

Beyond Borders and Beliefs

Governing Australia in the 21st Century



Communiqué

SEVENTH NATIONAL SCHOOLS CONSTITUTIONAL CONVENTION

Old Parliament House
Canberra

20-22 March 2002



Discovering Democracy



Seventh National Schools Constitutional Convention

The seventh National Schools Constitutional Convention was held in the Members Dining Room, Old Parliament House on 20-22 March 2002.

One hundred and sixteen student delegates from all Australian States and Territories took part in the Convention organised by State and Territory education authorities with funding in 2002 provided by the Commonwealth Department of Education, Science and Training.

The National Schools Constitutional Convention seeks to promote understanding and informed discussion amongst young Australians about the Australian Constitution and system of government.

The National Schools Constitutional Convention aims to:

- provide an opportunity for senior students to explore key constitutional issues; and
- encourage senior students to become better informed about Australia's system of government and encourage them to take an active interest in government.

Student delegates from every Australian school in the Government, Catholic and Independent education sectors are given the opportunity to participate in regional and State/Territory schools Constitutional Conventions, where they are either selected or elected to attend the National Convention.

Student delegates were welcomed to Canberra by Mr Simon Corbell MLA, the ACT Minister for Education, Youth and Family Services. As part of the Convention program, delegates toured Parliament House, attended Question Time in the House of Representatives, met with Members of Parliament at afternoon tea and attended a reception at Government House. Senator the Hon. Nick Minchin on behalf of the Prime Minister, the Hon. Mr John Howard MP, welcomed student delegates to Parliament House. Students also attended an Official Dinner in the Members Dining Room and listened to a presentation by Mr Scott Hocknull, Young Australian of the Year 2002, who was the guest speaker for the evening.

The Convention was opened by Mr Arthur Townsend, Assistant Secretary, Quality Schooling Branch, Department of Education, Science and Training on behalf of the Hon. Dr Brendan Nelson MP, Minister for Education, Science and Training. Mr Tony Mackay, Vice President of the Australian Curriculum Studies Association (Inc), chaired the Convention proceedings on behalf of the organisers.

The theme for the Convention was *Beyond Borders and Beliefs: Governing Australia in the 21st Century*.

Convention delegates discussed two issues:

- 1. Indigenous Rights: Should Indigenous Rights be spelt out in the Australian Constitution?**
- 2. Human Rights: Should the Constitution require Australian Governments to comply with international treaties, once Australia is a party to them?**

Parliamentarians Senator Aden Ridgeway, Senator for NSW (Australian Democrats), Senator Marise Payne, Senator for NSW (Liberal) and Ms Tania Plibersek MP, Member for Sydney (ALP) participated in an introductory panel session related to the Indigenous Rights issue. Mr Peter Buckskin from the Department of Education,

Science and Training was also in attendance. Panel members spoke for 10 minutes and Senator Ridgeway and Mr Buckskin responded to student delegates' questions.

Professor Cheryl Saunders, AO, Centre for Comparative Constitutional Studies, University of Melbourne; Mr Tjaart Steyn, First Secretary, South African High Commission; and Mr Jack Waterford, Editor-in-Chief of *The Canberra Times* participated in an introductory panel session related to the Human Rights issue. Panel members spoke for 10 minutes and the panel responded to student delegates' questions.

At the conclusion of the Convention, the President of the Senate, the Hon. Senator Margaret Reid, Senator for the Australian Capital Territory, accepted the Communiqué to convey to the Prime Minister and the Commonwealth Parliament.

The conclusions of the Convention on the two issues were as follows:

Beyond Borders and Beliefs: Governing Australia in the 21st Century

Issue 1. Indigenous Rights: Should Indigenous Rights be spelt out in the Australian Constitution?

1. A clear majority of Convention delegates supported the following:

- that Section 25 be removed from the Constitution;
- that the rights of Indigenous Australians should be acknowledged but not specifically protected;
- that a preamble to the Constitution should recognise the original occupation of Australia by Aboriginal and Torres Strait Islander peoples and their cultures; and
- that there was an over-riding need to address Indigenous Rights outside the Constitution through improved education, national leadership, and the promotion of public debate and collective action on these issues.

