

Constitutional Amendment and the Issue of Trust

Sean Brennan

Introduction

Will a reform proposal regarding the constitutional position of First Peoples in Australia include substantive legal change? Can the *content* of any such reform, and the *process* for achieving it, enhance levels of trust as between First Peoples and the state? These questions are central to the current 'Indigenous referendum' debate in Australia.

This chapter is concerned with the place of substantive legal reform in the contemporary discussion of constitutional change, and its relationship to the notion of trust. The idea of 'trust' arises in two senses in this context. In an *institutional* sense, the term connotes the idea of investing confidence and belief in certain institutions over time to carry into effect important legal and political values that we associate with democratic government. In a less abstract and more straightforward, *interpersonal* sense, 'trust' means the degree of faith we have in what the elected politicians of our present day say and in the way they carry out their political and governmental responsibilities.¹ The chapter is also about the *process* of working towards constitutional reform regarding First Peoples, and how it too can enhance or diminish trust.

For present purposes I define substantive legal change or substantive constitutional reform, in contrast to symbolic change, as procedural or judicially enforceable constraints on the actual exercise of law-making and executive power.

Before proceeding, some acknowledgments are appropriate. I contribute to this discussion as a non-Indigenous Australian. I am accordingly reluctant

1 One review of literature on trust in government put it this way: 'Political trust happens when citizens appraise the government and its institutions, policy-making in general and/or the individual political leaders as promise-keeping, efficient, fair and honest'. The author cited two further works, one that said 'trust in government ... is a summary judgment that the system is responsive, and will do what is right even in the absence of constant scrutiny' (Miller and Listhaug, 1990, 358) and another (Newton and Norris, 2000, 53) that said 'confidence in institutions is the central indicator of the underlying feeling of the general public about its polity'. See Peri K Blind, 'Building Trust in Government in the Twenty-First Century: Review of Literature and Emerging Issues' (Paper presented, 7th Global Forum on Reinventing Government, Vienna, 26-29 June 2007) 3-4, <<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan025062.pdf>>.

This is a preview. Not all pages are shown.