

## Indigenous Australians and Constitutional Reform: Learning from a Very British Experience

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### Introduction

This chapter discusses the potential benefits of comparing recent developments in the political arrangements of the United Kingdom with the present discussion in Australia surrounding the constitutional recognition of Aboriginal and Torres Strait Islander Peoples. In particular, the essay will argue that some of the narratives that informed the recognition of sub-state identity in the United Kingdom might also enrich the on-going dialogue in Australia.

Aboriginal and Torres Strait Islander Peoples aspire to have their identities recognised by the federal Constitution. Within the debate over the role of a constitution as the manifestation of the will of the people, identity-based constitutional claims are distinctive because they directly relate to the sense of belonging of a community that aspires, for historical, religious, ethnic or linguistic reasons, to gain a unique status within the social mesh of a constitutional system. In the case of the Aboriginal and Torres Strait Islander Peoples, the constitutional claim is derived from their ancestral claim to the land and ethnic distinctiveness that had, and potentially still has, negative repercussions in terms of their treatment by State and federal institutions.

The process of recognition of Aboriginal and Torres Strait Islander Peoples is already underway and it is likely to continue for the foreseeable future. Some participants in the discussion advocate purely symbolic forms of recognition, while others argue for the incorporation of substantive legal rights. In this chapter, I will focus on the potential effects of allocating a series of substantive rights to Aboriginal and Islander Peoples, and the potential beneficial effects of establishing an institution (or institutions) that allows for the formation of pre-legislative agreements, such as the Scottish concordat system, between the federal government and Aboriginal and Torres Strait Islander Peoples.

The body of this chapter is divided into four parts. The first part explains the validity of comparing recent experiences in Britain with the present process of recognising Aboriginal and Torres Strait Islander Peoples in the Australian Constitution: developments in the United Kingdom are manifestations of constitutional principles that are already part of the legal and historical assets

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