One of the most important questions for constitutional recognition is capable of making a difference to the everyday lives of indigenous peoples. Given the massive challenges that indigenous people face in health, education and housing, many Australians will be reluctant to support a costly referendum process unless it can bring about real change. The weeks since the Expert Panel reported to the Gillard government have seen a torrent of gloomy predictions from media punditry. Some say the panel’s recommendations are different in feel and substance from those of the previous Indigenous Referendum Association. The government has announced that it will not proceed with the referendum, and a new panel has been formed. The panel’s report is hugely valuable – it is there to remove and enhance individual dignity in a way that could have tangible effects on the lives of indigenous people.

The panel’s report makes five recommendations for constitutional recognition to their indigenous occupants of Australia, and acknowledges “the need to secure the advancement of Aboriginal and Torres Strait Islander peoples.” This is now out of step with the constitutions of many other states. The panel’s proposals are designed to redress disadvantage. In addition, the panel has suggested the insertion of a statement in the body of the Constitution that, among other things, recognises indigenous peoples as the first occupants of Australia, and acknowledges their continuing relationship with traditional lands and waters. This statement is part of a new section 51A, discussed below.

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From previous page

achieved in ways that do not adversely discriminate on racial grounds.

The passage of the 2007 Northern Territory laws provides a perfect example of why this is needed. Despite being a complex package of five bills, totalling 480 pages, it was debated for only a few hours before being passed by the House of Representatives. There was barely a mention of race discrimination in the parliamentary debates. A prohibition on racial discrimination would not have stopped the intervention proceeding. But it would have forced Parliament to return to the intervention laws with the general principle of non-discrimination. In practice, this would have required politicians to consult more widely with affected communities, and make a more genuine attempt to justify the laws as meaning the existing disadvantage.

In 2012, when there is such strong community opposition to racial discrimination, it makes sense for our lawmaking process to be guided in this way. And it would bring the Australian Constitution into line with those of Canada, South Africa and India, where constitutional guarantees against racial discrimination are commonplace.

Of course, if we push ahead with constitutional recognition we need to be sure the wording matches our intentions.

This is why some lawyers have queried the term “advancement”, wondering whether it is too vague; others have focused on power to make laws for indigenous advancement will interact with the non-racial discrimination clause.

A few commentators have interpreted this difference of opinion as evidence the panel’s more substantive proposals are unworkable and should be abandoned. But the debate about wording is only of constitutional reform process. In fact, debate is essential to确保 ensuring that lingering problems will be identified, and that any amendments are legally and technically sound. Rather than close-off consultation, the better approach is to allow experts and the general public to subject them to deeper analysis.

In thinking about what difference constitutional change might make, it may help to recall the legacy of the 1967 referendum. Even though the constitutional amendments were modest, Aboriginal and Torres Strait Islander peoples continue to look back on that day with a sense of pride and achievement.

The push for constitutional recognition has the potential to have an even bigger impact. Not only could it be a moment of national building and reconciliation, but there is scope for the constitutional changes to go further than the 1967 amendments in making a real difference in people’s lives.

If only for this reason, we should put aside our glitzy predictions and give the expert panel’s recommendations the detailed debate and analysis they deserve.

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