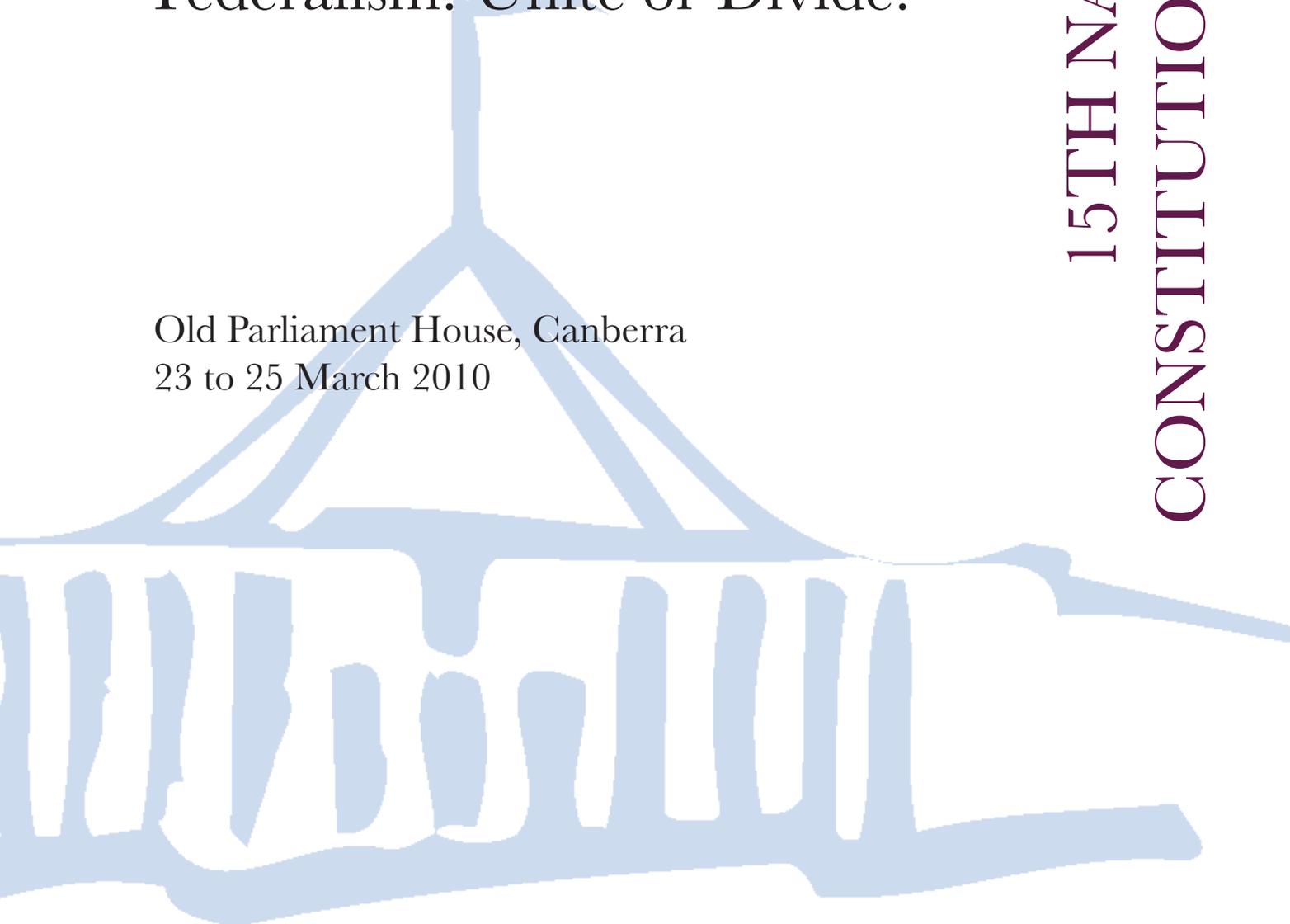


COMMUNIQUÉ

Federalism: Unite or Divide?

Old Parliament House, Canberra
23 to 25 March 2010

15TH NATIONAL SCHOOLS
CONSTITUTIONAL CONVENTION



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This Project was funded by the Australian Government Department of Education, Employment and Workplace Relations through the Civics and Citizenship Education Program and was managed by National Curriculum Services and the Australian Curriculum Studies Association.

