the States discriminating against Aboriginal people were not jeopardised by inconsistent Commonwealth legislation".[12]

In other words, by keeping specific legislative power with respect to First Nations peoples exclusively with the states and away from Commonwealth legislation, the states retained their authority to pass devastating and discriminatory laws against First Nations people, the effects of which are still being felt today. Just one example of many is *The Aborigines Protection Act 1909*, a law passed in New South Wales that allowed for the removal of Aboriginal children from their families, the removal of Aboriginal people from towns, and the prevention of non-Aboriginal people from accessing reserves or associating with Aboriginal people.[13]

As it was originally drafted, the primary rationale of Section 51 (xxvi) was to protect the racial and cultural homogeneity of the 'white population' from 'alien' races.[14] The 1967 revision of the section was widely perceived to be a landmark development. Unfortunately, even with its 1967 revisions, the Constitution still refers to, and as such upholds, an outdated and scientifically disproven notion of race as a biologically meaningful category. In this way, it endorses and promotes incorrect assumptions of cultural hierarchy and perceived racial difference. Guugu Yimidhirr lawyer Noel Pearson argues that the inclusion of Aboriginal and Torres Strait Islander peoples in what he calls 'the citizenship of the country' with the 1967 amendments was "...a momentous misstep. It was wrong in fact. Today we understand that there are no races". Nonetheless, the amendment to Section 51 approved at the 1967 Referendum had the practical and legal effect of allowing laws about First Nations peoples to be made at the Federal level. If there is a conflict between a State and Federal law on the same

[12]Address by The Hon Wayne Martin AC, 'Passing the Buck - has the diffusion of responsibility for Aboriginal people in our federation impeded closing the gap?' (26 August 2017), 15.
[13] National Library of Australia, 'Events that led to the 1967 Referendum'.
[14]Lisa McAnearney, Indigenous Recognition, Race and Section 51[xxvi]: Constitutional Law conundrums and possibilities' (2014/2015), 88.

issue, Section 122 of the Constitution provides that the Australian Parliament may override a State or territory law at any time.[15]

It is important to note that there were no provisions or clear textual additions in the 1967 amendments that confined the Commonwealth's legislative power to beneficial or non-discriminatory laws. This means that even with the 1967 amendments, there is a possibility that Section 51 (xxvi) may be used to support Commonwealth legislation adverse to First Nations peoples.

Since the 1967 amendment, the High Court has had to interpret whether Section 51 (xxvi) can be used for discriminatory laws against First Nations peoples or can only be used in a beneficial manner. In Kartinyeri v Commonwealth (1998), the High Court was for the first time asked to directly deal with the meaning and scope of the Race Power within Section 51 (xxvi). Ultimately, the Court was unable to reach a majority view on the provision's meaning and whether the Race Power directly authorises laws that do not benefit persons of a certain race.[16] Constitutional expert Professor Anne Twomey cautions against employing overly simplistic notions of a law's benefit or discrimination when she asks, "How do you decide what is or is not beneficial? There are all sorts of tricky questions – beneficial to whom?".[17]

"How can a liberal democratic constitution still allow race-based laws against its citizens? How can it still contemplate barring citizens from voting on account of race? The truth is the founding fathers abandoned liberal democratic principles with respect to race. It was an error reflecting the thinking of the time, but it needs to be rectified. For the

[15] Parliamentary Education Office, 'How does the constitution divide powers of the Government and how were the State responsibilities derived?'.
[16] Justin Malbon, 'The Race Power under the Australian Constitution: Altered Meanings'. The Sydney Law Review, Vol. 21 No. 1 (1999), 80.
[17] Dr Twomey, Parliament of Australia, House Standing Committee on Legal and Constitutional Affairs: Chapter 5. Transcript of Evidence, p. 61.

suffering that Indigenous people have experienced from this error is real."[18]

Section 127

Before its removal via the 1967 referendum, Section 127 provided: "In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives *(sic)* shall not be counted".

