



Writing in Rights

is the time right for an Australian Bill of Rights?



Communiqué

**EIGHTH NATIONAL SCHOOLS
CONSTITUTIONAL CONVENTION**

**Old Parliament House
Canberra**

26-28 March 2003



2003 National Schools' Constitutional Convention

The 2003 National Schools Constitutional Convention (NSCC) funded by the Commonwealth Department of Education, Science and Training, was held at Old Parliament House in Canberra from 26–28 March 2003. The NSCC is the eighth convention since 1996. One hundred and twenty students from Government, Independent and Catholic schools from across Australia, covering metropolitan and country areas attended.

The NSCC has three major aims:

1. To provide an opportunity for senior students to explore Constitutional issues.
2. To encourage those students who are informed and actively interested in the Australian system of government to pursue this interest.
3. To increase student awareness of key Constitutional matters.

The topic for this year's convention was *Writing in Rights*. Student delegates discussed the following two issues:

1. How well are our rights protected? What are the strengths and weaknesses of the current rights protection arrangements? What might be done to improve the protection of rights?
2. Is a Bill of Rights the answer and do we need Constitutional change?

The Convention was opened by the Hon Dr Brendan Nelson, MP, Minister for Education, Science and Training. Professor Greg Craven, Member of the Civics Education Group and Foundation Dean, Professor of Law, College of Law, Notre Dame University, was Master of Ceremonies for the 2003 NSCC. Mrs Matilda House, Ngunnawal elder welcomed the delegates.

Ashlyn Chapman, Kepnock State High School, Queensland and Simon Wilson, The Don College, Tasmania received Certificates of Participation from Dr Nelson on behalf of all delegates.

The NSCC programme

The programme for the NSCC, which provided the student delegates with a stimulating and challenging experience, was overseen by a Reference Committee comprising Professor Cheryl Saunders AO, Centre for Comparative Constitutional Studies, University of Melbourne, Professor Greg Craven and Marcia Rouen, who was the representative from the States and Territories. Prior to attending the NSCC, students received resource papers that were developed by Professor Cheryl Saunders.

On Day One, delegates toured Parliament House, and attended Question Time in the House of Representatives and Senate. The Hon Tony Abbott, MP, Minister for Employment and Workplace Relations hosted a Reception on behalf of the Prime Minister, the Hon John Howard, MP, at an afternoon tea function for delegates to meet Members of Parliament and Senators.

The Governor-General, His Excellency Dr Peter Hollingworth and Mrs Hollingworth hosted a Reception for delegates at Government House on the second day. Mr Jeff Mason, Director Curriculum and Assessment, ACT Department of Education, Youth and Family Services, representing the Minister Ms Katy Gallagher, MLA, welcomed delegates at a dinner funded by the ACT Government on the second night.

Professor Cheryl Saunders provided delegates with an overview of issues to be examined and chaired both of the issue related sessions, the Working Group report back sessions and the finalisation of the Communiqué. Professor Hilary Charlesworth, Director, Centre for International and Public Law, Australian National University, chaired a panel session relating to the Inquiry into a Bill of Rights for the ACT, which included fellow ACT Consultative Committee members Elizabeth Kelly and Penelope Layland.

The keynote speakers were Professor Hilary Charlesworth, and Mr Rick Farley of Farley Consulting Group. The speakers addressed the topic 'Getting the balance right about rights' and discussed the balance between the rights of individuals and restrictions on rights that are necessary for a free and democratic society. Professor Charlesworth provided delegates with a philosophical and historical perspective on human rights and Mr Farley provided a personal perspective with particular reference to indigenous Australians and the environment.

Students were given an opportunity to ask questions to clarify points and to seek further information as well as challenge the views put forward by the keynote speakers.

The Hon Daryl Williams, MP, Attorney General of Australia provided the Commonwealth's perspective on a Bill of Rights and panelists Professor Peter Bailey, Professor John McMillan, Professor Andrew Byrnes and Dr Adrienne Stone, from the Australian National University, provided delegates with perspectives on the need for a Bill of Rights and Constitutional change to protect rights.

