



**Australian Government**

**Department of Education,  
Science and Training**

***Federalism: Where to now?***



**Communiqué**

**TWELFTH NATIONAL SCHOOLS  
CONSTITUTIONAL CONVENTION**

**Old Parliament House  
Canberra**

**21-23 March 2007**

# Twelfth National Schools Constitutional Convention

## Background

The twelfth National Schools Constitutional Convention was held at Old Parliament House in Canberra from 21–23 March 2007.

One hundred and eighteen students attended from government, independent and Catholic schools from across Australia, covering metropolitan and country areas.

The National Schools Constitutional Convention increases understanding and knowledge about the Australian Constitution and system of government for students in Years 11 and 12 for whom civics and citizenship education is not a formal part of their school education. It aims to:

1. provide an opportunity for senior students to explore constitutional issues;
2. encourage students to pursue an active and informed interest in the Australia's system of government; and.
3. increase senior students' awareness of constitutional issues which shape our democracy.

Students from government, catholic and independent schools participate in regional and state/territory schools feeder conventions, where they are either selected, or elected to attend the National Schools Constitutional Convention.

## Visits and Receptions

Student delegates at the 2007 National Schools Constitutional Convention were welcomed to Parliament House by the Hon Pat Farmer MP, Parliamentary Secretary to the Minister for Education, Science and Training on behalf of the Prime Minister at his Reception in the Mural Hall, Parliament House. Student delegates attended Question Time in the House of Representatives, met Members of Parliament and Senators and participated in a role play hosted by the Parliamentary Education Office.

The Convention dinner, sponsored by the ACT Department of Education and Training, was held in the Anzac Hall in the Australian War Memorial. Students were welcomed to Canberra by the Hon Andrew Barr MLA, ACT Minister for Education and Training, and to the Australian War Memorial by Mr Andrew Gray. Mr Duncan McLean, 2007 Victorian Young Australian of the Year, gave the dinner speech.

## Convention Focus

The topic for the 2007 Convention was *Federalism: Where to now?* Student delegates were provided with pre-reading material and heard presentations that related to the following issues:

- Issue One: Current legislative powers and their allocation. Which powers are best left with the Commonwealth and which are best left with the States?
- Issue Two: State initiated referenda. Should we change Section 51 of the Constitution?

The Hon Julie Bishop, Minister for Education, Science and Training gave the opening address, and Mrs Matilda House, Ngunnawal Elder, provided the traditional welcome to

Ngunnawal country. Professor John Williams and Dr Clement Macintyre from the University of Adelaide were the Convention facilitators. Ms Jennifer Harwood, the 2006 Inaugural Kerrie Nairn Scholar, gave a presentation entitled Public Speaking for Civics and Citizenship Leadership on Thursday 22 March 2007.

### **Convention Processes**

Professor Greg Craven, Deputy Vice Chancellor, Professor of Government and Constitutional Law, Curtin University, presented the keynote address which provided perspectives on the current division of powers under Section 51 of the Australian Constitution and the anomalies that arise from the current division of powers. After the keynote address, student delegates were able to ask questions to clarify, seek further information and challenge the views put forward by Professor Craven.

### **Exploration of Issue One: Current legislative powers and their allocation. Which powers are best left with the Commonwealth and which are best left with the States?**

Dr Macintyre convened a panel to stimulate delegates' thinking in relation to Issue One. The panel session consisted of the Hon Bronwyn Bishop MP, Member for Mackellar, the Hon Kim Beazley MP, Member for Brand; Senator Lyn Allison, Senator for Victoria and Senator Rachael Siewert, Senator for Western Australia. They discussed the topic of dividing legislative power in a federal system.

Professor Williams and Dr Macintyre provided structured opportunities to enable students to further explore Issue One in two Working Groups and a Soap Box session.

The Working Groups for Issue One were structured around the following tasks:

- Task One: Why do you think that the framers of the Constitution gave the powers, outlined in Section 51 and Section 52 of the Constitution, to the Commonwealth? Does the same justification for assigning these powers exist today? Consider whether there should be a change in the way the 'double majority' required to amend the Constitution is calculated?
- Task Two: What are the powers that the States have control over (including all matters not listed in Section 51 and other matters listed elsewhere in the Constitution)? List at least ten.

This first Working Group was followed by a Soap Box session where students expressed their views on the topic to the whole group.