Section 127 was initially penned by the same constitutional author as Section 51(xxvi), Sir Samuel Griffith. It is often mistakenly believed that Section 127 excluded Aboriginal and Torres Strait Islander peoples from being counted in the national general population census.

Leading scholars on constitutional identity, however, argue that in fact the purpose of Section 127 was to exclude First Nations peoples from being counted *for constitutional purposes*. So what does this mean?

Put simply, what First Nations peoples were being excluded from was belonging to and being counted toward the category of 'constitutional people'. The constitutional people are commonly understood not as distinct individuals but as part of a constitutional community; that is, as holders of rights or bearers of duties under the Constitution, and as those bound by the Constitution.[19] While the legal implications of this term are not entirely clear, it is central to the idea of representative government. Section 127 is housed in the 'Miscellaneous' chapter of the Constitution, and was designed in reference to developing a formula for calculating the distribution of funds and the apportionment of parliamentary seats to the states on the basis of the size of their populations.[20]

Still, constitutional scholars do not agree on the reason for exclusion of First Nations peoples from this notion of the constitutional people, nor on its

[18] Noel Pearson, 'A Rightful Place: A Road Map to Recognition'. Collingwood: Schwartz Publishing Pty. Ltd. (2017), 45.
[19] Elisa Arcioni, 'Excluding Indigenous Australians from 'The People': a reconsideration of Sections 25 and 127 of the Constitution' (2012), 3.
[20] Bain Attwood and Andrew Markus, 'The 1967 Referendum', (2007), 3.

symbolic effect. Some argue that exclusion in Section 127 was a statement about the constitutional identity of the nation - that is, who was included in the fabric of the nation, as well as who was counted for the purposes of being represented proportionally in Parliament.[21] This argument suggests that First Nations peoples were not considered relevant individuals to be counted, which is consistent with the historical lack of equal personhood granted to First Nations peoples. In other words, 'The Aborigines did not count, hence they did not need to be counted'.[22] Unfortunately, we do not need to look far to find evidence of this widely held sentiment in the late 1800s.

In 1881, the Registrar-General Henry Jordan explained that "little practical benefit would result from ascertaining in any year the number of these unfortunates, who seem destined to die out before advancing settlement".[23]

Others strongly disagree, claiming that the exclusion of First Nations peoples from Section 127 was not intended to reflect upon the personhood of Aboriginal and Torres Strait Islander peoples and that the reason for it was simply a practical one; that is, that the difficulty of counting all Aboriginal and Torres Strait Islander peoples accurately combined with the low marginal benefit of doing so given their comparatively small numbers led to their exclusion from being counted toward the constitutional people.[24] To this line of thinking, the nomadic habits of many First Nations peoples and the vast tracts of unexplored land in the colony had made it 'wholly impracticable' to enumerate their population.[25]

Irrespective of these differences in scholarly opinion, it is hard to imagine that the intention of the drafting of Section 127 was a particularly benevolent one. Ultimately, the practical and symbolic significance of exclusion from Section 127, whatever its intention, was twofold. Firstly, the Constitution requires the

[21] Arcioni, 'Excluding', 4.
[22] Attwood and Markus, 'The 1967 Referendum', 3.
[23] Queensland, Sixth Census of the Colony of Queensland, Votes and Proceedings: Legislative Assembly (1882) 873.
[24] Greg Taylor, 'A history of section 127 of the Commonwealth Constitution', Monash University Law Review (Vol. 42, Issue 1), 2.
[25] Taylor, 'A history', 3.

calculation of 'the people' for a number of purposes, including to determine the number of members of the House of Representatives to be chosen in each State, as well as how much money each State would receive from, or have to pay to, the Commonwealth.[26] Excluding First Nations peoples from those calculations signifies exclusion from the community affected by those representative and financial distributions. Secondly, the symbolic impact of this exclusion is significant when considering the idea of membership in the community.