2. In response to the question 'Should Indigenous Rights have specific protection?' the conclusions of the Convention were as follows:

- the majority of delegates considered that Indigenous Rights should not have specific protection within the Constitution.

The reasons for the majority adopting this position included:

- any rights statement should apply to all Australians including all minority groups such as Indigenous peoples and that the singling out of one group could be discriminatory;
- the identification of specific rights for Indigenous Australians could be divisive;
- efforts would be better directed towards addressing social inequalities faced by Indigenous Australians than towards trying to protect Indigenous Rights; and
- rights were already implied or addressed in current legislation.

A significant minority considered that whilst basic rights for everyone should be protected, there were some rights of critical importance to Indigenous Australians that should also be given specific protection.

3. In response to the question 'What Indigenous Rights if any should have specific protection?' the conclusions of the Convention were as follows:

The significant minority who felt that some rights of Indigenous Australians should be given specific protection suggested that these rights could include:

- those pertaining to linguistic, ethnic and cultural characteristics and identities;
- the right to manage their own affairs¹ and be supported in this;
- a right to claim Native Title;
- an acknowledgment of customary laws; and
- an acknowledgment of traditional custodianship of land.

3. In response to the question 'Should specific protection of Indigenous Rights be provided through the Constitution and should these be justiciable?' the conclusions of the Convention were as follows:

- the majority of delegates considered that the use of a preamble to the Constitution to give symbolic expression to Indigenous Rights was preferable to spelling out rights in the Constitution as being non-justiciable;
- a significant minority of delegates considered that a Treaty provided a better means for gaining expression of the rights of Indigenous Australians;
- a significant minority of delegates considered that both a Treaty and a preamble provided the best means for gaining expression of the rights of Indigenous Australians; and
- a significant minority of delegates considered that neither a Treaty nor a preamble should be used as a means for gaining expression of the rights of Indigenous Australians, preferring social action and legislation as the means to bringing about the required outcomes.

Issue 2. Human Rights: Should the Constitution require Australian Governments to comply with international treaties, once Australia is a party to them?

1. In response to the question 'Should the Constitution require the Parliament to approve some or all international treaties, before Australia finally becomes a party to them and if so what Treaties?' the conclusions of the Convention were as follows:

- a clear majority of Convention delegates supported the proposition that the Constitution require the Parliament to approve some, but not all, international treaties, before Australia finally becomes a party to them;
- within this clear majority the category of Treaty requiring parliamentary approval was variously described as those relating to Human Rights and those with clear legislative and/or budgetary implications;
- the category of Treaty to be approved by the Executive Council rather than requiring parliamentary approval was mainly described as technical, administrative or executive² in nature; and
- a minority view was expressed that the Executive Council should continue to approve all Treaties.

2. In response to the question 'Should the Constitution provide that some or all treaties automatically come into effect once Australia is bound by them?' the conclusions of the Convention were as follows:

¹ A concern was expressed by some delegates that custodial law could violate Australian laws and that to avoid this possibility custodial law should operate only within tribal communities.

² Delegates indicated that definition of what might be deemed 'executive' needed further clarification.

- a clear majority of Convention delegates supported the proposition that Treaties described as technical, administrative or executive in nature should be self-executing;
- a clear majority of Convention delegates supported the proposition that Treaties relating to Human Rights and those with clear legislative/budgetary implications should require parliamentary approval and simultaneously come into effect and where necessary require legislative action;
- a significant minority view was that no Treaties should automatically come into effect, but all Treaties should be scrutinised by Parliament; and
- a minority view was that the current arrangements whereby Treaties are ratified by the Executive Council do not require any automatic legislative/parliamentary obligations.

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This Project was supported by funding from the Commonwealth Department of Education, Science and Training under the *Discovering Democracy* programme.

The views expressed at the 2002 National Schools Constitutional Convention do not necessarily represent the views of the Commonwealth Department of Education, Science and Training.