



Senate Reform

House of Review or Obstruction?



Communiqué

**NINTH NATIONAL SCHOOLS
CONSTITUTIONAL CONVENTION**

**Old Parliament House
Canberra**

24-26 March 2004

2004 National Schools' Constitutional Convention

The 2004 National Schools Constitutional Convention (NSCC) funded by the Australian Government, Department of Education, Science and Training, was held at Old Parliament House in Canberra from 24–26 March 2004. The NSCC is the ninth convention since 1996. One hundred and sixteen 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 *Senate Reform*. Student delegates discussed the following issues:

The NSCC programme is attached.

The Issues addressed by the Convention were:

- ISSUE 1: Does the Senate need reform? What is the basic problem?
- ISSUE 2: How should the Senate be reformed?

The Convention was opened by Ms Lisa Paul, Deputy Secretary, Department of Education, Science and Training who represented the Hon Dr Brendan Nelson MP, Minister for Education, Science and Training.

Convention Conclusions

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

ISSUE 1: Does the Senate need reform? What is the basic problem?

The severity of the issue of deadlocks

In response to the question 'How serious a Constitutional problem is the presence of deadlocks between the two houses of the Commonwealth Parliament?' the conclusions of the Convention were as follows.

1. A clear majority of convention delegates concluded that the presence of deadlocks between the two houses of the Commonwealth Parliament is not a significant problem.

The reasons advanced to support this conclusion included that:

- historically there have only been very few occasions when it has been necessary to resort to a double dissolution to resolve a deadlock between the two houses.
- within the life of the current Government, the vast majority of bills (approximately 98%) have been eventually passed by the Senate.
- the Senate plays a legitimate role in providing checks and balances on the legislation of the government of the day and is properly exercising its power when amending and blocking bills.
- the views of minority parties are legitimate and should be respected.
- good government is not usually impeded or undermined by a few deadlocks.

2. A significant minority of convention delegates concluded that the presence of deadlocks between the two houses of the Commonwealth Parliament is a significant problem.

The reasons advanced to support this conclusion included that:

- the government of the day has been given a mandate to govern and should be able to put in effect its legislative reforms and not be thwarted in this role by a hostile Senate.
- whilst the vast majority of bills are eventually passed by the Senate, the bills that have not been passed within the life of the current Government have been items of key legislation.
- fringe and minority parties and independents in the Senate are able to exert disproportionate power to frustrate the passing of Government legislation.

Adequacy of Section 57 for resolving deadlocks

In response to the question ‘How adequate are the Constitutional provisions to resolve a deadlock between the houses?’ the conclusions of the Convention were as follows.

1. A majority of convention delegates concluded that the double dissolution provision under Section 57 of the Constitution is an adequate solution.

The reasons advanced to support this conclusion included that this provision:

- provides an incentive for the Government and minority parties to negotiate and compromise (when the Government believes it would lose the election if it invoked Section 57).
- is not unduly expensive as the double dissolution provision is very seldomly invoked.
- has worked throughout the life of the Federation.
- acts as a safeguard against a hostile Senate and enables voters to engage in the process of deciding the deadlock.

2. A minority of convention delegates concluded that the double dissolution provision under Section 57 of the Constitution is an inadequate arrangement for resolving a deadlock between the houses.

The reasons advanced to support this conclusion included that this provision:

- is too costly and time consuming.
- may not lead to a resolution of the deadlock.
- enables the Government to opt out of negotiations designed to reach a compromise (if the Government believes it will win the election brought on by invoking Section 57).
- could be an annoyance for the public and make them cynical about the workings of government
- it confuses the issues as there may be several deadlocked bills and voters when casting their votes will not know which particular deadlocked issue the election is being fought on.

3. Consistent with the idea of maximising the need for compromise between the houses, there was some support for the repeal of Section 57 in its entirety.

ISSUE 2: How should the Senate be reformed?

Relative merits of the two options for Constitutional change

Delegates were asked to response to the question:

- ‘If given the choice of changing the deadlock provisions in the Constitution, how would you rate the relative merits of the two options for Constitutional change, and would you rate either as a valuable addition to the Constitution?’

It needs to be noted that:

- **the majority of delegates preferred the retention of Section 57 to the two options for change**
- **neither option was considered adequate.**
- **there was a some support for the abolition of Section 57.**

In relation to the relative merits of the two options:

1. Option 1 (Joint sitting without an election if a bill is blocked by the Senate) had no support because:
 - it does not provide for voters to be involved in the resolution of a deadlock.
 - it makes Parliament redundant and prevents it from scrutinising the Executive
2. Option 2 (Joint sitting followed by an ordinary election if a bill is blocked by the Senate) was preferred over Option 1.

The reasons advanced for preferring this option included that:

- it is closest to the current system – but is considered to be the best of two inadequate options.
- the process provides for the views of the majority of the voters to be expressed.
- it is not as expensive to institute as a double dissolution.
- it provides a speedy solution to resolving deadlocks

Other options for resolving deadlock between the houses of Parliament

1. A significant minority of convention delegates preferred to have deadlocks resolved by a binding plebiscite following an education campaign on the issue to be voted upon (ie. the ACT model).

The reasons for a minority preferring this option included that:

- it provides the opportunity for voters to decide whether or not a deadlocked bill is passed.
- it does not give either house a majority of power.
- it puts the onus on the Government to negotiate with the opposition
- it raises the level of public education and debate.

The reasons for the majority opposing this option included that:

- it is too expensive to operate.
- the Government is likely to exert a bias on the education program associated with the plebiscite.
- educating the nation on the matters to be voted upon is an unrealistic proposition.
- it diminishes Parliament's role in resolving deadlocks.