Larissa Behrendt speaks to this symbolic inclusion as not "simply a body-counting exercise" but based on the belief that if First Nations peoples were included as constitutional people, "it would start to break down this barrier that had occurred where Indigenous people were treated differently to other members of the community".[27] Inclusion - achieved through the removal of Section 127 from the Constitution - was thus conceived of as "a kind of nation-building exercise where we would be incorporating, in an imagined community kind of way, Indigenous people into the fabric of Australian society".[28]

While the 1967 referendum was in fact a landmark occasion that had significant effect both symbolically and practically for many Aboriginal and Torres Strait Islander people, we will come to see that its promise to usher in a new era of non-discrimination and better outcomes for First Nations peoples did not quite live up to the expectations of the many people, both Aboriginal and Torres Strait Islander peoples and non-Indigenous peoples, who championed its 'Yes' vote.

Leading up to the Referendum

The road to the 1967 referendum was long and complex, with many First Nations leaders paving the way for constitutional change. Megan Davis and

[26] Arcioni, 'Excluding', 11.
[27] Behrendt, 'What did the 'Yes' vote achieve?' (2008)
[28] Behrendt, 'What did'.

Marcia Langton identify some of these First Nations changemakers from as early as 1926 when David Unaipon called for increased Aboriginal autonomy and representation; Joe 'King Burraga' Anderson's calls for a 'voice' in Federal parliament in 1933; the Yolngu elders who advanced the Yirrkala Bark Petitions in 1963 in hopes of recognition in Australian law, and many more.[29] Notably, a coalition of women activists—some non-Indigenous but particularly Aboriginal, Torres Strait Islander and South Sea Islander women — were instrumental in the development and success of the referendum; a fact that is sometimes overlooked.

"Well, there you are girl, go and get yourself a referendum."
Jessie Street to Faith Bandler, 1957

In 1956, feminist activist Jessie Street, a non-Indigenous woman who was active in the peace and women's rights movements and was Australia's only female delegate to the founding of the United Nations, urged Aboriginal leader Pearl Gibbs, a Ngemba woman, and South Sea Islander activist Faith Bandler to form the Aboriginal–Australian Fellowship (AAF). The AAF was a partnership between non-Indigenous and Aboriginal and Torres Strait Islander people that campaigned for First Nations rights, including changing the New South Wales Aborigines Protection Board (a board established in 1883 that was granted the legal power in 1909 to remove Aboriginal and Torres Strait Islander children from their families). On 29 April 1957, at its first meeting, the AAF launched a petition drafted by Jessie Street for amendments — specifically to Sections 51(xxvi) and 127 — to the Federal Constitution to include Aboriginal and Torres Strait Islander peoples.[30] This petition campaign would prove to be very successful, with 100,000 signatures collected by the end of that year.[31]

In 1958, a group of Aboriginal and Torres Strait Islander associations and leagues that had been steadily working toward First Nations rights came

[29] Megan Davis and Marcia Langton, It's Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform. Melbourne: Melbourne University Publishing, 2016.
[30] Zoe Pollock, 'Aboriginal-Australian Fellowship', 2008
[31] National Library of Australia, 'Timeline–Events that led to the 1967 Referendum'.

together with activists to form a national body that gave further momentum to the steady struggle and activism for First Nations recognition and voice. The Federal Council for the Advancement of Aborigines (FCAA), later renamed The Federal Council for the Advancement of Aborigines and Torres Strait Islanders (FCAATSI), held as its mandate the repeal of discriminatory legislation at Federal and State levels; the improvement of the lives of Aboriginal people through housing, equal pay, education and adequate rations in remote areas; and the advancement of land rights.[32]

During 1962 and 1963, the FCAA ran a remarkably successful national petition campaign calling for constitutional change. This campaign was heavily influenced by another powerful woman and one of its founding members, activist and poet Oodgeroo Noonuccal (Kath Walker), who toured Australia to raise awareness and lobby for change. The campaign highlighted the discriminatory national laws and policies controlling the lives of Aboriginal and Torres Strait Islander peoples and co-ordinated 94 separate petitions which were presented to Federal parliament and ultimately secured parliamentary support.[33]

