



Australian Government
Department of Education, Science and Training

**The Executive: Its role and responsibility in the
Australian system of government.**



Communiqué

**TENTH NATIONAL SCHOOLS’
CONSTITUTIONAL CONVENTION**

**Old Parliament House
Canberra**

16-18 March 2005

Tenth National Schools' Constitutional Convention

The tenth National Schools Constitutional Convention (NSCC) was held at Old Parliament House in Canberra from March 16–18 2005.

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

The National Schools Constitutional Convention seeks to promote understanding and informed discussion amongst young Australians about the Australian Constitution and system of government. Its three main aims are:

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.

Student delegates from every Australian school in the catholic, government 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 at this year's Convention were welcomed to Canberra by Hon. Dr Brendan Nelson, Minister for Education, Science and Training and attended a Prime Minister's reception at Mural Hall, Parliament House. Student delegates participated in a 'behind-the-scenes' tour of Parliament House hosted by the Parliamentary Education Office, attended Question Time in the House of Representatives and met with their Members of Parliament. An Official Dinner, sponsored by the ACT Department of Education and Training, was held at Anzac Hall in the Australian War Memorial where students were welcomed to Canberra by Michele Bruniges, Chief Executive Officer of the ACT Department of Education who represented Katy Gallagher, the ACT Minister for Education and Training. Students were also addressed by Mr. Matthew Albert, Victorian Young Australian of the Year.

The Convention was opened by the Hon. Dr Brendan Nelson, Minister for Education, Science and Training. Dr. John Williams and Dr. John Uhr facilitated the Convention proceedings.

The topic for this year's convention was *The Executive: Its role and responsibility in the Australian system of government*. Student delegates were provided with pre-reading and presentations that related to the following two questions:

- Should the accountability of the Executive be improved?
- Should Ministers be appointed from outside the Parliament?

Students worked in groups to analyse and reach conclusions about the following two issues:

- Issue 1: Appointment to the High Court of Australia.
- Issue 2: Amendment to Section 64 of the Constitution.

The program for the National Convention provided the student delegates with a stimulating and challenging experience.

A Keynote Address entitled *Executive Power: Its scope and limitations* was presented by George Winterton, Professor of Constitutional Law, the University of Sydney. Dr Fiona Wheeler, Faculty of Law, the Australian National University provided a presentation on the accountability of the executive (Issue 1) and Dr John Hart, School of Social Sciences, Australian National University provided a presentation on whether Ministers should be appointed from outside Parliament (Issue 2).

After both keynote speakers had addressed delegates, 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. Panel members Senator Gary Humphries, Mr Robert McClelland MP, Professor George Winterton and Professor Greg Craven responded to questions and provided further input to Issue 1. Further exploration of Issue 2 was provided by Dr. John Williams who facilitated students' Working Group and Soap Box sessions. Students also participated in a mock referendum administered by the Electoral Education Centre of the Australian Electoral Commission. Students were asked to write YES or NO on a ballot paper to indicate whether they approved of an alteration of the Constitution to allow Ministers of State to be appointed from outside Parliament.

The majority of students (84 to 32) voted not to approve the proposed alteration to the Constitution. Delegates from all states and territories, except South Australia, voted in opposition to the proposed alteration.

At the conclusion of the Convention, the President of the Senate, the Hon. Paul Calvert, Senator for Tasmania accepted the Convention Communique to convey to the Prime Minister and the Commonwealth Parliament.

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

Issue 1: Should the accountability of the Executive be improved in relation to the appointment of High Court judges?

1.1. The majority of delegates considered that there is no need to change the Constitution to make the Executive more accountable for the way that new judges are appointed to the High Court.

1.2. The overwhelming majority of delegates considered that High Court judges should be appointed and not be elected to their positions.

1.3. The majority of delegates considered that the main criterion for selecting a High Court judge should be outstanding legal competence (i.e. a merit-based selection), even if this results in the High Court judges not being representative of different groups in society.

1.4. A significant proportion noted the disproportionate representation on the High Court from the larger states and the near absence of gender, ethnic and cultural diversity in the

membership of High Court judges but felt that in due course this problem would be rectified as a more diverse group became expert experienced lawyers.

1.5. The majority of delegates considered that the Executive should be more accountable for the processes followed when appointing High Court judges.

1.6. The majority of those seeking a more accountable and transparent process believed that the option of having a Judicial Commission involved in the process of scrutinising and nominating possible candidates should be explored.

1.7 Various models for the composition of a possible Judicial Commission were advanced. These included an independent committee consisting of:

- senior members of legal associations from each of the states and territories
- the attorney generals from the Commonwealth, states and territories
- eminent representatives from the legal fraternity and the general public
- current and former High Court judges.

1.8. A significant minority of those seeking a more accountable process believed that the option of having a Parliamentary Senate or House of Representatives Committee or a joint committee of the two houses to scrutinise the process by which the Attorney General selected the candidate should be explored.

1.9. The majority of delegates considered that the Executive should have the final decision over the appointment of a High Court judge as the Executive is elected to represent society's views and is ultimately accountable at the ballot box for its decisions.

1.10. Another variation to the above changes to the appointment process was the suggestion that the Attorney General be required to reveal the names of the candidates being considered for appointment to the High Court.

Issue 2: Should Ministers be appointed from outside the Parliament?

(Section 64 of the Constitution requires that Ministers sit in the Parliament)

2.1. The vast majority of delegates considered that Section 64 of the Constitution does not need amendment as any such amendment would require a significant overhaul of parliamentary processes. That is, they agreed with the proposition that Ministers must be appointed from within the Parliament.

2.2. The reasons for the vast majority adopting this position included that:

- appointees from outside the Parliament, as they would be employees rather than elected representatives, would be less accountable for their actions than are elected Parliamentarians
- appointees from outside the Parliament are more likely to have a conflict of interest between their Ministerial role and their business interests than are Ministers who are 'professional' politicians
- a system of making appointments from outside Parliament by the Prime Minister could result in executive leadership being less stable than it is under our current system

- a system of the Prime Minister making appointments from outside Parliament could lead to cronyism and corruption without appropriate checks and balances being put in place
- specific expertise in an area of administration is not necessarily required as Ministers have advisers, Department Secretaries and public servants with the expertise to advise them. Moreover, Ministers bring to their portfolios generic skills which are conducive to both the organisation of the Department and the political realities of Government.
- a change in the current arrangements could undermine the concept of collective government and give the Prime Minister a substantial new power, the power to select and dismiss Ministers
- a system of making appointments from outside Parliament would block opportunities for backbenchers to progress to a more influential positions within government
- as the current system in Australia seems to be working adequately, there would be little likelihood that the Parliament or the public would endorse any proposal to change Section 64 of the Constitution.

2.3. A minority supported the amendment of Section 64, as this would open a broader base from which Ministers could be selected and as selection would be undertaken by the Prime Minister, accountability to the public would be protected as it is currently.

2.4 An opinion was also expressed that Executive accountability would also be enhanced by making government departments more accountable for their actions.

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The views expressed at the 2005 National Schools Constitutional Convention do not necessarily represent the views of the Commonwealth Department of Education, Science and Training.