The views expressed here do not necessarily represent the views of the Australian Government Department of Education, Employment and Workplace Relations.

Background

The fifteenth National Schools' Constitutional Convention (NSCC) was held at Old Parliament House in Canberra from 23–25 March 2010.

One hundred and twenty-two students from government, independent and Catholic schools from across Australia, covering metropolitan and country areas attended. Approximately 71% of students were from government schools, 12% were from independent schools and 17% were from Catholic schools.

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:

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

Students participate in regional and state/territory Schools' Constitutional Conventions, where they are either selected or elected to attend the National Schools' Constitutional Convention.

Visits and receptions

The Convention was officially opened by Senator Kate Lundy, Senator for the Australian Capital Territory, and Mrs Matilda House, Ngambri woman, welcomed participants to country. Delegates visited the National Archives of Australia, the Museum of Australian Democracy at Old Parliament House and Parliament House.

The Convention Dinner was held at the High Court of Australia. Delegates were welcomed to the High Court by the Hon Robert French AC, Chief Justice of the High Court. Ms Fiona Roughley, Principal Research Officer, Parliament Senate Committees, presented an address to the students about her experiences as a lawyer working at the High Court and in the Northern Territory.

Convention focus

The focus of this year's Convention was:

- to introduce and inform delegates about the current allocation of legislative responsibilities in Australia's Constitution with reference to a number of international constitutions;
- to have delegates consider why these take the form that they do and to think about the implications of these divisions; and

- to have delegates consider whether there should be a change to Commonwealth powers as set out in the Australian Constitution, to include water and health as Commonwealth powers.

Professor John Williams from the Law School at the University of Adelaide and Dr Clement Macintyre, Reader in Politics, University of Adelaide, developed the two day program in conjunction with the Australian Curriculum Studies Association and facilitated the Convention proceedings at Old Parliament House.

Student delegates were provided with pre-reading which:

- discussed the definition and purpose of a Constitution; and
- contained selected sections from the Australian Constitution to do with the powers of Parliament and the processes for altering the Constitution.

At the Convention delegates were provided with a Workbook which included the pre-reading materials and outlined four activities for working groups.

Delegates were provided with relevant sections of the Constitutions from four other countries and used these in conjunction with the Workbook to develop their viewpoints about the allocation of legislative responsibilities in the Australian Constitution.

Convention processes

Delegates met at Old Parliament House and over two days engaged in discussions about the powers of the Commonwealth and states as outlined in the Constitution. Professor John Williams commenced the topic enquiry by presenting delegates with an explanation of the concept of Federalism.

Delegates heard two addresses that provided arguments for and against the Commonwealth assuming full powers over water and health. The case for the Commonwealth assuming full powers over water and health was presented by Senator Kate Lundy, Senator for the Australian Capital Territory, and the case against by Senator Cory Bernardi, Senator for South Australia. Following each presentation 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 speakers. These sessions provided a context for delegates' first Working Group activities.

Working Group 1 was focused on Comparative Constitutions and the group activity required delegates to:

- respond to the following questions: What is the rationale behind the allocation of certain powers to the central government? What other areas of responsibility would you see as being unambiguously 'national' in character? Are there any matters that you think should not be listed as powers of the national parliament?;
- consider the legislative powers in the tabled Constitutions and formulate a rationale for the allocation of powers;
- list three or four arguments for the allocation of powers to the central government and three or four arguments for listing matters as State responsibilities; and
- identify which nation each of the constitutions is from, and guess the decade it was drafted.

Working Group 1 was designed to promote thinking about the principles that could be used to guide the distribution of powers. A report back session enabled delegates to report on their ideas. The delegates' rationales for the allocation of certain powers to the central government included national security (for

example, military, border security and quarantine and customs); consistency of practice (for example, in safety and criminal laws, currency, trade, immigration, citizenship and interstate transport); equality (for example, pensions, taxes and other entitlements); efficiency (that is, to avoid duplication of effort); and national interest (for example, marketing, census and foreign affairs).

Delegates suggested that the following matters should not be listed as powers of the national parliament: marriages and divorce; property rights; roads; power and electricity; local councils; policing; water management; waste and sewerage management; social care; housing and community planning; driving licences; public transport; and emergency and correctional services.