At the conclusion of the Convention, Professor Greg Craven invited Caitlin Macdonald, Radford College, Australian Capital Territory and Paul Vardanega, Iona College, Queensland on behalf of all delegates to present the Communiqué to the President of the Senate, the Hon Paul Calvert, Senator for Tasmania. Senator Paul Calvert accepted the Communiqué which will be incorporated into Hansard.

Convention Conclusions

The conclusions of the Convention in relation to the two issues were as follows

Issue 1: How well are our rights protected? What are the strengths and weaknesses of the current rights protection arrangements? What might be done to improve the protection of rights?

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

- That rights in general are relatively well protected by the processes of the judiciary and Parliament

- That whilst rights in general were relatively well protected, too few people are aware of what their rights were and education is needed to improve this situation
- That the rights of minority groups are not as well protected as those of others
- That rights in relation to environment , social and cultural factors are not as well protected as are political and civil rights
- That there is scope for improving the protection of rights
- That there is a need to make implicit rights more explicit and to clarify citizens' rights entitlements
- That rights needed to be documented as this would help to clarify them and to educate citizens about their rights

2. Suggestions about ways to improve the protection of rights were quite diverse and included the following:

- automatic adoption and ratification of international treaties and agreements
- legislation to protect rights
- increase support for human rights organisations
- develop an Australian Declaration of Human Rights / Bill of Rights
- establish an independent 'rights protection' authority to monitor laws
- establish a judicial and parliamentary standing committee to monitor interpretations of rights
- change the Constitution to strengthen the protection of rights

These suggestions were developed as preliminary thoughts by delegates and were given greater consideration when delegates focused on Issue 2.

Issue 2: Is a Bill of Rights the answer and do we need Constitutional change?

The delegates expressed wide divisions of opinion that are reflected in the broader Australian community. The complexity of the issues led several delegates to indicate they needed further information in order to clarify their understandings about the issues.

1. A majority of convention delegates supported the following.

- That a Bill of Rights with legal status is not needed to guarantee rights
- That Constitutional change is not required to guarantee rights
- That a Declaration of Rights or Statement of Rights without legal status is needed to clarify rights and to educate the public about their rights
- That such a Declaration of Rights would need to recognise civil, political, social, economic, cultural and environmental rights
- That statements of rights should be expressed in broad rather than specific terms.

The reasons for the majority adopting the above position included that:

- A Bill of Rights is not necessary as rights are adequately protected through current parliamentary and judicial processes
- Implementing a Bill of Rights in the Constitution could result in the rights becoming out-dated as changes to the rights required a referendum and winning support for change would be difficult

- Implementing a Bill of Rights in the Constitution could convey too much power to the judiciary to interpret rights issues
 - A non-legal Declaration of Rights is needed to help clarify rights and to educate citizens about their rights
2. A substantial minority of convention delegates supported the following:
- That a Bill of Rights formed through legislation, but not as part of the Constitution, is needed to guarantee rights
 - That a Declaration of Rights be developed as a stage along the path to developing a Bill of Rights and ultimately enshrining these in the Constitution.

The reasons advanced for the above position included that:

- A Bill of Rights formed through legislation would assist to make the change of the rights easier as a referendum would not be required to support changes
 - Any attempt to adopt a Bill of Rights must proceed slowly and in a way that enables the public to be educated about their rights and to feel comfortable with the proposed changes
3. Ideas put forward by individual groups included:
- That rights should be in the Constitution but in a non-justiciable form. They should be implemented through legislation that courts could enforce.
 - That if Australia had a Bill of Rights that judges should be trained in human rights issues
 - That if a legislative Bill of Rights was adopted it should only be changed by a three-quarters majority of parliament
 - That an independent commission representative of all states should measure all legislation against a Declaration of Rights
 - That if Australia had a Declaration of Rights in any form that it should be reviewed at regular intervals.

The 2003 National School Constitutional Convention was organised and managed by National Curriculum Services Pty Ltd and Australian Curriculum Studies Association (Inc.) and funded by the Commonwealth Department of Education, Science and Training under the *Discovering Democracy* programme.

The views expressed at the 2003 National Schools Constitutional Convention do not necessarily represent the views of National Curriculum Services Pty Ltd, Australian Curriculum Studies Association (Inc.) or the Commonwealth Department of Education, Science and Training.

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