

During the Commission's consultations across Western Australia, Aboriginal people frequently stated that they wished for constitutional change. Aboriginal people wanted government to show its respect for Aboriginal law and culture by changing the foundation of Western Australian law.

Although the Western Australian government has no power to change the Commonwealth Constitution (which applies to the whole of Australia), it can change Western Australia's Constitution. The Commission has considered two different ways of bringing greater recognition to Aboriginal law and culture through change to the Western Australian Constitution.

Constitutional acknowledgement of Aboriginal people as 'first Australians'

Victoria is currently the only state in Australia to acknowledge the unique status of Aboriginal people as 'first Australians' in its Constitution. Victoria has added a new foundational section which:

- acknowledges that the colony of Victoria was established without proper consultation, recognition or involvement of the Aboriginal people of Victoria;
- acknowledges that Aboriginal people are the original custodians of the land on which the colony was established;
- recognises that Aboriginal people have a unique status as descendants of Australia's first people;
- recognises that Aboriginal people have a spiritual, social, cultural and economic

relationship with their traditional lands and waters; and

- recognises that Aboriginal people have made a unique and irreplaceable contribution to the identity and wellbeing of Victoria.

The provision does not give Aboriginal people any more legal rights, but it does show respect for Aboriginal people and acknowledges Aboriginal people's special relationship with the land and waters. When this constitutional change was introduced in Victoria, the Aboriginal and Torres Strait Islander Social Justice Commissioner commented how important it was for Aboriginal people to be recognised at the constitutional level. This was exactly what Aboriginal people in Western Australia told the Commission when it consulted with Aboriginal communities.

Constitutional recognition of Aboriginal customary law as a distinct 'source of law'

The other type of constitutional change that the Commission looked at was making Aboriginal customary law a separate source of law in the Western Australian Constitution. This has been raised as a possibility in the Northern Territory.

The Commission found that recognising Aboriginal customary law as a source of law would mean that Aboriginal customary law would have to be written down. This goes against the Aboriginal way of passing the law down through generations by initiation, ceremonial knowledge and stories. The Commission was concerned that if Aboriginal customary law was written down, people who

should not know the law would be able to see it. The Commission was also concerned that if