In 1965, a group of students from the University of Sydney, led by Arrernte and Kalkadoon student and civil rights activist Charles Perkins and inspired by the African American Civil Rights movement in the United States, formed the Student Action For Aborigines (SAFA) to bring attention to the racism and segregation in western New South Wales towns. SAFA, with Perkins as their President, organised the Freedom Ride, a fifteen day bus journey through regional New South Wales, where they directly challenged a ban against Aboriginal ex-servicemen at the Walgett Returned Services League, and local laws barring Aboriginal children from the Moree and Kempsey public swimming pools.[34] This journey became a defining moment in Aboriginal and Torres Strait Islander activism, gathering great crowds across NSW and gaining international

[32] The Australian Women's Register

[33] Russell Taylor, 'Indigenous Constitutional Recognition: The 1967 Referendum and Today

[34] AIATSIS, '1965 Freedom Ride',

publicity which illuminated the racial discrimination taking place in Australia both to the nation and overseas. Some commentators assert that at the time of the 1964 Freedom Ride, Australia had a Jim Crow system of racial segregation that was every bit as bad as in the American South.[35]

After mounting pressure and persistent activism, a bill was put to the House of Representatives in 1965 to repeal section 127 of the Constitution. It was passed unanimously by both Houses of the Parliament in November 1965. Members from FCAATSI travelled to Canberra to campaign for the inclusion of amendments to Section 51 (xxvi) as well.[36]

On 1 March 1967, Prime Minister Harold Holt announced that two bills - The Constitution Alteration (Parliament) Bill 1967 and Constitution Alteration (Aboriginals) Bill 1967 - would be put forward, this time including the alteration of Section 51 (xxvi). They were passed by both Houses of Parliament, allowing for the referendum to be called.

Impact of the 1967 Referendum

The 1967 Referendum campaign marked a turning point in the social and political relationship between many First Nations and non-Indigenous Australians. For the first time, many white Australians were confronted with issues they had never considered, a disregard articulated by W. E. H. Stanner as the 'great Australian silence'.[37]

In considering and measuring the impacts of the 1967 Referendum, Kamilaroi man Russell Taylor makes a helpful distinction between the immediate or short-term impact and its influence on the longer term.

On the immediate effects of the Yes vote, Taylor reflects:

> "The campaigners had predicted a brave new world for all us blackfellas and proposed that a successful referendum would bring about great and

[35] Jack Waterford, 'The shame of missing a national mood'. Pearls and Irritations, 28 March 2023.
[36] National Library of Australia, 'Timeline'.
[37] Kate Laing & Lucy Davies, 'The Leadership of Women in the 1967 Referendum', Agora 56:1 (2021), 14.

> immediate beneficial reforms through greater recognition, the application of social equality and a new progressive era of Aboriginal affairs. From my personal perspective, however, nothing changed at all in our lives."[38]

Faith Bandler, a key campaigner, echoed Taylor's sentiments:

> "Changes following the referendum were disappointingly slow. Our earlier euphoria died down. The government despite putting the referendum to the people had themselves been lukewarm about it. This was evident not only from their pre-referendum posture but also from the absence of any real plan of action on which they should embark following the referendum. Meanwhile the lives of Aborigines virtually remained the same—still under state control..."[39]

In reflecting on what the 'Yes' vote achieved forty years after the Referendum, Larissa Behrendt points out the gap between what the Referendum campaigners hoped a 'Yes' vote would achieve and what actually transpired:

> "It's very clear that the proponents of the 'yes' vote thought that those two changes would go much further than they actually did... It's very clear that the proponents of the 'yes' vote had assumed that by giving the power to the federal government and taking it away from the states who had for so long abused that power in a way that people thought had breached the rights of Indigenous people and hadn't actually been beneficial to them at all, that the federal government would actually move to act in a benevolent way towards Indigenous people. It was the key assumption that they would use that power for the betterment of Aboriginal people. In hindsight we've seen lots of instances where that just hasn't been the case".[40]

[38] Russell Taylor, 'Indigenous Constitutional Recognition: the 1967 Referendum and Today'. Parliament of Australia, Papers on Parliament No. 68.
[39] Faith Bandler, Turning the Tide: A Personal History of the Federal Council for the Advancement of Aborigines and Torres Strait Islanders, Aboriginal Studies Press, Canberra, 1989, p. 116.