The second Working Group session on Issue One involved the following tasks:

- Task One: Delegates were asked to evaluate and assess the merits of the Soap Box debates.
- Task Two: Delegates were asked to list three arguments for the retention by the powers as they are currently divided between the Commonwealth and the States; the transfer of certain powers to the Commonwealth from the States (give examples of the powers that you wish to move) and the transfer of certain powers to the States from the Commonwealth (give examples of the powers that you wish to move).

- Task Three: Delegates were asked to complete a Plebiscite which enabled delegates to indicate if there were any responsibilities which should be allocated (or re-allocated) to, or between the Commonwealth and the States.

The Plebiscite paper contained three exercises to be completed:

- Exercise A required delegates to select up to five of the Commonwealth's powers listed in Section 51 of the Constitution that they wished to see transferred to become exclusive powers of the States, and number them in order of preference (one for the highest priority, two for second and so on up to a maximum of five).
- Exercise B required delegates to list up to five areas that are currently State matters which they thought should be transferred to the Commonwealth and included in a revised Section 51.
- Exercise C required delegates to list up to five of the residual powers (that is powers now exercised by the States) that they thought should become exclusive to the States.

Results for the indicative plebiscites on Issue One were then tallied.

### **Delegates' Perspectives on Issue One: Current legislative powers and their allocation.**

The results for Exercise A revealed that:

- two thirds of the delegates (69 of 106 responses returned) were content with the powers granted to the Commonwealth under the provisions of Section 51 of the Constitution.
- one third of the delegates (37 of 106) desired to alter the provisions of Section 51 of the Constitution and made suggestions for transferring to the States exclusive powers over matters that are currently controlled by the Commonwealth.
- the Commonwealth's powers that various delegates wished to see transferred to become exclusive powers of the States were as follows in order of delegates' preferences:
  - (xxi.) Marriage
  - (xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants
  - (xxiiiA.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances
  - (xxxiv.) Railway construction and extension in any State with the consent of that State
  - (ii.) Taxation; but so as not to discriminate between States or parts of States
  - (xxvi.) The people of any race, for whom it is deemed necessary to make special laws
  - (vii.) Lighthouses, lightships, beacons and buoys
  - (xxiii.) Invalid and old-age pensions

- (ix.) Quarantine
- (v.) Postal, telegraphic, telephonic, and other like services.

The results for Exercise B revealed that:

- a very small minority of the delegates (11 of 106 responses returned) were content with the provisions of Section 51 of the Constitution and did not provide suggestions for altering current Constitutional arrangements.
- a vast majority (95 of 106) suggested areas for change within Section 51. The areas that are currently State matters that delegates most often suggested to be transferred to the Commonwealth and included in a revised Section 51 were as follows in order of preference:
  - Health
  - Education
  - Water
  - Transport
  - Law and Order
  - Environment

The results for Exercise C revealed that:

- the majority of students (60 of 106) did not consider that there were residual powers (that is powers now exercised by the States) that should become exclusive to the States.
- the residual powers (that is powers now exercised by the States) that the remainder of delegates (46 of 106) indicated should become exclusive to the States were as follows in order of preference:
  - Health
  - Law and Order
  - Education
  - Industrial Relations
  - Transport
  - Tax.

Although there are some common items (that is Health, Education and Law and Order) in the list of those powers that delegates thought should be transferred to the Commonwealth (Exercise B), and in the list of those powers that delegates thought should be made the exclusive responsibility of the States (Exercise C), those delegates seeking to change current arrangements expressed the belief that the current arrangement of having shared powers in relation to these matters is unsatisfactory.

When it came to addressing this concern, the majority of delegates considered that powers in relation to Health, Education and Law and Order should be the responsibility of the Commonwealth, and the minority considered that they should be the exclusive responsibility of the States.

The Friday session commenced with representatives of the Australian Electoral Commission providing delegates with an explanation of a referendum and the current initiation processes of referenda.

### **Exploration of Issue Two: States initiated referenda. Should we change Section 51 of the Constitution?**

Issue Two was introduced by Dr Narelle Miragliotta from the University of Western Australia who provided a presentation entitled *State(s) initiated referenda: the arguments for and against*. Student delegates asked questions to clarify points after this address. Two Working Groups and a Soap Box session provided further opportunities for delegates to explore questions and issues on the topic of whether Section 51 of the Constitution should be changed.

Working Groups considered Section 128 of the Australian Constitution and answered the following questions:

- How is a referendum initiated under this section? Who gets to call it and when?
- What are the requirements for a successful referendum?
- How are Territorians represented in the overall vote?