Working Group 2 was focused on the Australian Constitution and the group activity required delegates to:

- respond to the following questions: What are the underlying themes or principles with the Australian division of powers? What do you believe should be the absolute minimum powers held by a national Parliament? Do you think that the Commonwealth's powers as defined in sections 51 and 52 of the Constitution give an accurate picture of the ways that the different levels of government in Australia work? If not, why not?; and
- list and justify the five most important policy areas that they considered were best left to the States.

Working Group 2 was designed to promote understanding of how and why powers are divided in federal systems and the reasons why the Australian Constitution lists the various matters under sections 51 and 52. It also helped to develop delegates' views on whether this is the 'best' allocation of responsibilities and the principles that should be used in any consideration of the 'best' distribution. A report back session enabled delegates to report on their ideas.

Working Group 3 was focused on water and health and the group activity required delegates to:

- respond to the following question: Who should have control of health and water, and why?
- list arguments against and in favour of moving control of health policy to the Commonwealth by a formal change to the Constitution; and
- list arguments against and in favour of moving control of rivers to the Commonwealth by a formal change to the Constitution.

A **Soap Box** session, which completed the day's program, followed the third Working Group. The Soap Box session enabled students to advance arguments in favour and against moving control of water and health policy to the Commonwealth by a formal change to the Constitution. Some of the views expressed in favour of transferring more power to the Commonwealth were:

- States have not been able to manage things thus far so a new approach is required.
- We are a single nation not separate nation states, and so a national focus should prevail.
- States can become too parochial and self interested and forget about the needs of the nation as a whole.
- Nationally controlled systems work well in other federations overseas, so we should not discount the role of the Commonwealth.
- What one state does can impact on other neighbouring states and so we need a way to manage matters that cross state boundaries.
- Where there are resource excesses in one state and scarcity in another state we need a way to reconcile resource use in a way that is fair to all.

Some of the more common views expressed against transferring more power to the Commonwealth were:

- The real task is to make the states more accountable for their performance in managing water and the health system. Passing powers over to the Commonwealth removes the accountability of states.
- There is no guarantee that things will work better just because the Commonwealth exerts greater power over a resource or service.
- The greater the distance between the authority exercising power and the delivery of the service, the greater the likelihood that delivery quality will suffer.
- The problems and needs of states are quite diverse and so a 'one size fits all' Commonwealth solution will not help.
- Once the power is given to the Commonwealth, it may be regretted and will be hard to retrieve.

The morning session on Thursday 25th March opened with an Australian Electoral Commission presentation that outlined the grounds upon which a change can be made to the Australian Constitution and how a referendum is conducted. This presentation was followed by a whole group discussion facilitated by Professor Williams and Dr Macintyre to clarify the referendum process.

Working Group 4 provided a further opportunity for delegates to explore the grounds upon which a change can be made to the Australian Constitution. This activity required delegates to respond to the following questions:

- Why is there provision for a referendum when the House of Representatives and the Senate disagree? What happens in this case?
- What is the status of Territorians in the counting of votes at a referendum?
- In terms of Citizen Initiated Referenda (CIR), what do you believe are the three most significant arguments in favour of this approach and what are three against?
- What are three arguments for and three arguments against the States having the capacity to initiate a referendum? If you are in favour of the States having this right, how many states do you think should agree on the proposed question before it can be put to the voters?

A report back session enabled delegates to report on their discussions and conclusions. In relation to the issue of a CIR, arguments advanced by delegates in favour of the adoption of a CIR included that:

- it would help to increase citizen's awareness of Constitution reform issues;
- it could prompt greater citizen involvement and public debate; and
- it could make it easier to reform the Constitution.

Arguments against the adoption of a CIR that were advanced by delegates included that:

- a CIR would take power away from elected representatives;
- a CIR could encourage groups with extremist views to initiate a referendum;
- citizens may advance proposals without a full understanding of the implications or consequences of their proposition; and
- it could provide a means for repeatedly floating proposals that do not have broad support.

A significant majority of delegates considered that a CIR should not be adopted as a means for initiating a referendum.