[40] Behrendt, 'What did'.

These reflections signal two important distinctions to be made: firstly, that of the difference between the hopes for what the 1967 constitutional changes would achieve and the reality in terms of lived experience of Aboriginal and Torres Strait Islander peoples on the ground; and secondly, the differences in the perceived impact between First Nations peoples and Australia's non-Indigenous community.

As Russell Taylor argues, for many non-Indigenous people, the overwhelming 'Yes' vote felt like an act of redemption, where "the outcome signalled somehow overnight the closure on a bad old racist Australia and the beginning of a good new non-racist country where Aboriginal people would be given 'fair go'".[41] For First Nations peoples, despite the initial euphoria, the era of bad old racist Australia was anything but over.

While the immediate impact of the 1967 Referendum may have fallen short of the hopes and aspirations of the campaigners, for Aboriginal and Torres Strait Islander communities and indeed many non-Indigenous Australians too, the historic 'Yes' vote should not be relegated to the dustbins of history as yet another example of Australia's failure to correct the wrongs of its colonial past (and present), nor as a toothless attempt at substantive change.

Reflecting on the long term impacts of the 1967 Referendum points to at least three elements of its wider significance:

1. The referendum outcome was directly responsible for the involvement of the Federal government in Aboriginal and Torres Strait Islander affairs, and gave the public an expectation that the Federal Parliament had a significant role to play in addressing the often dire practical conditions under which Aboriginal and Torres Strait Islander people lived. As a consequence, it is now an accepted fact that the Federal government has a political and moral duty to remove the many barriers facing First Nations communities as they seek to assert their self-determination, heal from intergenerational trauma

[41] Taylor, 'Indigenous Constitutional Recognition'.

inflicted on them by White Australia's policies and improve the health and educational outcomes of their peoples.

2. The significance of the referendum, and in particular the sheer size and magnitude of the 'Yes' vote, empowered and mobilised Aboriginal and Torres Strait Islander peoples as a national political force, a process that has had radical political and discursive effects.[42] Becoming a national constituency gave Aboriginal and Torres Strait Islander communities increased political power and an impetus to organise at the Federal level.[43] In this way, the 1967 Referendum success inspired and emboldened a generation of First Nations thinkers, academics, activists, educators and many more to push on with their work toward more progressive developments in Indigenous affairs. These efforts have led to considerable wins for First Nations rights with the work of the Aboriginal Tent Embassy, land rights, the Mabo decision and native title, and more recent initiatives for constitutional recognition, treaty making and Voice.

3. Perhaps most symbolically, the 1967 Referendum served to link the fates of non-Indigenous and First Nations communities. Megan Davis and Marcia Langton maintain that the 1967 Referendum should be remembered as a wonderful achievement of collaboration between Aboriginal and Torres Strait Islander and non-Indigenous Australia.[44] Linda Burney articulates this in terms of relationship building, stating that while the 1967 Referendum was not a panacea for all of the issues First Nations peoples faced, it lay the foundation "in terms of relationships between Aboriginal Australia and non-Aboriginal Australia. It fundamentally changed that".[45]

"It's easy to forget what the real magic of the 1967 referendum was, and that was that 90.77 per cent of Australians voted 'yes'. They voted 'yes'

[42] Marilyn Lake, 'Faith: Faith Bandler, Gentle Activist' (Crows Nest, NSW: Allen & Unwin, 2002), 87
[43] Laing & Davies, 'The leadership', 18.
[44] Megan Davis and Marcia Langton (eds.), It's Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform, Melbourne University Press, Carlton, Victoria (2016), 5.

[45] National Museum of Australia, 'Defining Moments 1967 Referendum panel discussion',

because they thought that by voting 'yes', they were going to give Aboriginal Australians a better chance at a life within Australia, that they were going to be given the capacity to be able to live in Australia at a standard that wouldn't make us ashamed. I think that that is a really important moment to hold on to because it's not often in our history that non-Indigenous Australia has actually understood that its fate is tied to the fate of the Indigenous community".[46]

Unfinished Business: Section 25, and a lack of recognition

The 1967 'Yes' vote was and still is cause for celebration, but it should not be mistaken as the culmination of the agenda on constitutional reform for First Nations peoples. In fact, the 1967 referendum left two significant issues unresolved.