They were also requested to address the following questions:

- Should there be a change in the way that the ‘double majority,’ required to amend the Constitution, is calculated?
- If States (and Territories) can initiate referendum questions, what should be the required number (or threshold) of States to do so?

Students addressing the whole group in the Soap Box session were required to make a clear case for or against whether the Territories should be counted as States for the purposes of Section 128. They also had to provide arguments to support their preferred number of State (or Territory) Parliaments which should be required to initiate a referendum question.

To capture the preferences of delegates in relation to the issues discussed at the Convention, a mock referendum was administered by the Electoral Education Centre of the Australian Electoral Commission.

The referendum asked delegates to vote yes or no on the following matters:

- a proposed law to alter the Constitution to allow the Territories to be regarded as ‘States’ for the purposes of conducting referendums to amend the Constitution.
- a proposed law to alter the Constitution to allow the agreed number of States to have the capacity to initiate referenda to amend the Constitution.

### **Delegates’ Perspectives on Issue Two: State(s) initiated referenda**

The results of this mock referendum were outlined on the tally board designed by the Electoral Education Centre of the Australian Electoral Commission. One hundred and seventeen formal votes were cast.

*Proposal One: To alter the Constitution to allow the Territories to be regarded as 'States' for the purposes of conducting referendums to amend the Constitution.*

<b>National Tally Board</b>	<b>Formal yes</b>	<b>Formal no</b>	<b>Is the majority in favour?</b>		
New South Wales	16	12	Yes	Is there a majority of voters in a majority of states in favour of the alteration?	Yes
Victoria (1 informal)	15	9	Yes		
Queensland	18	6	Yes		
Western Australia	5	10	No		
South Australia	5	6	No		
Tasmania	3	2	Yes		
Australian Capital Territory	2	3			
Northern Territory	4	1			
National total	68	49	Is there a majority of voters in a majority of states in favour of the alteration?	Yes	Yes
			Has a double majority been achieved?	Yes	Yes
			Has the Australian Constitution been altered?	Yes	Yes

**Delegates endorsed the proposition that the Territories should be regarded as 'States' for purposes of conducting referendums to amend the Constitution.**

*Proposal Two: To alter the Constitution to allow the agreed number of States to have the capacity to initiate referenda to amend the Constitution.*

<b>National Tally Board</b>	<b>Formal yes</b>	<b>Formal no</b>	<b>Is the majority in favour?</b>		
New South Wales	18	10	Yes	Is there a majority of voters in a majority of states in favour of the alteration?	Yes
Victoria (1 informal)	19	5	Yes		
Queensland	16	8	Yes		
Western Australia	7	8	No		
South Australia	7	4	Yes		
Tasmania	5	0	Yes		
Australian Capital Territory	3	2			
Northern Territory	3	2			
National total	78	39	Is there a majority of voters in a majority of states in favour of the alteration?	Yes	Yes
			Has a double majority been achieved?	Yes	Yes
			Has the Australian Constitution been altered?	Yes	Yes

## **Delegates endorsed the proposition that the States should be able to initiate referenda.**

As a consequence of the support for a change in the Constitution, delegates were asked to indicate their preference to the agreed number of States to have the capacity to initiate referenda to amend the Constitution.

In a show of hands, five was the preferred number of states to have the capacity to initiate referenda to amend the Constitution.

The following observations about the delegates' voting process and the outcomes of the mock referendum are reported:

- although the proposition for Territories to be regarded as 'States' for the purposes of conducting referendums to amend the Constitution was carried, it was by a minimal majority (one vote could have reversed the outcome);
- delegates from Western Australia rejected both referendum proposals;
- ACT delegates did not support the ACT becoming a State for the purposes of conducting referendums;
- delegates from South Australia were 'balanced' on both referendum issues;
- the 'no' vote to alter the Constitution to allow the States to have the capacity to initiate referenda to amend the Constitution was influenced by the lack of specificity about the number of states that would be needed to support the initiation of a referendum.

## **Convention Outcomes**

A Communiqué outlining the Convention outcomes was developed and endorsed by the delegates.

At the conclusion of the Convention, Senator Gary Humphries, Senator for ACT on behalf of the President for the Senate, the Hon Paul Calvert, Senator for Tasmania, accepted the Convention Communiqué for presentation to the Parliament and incorporation into Hansard.

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