

INTRODUCTION

B.1 This Part is concerned with a discussion of the principal legal solutions put forward as potential means of implementing any compact which may emerge from negotiations between Aboriginal and non-Aboriginal Australians.

B.2 The legal solutions with a full discussion of their advantages and disadvantages are considered by the Committee in the following order:

- . Agreement in the form of a treaty;
- . agreement with constitutional backing;
- . agreement with legislative backing;
- . simple agreement.

Before discussing these options in detail, it is convenient to summarise them.

Agreement in the form of a treaty. This option proposes that two sovereign parties, the Commonwealth of Australia and the Aboriginal people would enter an agreement enforceable under the international law of treaties. Implicit in discussion of this option is the question of the existence of Aboriginal sovereignty in a sense akin to nationhood.

Agreement with constitutional backing. There are two alternative means of implementing this option, both of which require the assent in a referendum of the majority of Australian voters including the majority of voters in the majority of States. The first would be to incorporate the full text of the compact as part of the Constitution. The terms of the compact would become a new section of the Constitution. The second possibility would be a section in more general terms, giving the Commonwealth

power to enter a compact with representatives of the Aboriginal people and to carry out its terms. It would further provide that the compact would be binding on the Commonwealth and States, notwithstanding any other provision of the Constitution and would set out in broad terms the sorts of areas to be covered by the compact. Acceptance of such a constitutional amendment would be followed by legislative measures putting into effect the terms agreed upon between both sides to the negotiations.

Agreement with legislative backing. Several approaches could be adopted whereby the Commonwealth Parliament could give legislative force to the compact. The first could be legislation based on existing Commonwealth powers, e.g. ss.51(xxvi) (races power) and 51(xxix) (external affairs power). Another possible approach would be for the States to refer power to the Commonwealth under s.51(xxxvii) to enable it to enact legislation to implement a compact, especially in any areas where doubt might exist as to the extent of Commonwealth power.

Simple agreement. Under this alternative the compact would derive its legal force as a binding agreement enforceable by ordinary legal processes insofar as it imposed obligations between the parties, presumably the Executive Government of the Commonwealth and representatives of the Aboriginal people.

The Committee's conclusions to Part B are contained in paragraphs B.3 - B.9 and can be found on p. 114