Firstly, despite many formal recommendations, Section 25 remains in the Australian Constitution, which contemplates that if a State disqualifies all members of a particular race from voting in a State election, those persons shall not be counted when determining the number of representatives of that state in the Parliament.[47] This means that even with the 1967 deletion of Section 127, the possibility of racial exclusion persists in the Australian Constitution because Section 25 allows for its reintroduction. Section 25 is often called a 'dead letter', meaning it cannot be used anymore because The Racial Discrimination Act stops states from banning a racial group at state elections. While this is true, constitutional experts point out that the existence of Section 25 affects the nature of the Australian constitutional community by indicating that it can be racially discriminatory.[48] In other words, our Constitution still contemplates that a state government could ban an Australian

[46] Larissa Behrendt, 'What did'.
[47] Parliament of Australia, 'Other proposals for constitutional change'.
[48] Arcioni, 'Excluding', 1.

from voting on the basis of their race.[49] The existence of Section 25 means that Aboriginal and Torres Strait Islander peoples, as well as any other groups defined as 'races', can be excluded from being counted as amongst 'the people'.[50]

And while it is unlikely in today's political climate that a State would enact discriminatory legislation based on race, it is also true that a law which directly deprives individuals of their right to vote on the basis of race should have no place in the Australian Constitution.

Secondly, with the approved amendments, the referendum had the curious textual effect of entirely removing reference to Aboriginal and Torres Strait Islander peoples from the Constitution.[51] As such, there is no formal recognition or acknowledgment of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia in the Constitution, no constitutional guarantee of fair treatment and no permanent safeguard to ensure they have a role in the decision-making that affects their lives and communities. Nor is there any constitutional acknowledgement of the value of their cultures, languages and rights.

Moving forward

Acknowledging both the disillusionment and the promise that are contained within and continue to reverberate out of the 1967 Referendum, we can understand the complexity of this watershed political moment as one point along a spectrum of activity that ultimately aims to secure and advance the self-determination, health and vibrancy of Aboriginal and Torres Strait Islander peoples in the Australian nation. The much celebrated 1967 amendments not only paved the way for continued meaningful activism and reform, but left Australia with unfinished business. In this way, the constitutional amendments

[49] Referendum Council Discussion Paper, 12.
[50] Arcioni, 'Excluding', 19.
[51] Harry Hobbs, 'The Road to Uluru: Constitutional Recognition and the UN Declaration on the Rights of Indigenous Peoples', Australian Journal of Politics and History: Volume 66, Number 4 (2020), 619.

of 1967 serve as the starting point for the contemporary debate on constitutional recognition.[52]

"Will constitutional reform empty the jails of our people? Not necessarily. Will constitutional reform make our lives longer? Not necessarily, but that's, in my view, in the short term. Constitutional reform and the 67 referendum laid foundations. It laid foundations and it allowed Aboriginal people and the broader community to walk taller. And that's important, that's nation building".[53]

At the National Constitutional Convention in 2017 held at Mutitjulu at the base of Uluru, the foundational nation building work of the 1967 Referendum continued its evolution when 250 Aboriginal and Torres Strait Islander people 'from all points of the southern sky' called yet again for meaningful reform to the Australian Constitution. The Uluru Statement from the Heart calls for substantive constitutional change and structural reform that will allow for proper constitutional recognition together with a First Nations Voice enshrined in the Constitution. In this way, the Uluru Statement from the Heart is an invitation for non-Indigenous Australia to walk hand in hand with First Nations peoples on a journey to resolve the unfinished business of 1967 and create a path forward to justice.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.[54]

[52] Hobbs, 'The Road', 619.
[53] Linda Burney, National Museum Australia 'Defining Moments 1967 referendum panel discussion'.
[54] Uluru Statement from the Heart.

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

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