2. Other suggestions for reform included:

- the introduction of a fixed term for parliamentary elections, with a four-year term being the most preferred option.
- the adoption of a consistent form of voting between the two houses of Parliament (ie. either the introduction of proportional representation in the House of Representatives or the introduction of preferential representation in the Senate) as this will help to overcome the possibility of a deadlock.
- increasing the role of the Senate to increase scrutiny of the Executive, including declaration of war and appointment of judges.
- prohibiting Ministers from being members of the Senate.
- giving more independence to the presiding officers (eg. President of the Senate).
- requiring Ministers to appear before Senate committees.
- that the Senate should not be able to block Supply.

Plebiscite on proposed changes to the powers of the Senate

The following options were provided for delegates to cast their votes in a plebiscite of the options for changing the powers of the Senate. The results of the plebiscite were as follows.

Note that the total number consists of a first preference (value 3), second preference (value 2) and third preference (value 1) for an option.

Option	Total	Ranking
Retain the current system.	256	1
Other	172	2
Widening the powers of the Senate to require its approval of executive action (eg. declaration of war)	129	3
Retention of the Senate but enlarged to equal the size of the House of representatives.	41	4
Retention of the Senate but with no power to block, amend or reject government budgets.	34	5
Joint sitting followed by an ordinary election if a bill is blocked by the Senate.	30	6
Joint sitting without an election if a bill is blocked in the Senate	23	7
Abolition of the Senate.	11	8

The 2004 National School Constitutional Convention was organised and managed by National Curriculum Services Pty Ltd and Australian Curriculum Studies Association (Inc.) and funded by the Australian Government, Department of Education, Science and Training under the *Discovering Democracy* programme.

The views expressed at the 2004 National Schools Constitutional Convention do not necessarily represent the views of National Curriculum Services Pty Ltd, Australian Curriculum Studies Association (Inc.) or the Australian Government, Department of Education, Science and Training.

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Senate Reform: House of Review or House of Obstruction?

DAY ONE – Wednesday 24 March 2004

12.00 PM	Lunch and Briefing Session, Eaglehawk Resort
1.30 PM	Bus departs Eaglehawk Resort for Parliament House
2.00-3.00 PM	Tour of Parliament House and Parliamentary Question Time
3.15 PM – 4.00 PM	Meet the Politicians Mural Hall, Parliament House, Capital Hill Welcome – The Deputy Prime Minister, Hon John Anderson, MP
4.15 PM	Bus departs for Government House
4.30-5.30 PM	Reception at Government House
5.45 PM	Bus departs for Hotel
7.30 PM	Official Dinner: Anzac Hall, Australian War Memorial Welcome: Ms Katy Gallagher, ACT Minister of Education, Youth and Family Services. Guest Speaker: Hugh Evans, Young Australian of the Year

DAY TWO – Thursday 25 March 2004 – Old Parliament House

8.00 AM Bus departs Hotel for Old Parliament House

8.30 AM Registration

House of Representatives

9.00 – 9.30 AM

Welcome to Land: *Mrs Matilda House, Ngunnawal Elder*

Official Opening: *Ms Lisa Paul, Deputy Secretary,
Department of Education, Science and Training
representing The Hon Dr Brendan Nelson, MP.*

Chair: *Professor Greg Craven*

9.30 – 10.00 AM **Keynote Address:** The Role of the Senate
Mr Harry Evans

10.00 – 10.30 AM Question and Answer session on Keynote Address.

10.30 – 11.00 AM **Morning Tea**

House of Representatives

11.00 – 12.00 PM **Issue 1:** Does the Senate need reform?

Chair: *Dr John Uhr*

Panel: *Mr Neil Brown, Prof Michael Coper, Ms
Amelia Simpson*

Breakout Rooms

12.00 – 12.45 PM **Working Groups**-Issue 1

12.45 – 1.30 pm **Lunch**

Members Dining Room

1.30 – 2.00 PM **Soap Box Session**

Chair *Dr John Uhr*

Breakout Rooms

2.00 – 2.30 PM **Working Groups** – finalise response to Issue 1.

Members Dining Room

2.30 – 3.00 PM Report back from working groups.

3.00 – 3.30 PM **Afternoon Tea**

House of Representatives

3.30 – 4.30 PM **Issue 2:** How should the Senate be reformed?

Possible models from political perspectives.

Panel: *Senator Marise Payne, Senator Linda Kirk,
Senator Natasha Stott Despoja*

House of Representatives

4.30 – 5.00 PM Implications for the constitution *Dr John Williams*

5.00 – 5.30 PM Photographic session (whole group)

5.30 PM Return to Hotel

7.30 PM **Informal Dinner**

DAY 3 – Friday 26 March 2003 – Old Parliament House

8.00 AM Bus departs for Old Parliament House

Members Dining Room

9.00 – 9.45 AM Working Groups Issue 2.

Breakout Rooms

9.45 – 10.15 AM Soap Box Issue 2. Chair: *Dr John Williams*

Members Dining Room

10.15 – 10.45 PM Working Groups to finalise response to Issue

10.45 -11.15 AM **Morning Tea**

Members Dining Room

11.15 – 11.45 Reporting Back Issue 2. Chair: *Dr John Williams*

11.45 -12.15 PM Electoral Commission – Explanation of Plebiscite and a Referendum

12.15 – 12.45 PM Conduct of the Plebiscite

12.45 – 1.45 PM **Lunch**

House of Representatives

1.45 – 2.30 PM Finalising the communiqué incorporating plebiscite results.
Chair: *Dr John Williams*

2.30 – 3.00 PM Review of the 2004 National Schools Constitutional Convention

3.00 - 3.15 PM Presentation of communiqué to President of the Senate
The Hon. Paul Calvert, MP, Senator for Tasmania

3:15 PM Depart for Airport