In relation to the issue of the States having the capacity to initiate a referendum, arguments advanced by delegates in favour of the adoption this model included:

- power would be returned to the states / the concentration of power in the Commonwealth would be reduced;
- items that could be hard to get onto a national agenda would have a better chance of emerging; and
- it would make the States more accountable to voters.

Arguments against the States having the capacity to initiate a referendum that were advanced by delegates included:

- parochial issues may keep getting an undeserved airing;
- the Commonwealth's authority could be undermined;
- there is a potential that the views of the bigger states could be imposed on the smaller states and territories; and
- additional costs could be incurred as there are more sources of initiation.

A slight majority of delegates were against the proposition that the States should be able to initiate a referendum.

The majority of delegates considered that if the States were given the capacity to initiate a referendum, it should only be triggered when at least four states agreed on the proposed question to be put to the voters.

Delegates also wanted it recorded that they considered that the Territories should be given the same status as States when a referendum is conducted.

A **mock referendum** was conducted to ascertain whether delegates would be willing to alter the Constitution to change Commonwealth powers in relation to water and health. The referendum ballot papers to be completed by the delegates contained the following proposals:

- A Proposed Law: To alter the Constitution to empower the Commonwealth Parliament to directly legislate for the waters of the Murray-Darling system.
- A Proposed Law: To alter the Constitution to empower the Commonwealth Parliament to legislate for health care, including public and private hospitals.

Delegates were asked to write 'YES' or 'NO' in response to the question 'Do you approve of the proposed alteration?'. One hundred and twenty-one delegates were present for the voting.

Delegates' perspectives

on the proposition to alter the Constitution to empower the Commonwealth Parliament to directly legislate for the waters of the Murray-Darling system

Results were tallied for the mock referendum on the proposition to alter the Constitution to empower the Commonwealth Parliament to directly legislate for the waters of the Murray-Darling system. The detailed results of this mock referendum are outlined on the following tally board. One hundred and twenty-one formal votes were cast.

National Tally Board	Formal YES	Formal NO	Is the majority in favour?	
New South Wales	26	0	YES	YES
Victoria	16	10	YES	
Queensland	26	1	YES	
Western Australia	12	3	YES	
South Australia	11	1	YES	
Tasmania	4	1	YES	
Australian Capital Territory	5	0		
Northern Territory	3	2		
NATIONAL TOTAL	103	18	Is there a majority of voters in a majority of states in favour of the alteration?	YES
			HAS A DOUBLE MAJORITY BEEN ACHIEVED?	YES
			HAS THE AUSTRALIAN CONSTITUTION BEEN ALTERED?	YES

The referendum to alter the Constitution to empower the Commonwealth Parliament to directly legislate for the waters of the Murray-Darling system was:

successful

Delegates' perspectives

on the proposition to alter the Constitution to empower the Commonwealth Parliament to legislate for health care, including public and private hospitals

Results were tallied for the mock referendum on the proposition to alter the Constitution to empower the Commonwealth Parliament to legislate for health care, including public and private hospitals. The detailed results of this mock referendum are outlined on the following tally board. One hundred and twenty formal votes were cast and one delegate lodged an informal vote.

National Tally Board	Formal YES	Formal NO	Is the majority in favour?	
New South Wales	14	12	YES	NO
Victoria	6	20	NO	
Queensland	8	19	NO	
Western Australia	4	11	NO	
South Australia	3	9	NO	
Tasmania	1	3	NO	
Australian Capital Territory	3	2		
Northern Territory	1	4		
NATIONAL TOTAL	40	80	Is there a majority of voters in a majority of states in favour of the alteration?	NO
			HAS A DOUBLE MAJORITY BEEN ACHIEVED?	NO
			HAS THE AUSTRALIAN CONSTITUTION BEEN ALTERED?	NO

The referendum to alter the Constitution to empower the Commonwealth Parliament to legislate for health care, including public and private hospitals was:

unsuccessful

Convention outcomes

This Communiqué outlining the Convention program, processes and outcomes was developed and endorsed by delegates. Senator Claire Moore, Senator for Queensland, representing the President of the Senate, joined the delegates in the House of Representatives chamber of Old Parliament House and accepted the Convention Communiqué for presentation to the Parliament and incorporation into Hansard.