

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
AUSTRALIAN HUMAN RIGHTS COMMISSION

Question No. SBE15/005

Senator Lindgren asked the following question at the hearing on 20 October 2015:

Senator LINDGREN: Professor Triggs, I believe this one is for you. Would the potential recognition of Indigenous Australians in the Constitution create a separate class of citizen while section 51(xxvi), the so-called race power, still exists or would the removal of section 51(xxvi) along with constitutional recognition in the preamble—something like a statement of historical fact—give Indigenous people any constitutional advantage?

Prof. Triggs: I would very much like to take that question on notice, if I may. My colleague Mick Gooda has been working on this, along with a legal team, looking at the various options. We very much support the recognition of Aboriginal and Torres Strait Islanders in the Constitution. That is a clear position that we have taken in the commission. But exactly how one does it—whether a discrimination power is included, whether the race power is taken out—is a matter for discussion.

I understand that your question is really a core question: were those kinds of proposals to go forward would that give Indigenous Australians a preferred position, which may or may not be acceptable to the Australian people? I know this is a very important question and you ask it in good faith, but if I may I would like to answer it in a considered way as a matter of notice. We certainly take the view, at minimum, that constitutional recognition of our First Nation's peoples is very important and should be supported—but exactly what model and how? I think most people agree that the capacity to legislate on the grounds of race or to prevent voting on the grounds of race are anathemas and should be out of the Constitution. But the more complex question is: 'What will be the consequence of a non-discrimination clause?' and that is a matter for public debate.

The answer to the honourable senator's question is as follows:

The Commission does not see how any of the proposed forms of recognition of Indigenous Australians in the Constitution would lead to the creation of a separate class of citizen in Australia. The Senator's question cannot be answered with any more precision until such a time as a proposal to be put to the Australian people has been finalised.