

Changing our system of Government: The view of the Federal Centenary Convention

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The Federal Centenary Convention

As the centenary of our federation approaches, constitutional reform has emerged as an issue of concern to many Australians. As young Australians, it is our generation who will operate whatever system of government that is in place next century. As lawyers, we have the specialist skills and knowledge to enrich the debate on constitutional reform. In recognition of the significant contribution young lawyers can make, the Young Lawyers Section was invited to participate in the Federal Centenary Convention¹. The Convention commemorates the drafting of our present Constitution at the Australasian Federal Convention held during 1897 to 1898.

The Convention held the first of three conferences aimed at facilitating an informed public debate on the system of government in Australia leading up to the centenary of federation. The aim of the first conference was to identify the significant principles on which the Australian Constitution and system of government should be based next century. The existing Constitution and systems of government may be evaluated by Australians with reference to these principles, and these principles may help resolve any identified deficiencies in the existing Constitution and system of government.

An appraisal of the existing Constitution and system and practices of government will take place in Sydney in September 1997 when the Convention meets for the second time. In Melbourne in early 1998, the Convention will conclude by identifying constitutional provisions capable of establishing a system of government that could operate in Australia next century.

The First Conference

Participants at the conference considered the challenges Australian governments will face next century. Participants then devised a set of principles upon which to base the Australian Constitution and system of government, after considering the expectations people have of government. The challenges and principles have been included in a Communique from the Convention.² In this Article, I shall

identify the major areas of concern emerging from the conference and discuss the relevant challenges and principles designed to address these concerns.

Democracy and Participation

A major challenge facing future governments is to ensure that Australia remains a democracy in which the power to govern is derived from the people. Associated with this is the challenge of securing the widest political participation by all Australians, and an improved public understanding about the Australian Constitution and system of government.

Many principles were adopted to secure the recognition of the sovereignty of the people. The Constitution is to state that it, and all institutions of government created under it, draw their authority from the people. To reinforce this, the Constitution is to outline the framework of responsible government and representative democracy, as well as indicate that the executive arm of the government is accountable to the parliament and the people. The sentiment that representative democracy must be more clearly defined in the Constitution emerged from the concern that Members of Parliament were representative of their respective party politics rather than of the people, and that minority political parties were unable to effectively participate in the legislative process.

It was acknowledged that modern democracy depends on access to accurate and unbiased information about Australia and the world.

Developed from this was the

principle that the Constitution should contain a mechanism by which a diversely controlled media, including a significant role for publicly owned media, is guaranteed.

System of Government

The Republic

The Convention supported the move from a constitutional monarchy to a constitutional republic. Two of the principles sanctioned declare that an Australian citizen chosen by Australians should be Australia's head of state, rather than the Monarch of the United Kingdom.

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The Institutions of Government

Reflective of the increasing dissatisfaction in our system of government, the conference identified the promotion of confidence in our institutions of government, including the judiciary, and the accessibility of justice for all Australians as significant challenges facing future governments. The consequential principles include reinforcement that only courts can exercise judicial power and that judges are to be independent and impartial. It was suggested that a more comprehensive process for the selection of judges be designed, but this was not formally adopted by the participants. This is unfortunate as wider participation in the appointment of judges should increase public confidence in the judiciary.

Another challenge posed was the efficient allocation of power and functions between the levels of government. This was also reflected in the principles. Specifically, governments must work co-operatively and account for the interests of Australia as a whole, whilst giving genuine regard to regional and local interests. Connected to this is the principle that resources should be shared within the federation so that each government is able to provide equal basic services to its citizens, subject to the making of comparable taxation efforts. The establishment of procedures that allow for appropriate checks and balances between the institutions of government was also sanctioned.

The principle that people, products, services, capital and information should be able to move freely throughout Australia was also ratified. An issue raised at, but not formally recognised by, the conference was the control of the flow of information extra-territorially. Government is unable to control the flow of information electronically exchanged, making regulation of the sector seem impossible. Solutions to this dilemma are needed.

Rule of Law

Many key principles relevant to the rule of law were approved by the participants. The Constitution and system of government should guarantee that Australia is governed according to the rule of law, that the law is made by processes that are transparent, public and accessible, and that statutory law be clearly stated and available to all. Of significance in the current climate of cuts to Legal Aid, the conference adopted the principle that the cost of law should not be or become a bar to any person's access to justice. Moreover, efforts need to be made to ensure that people brought before the courts can understand, and are understood in, the legal proceedings.

Rights and Responsibilities

In General

A future challenge is the agreement on the definition of fundamental human rights and on the mechanisms by which

Australia will recognise and protect these rights. In order to achieve this, the core principles that Australia aspires to as a nation should be included in a new preamble to the Constitution. The conference concluded that the principles in the preamble are to include equality before the law, regardless of race, colour, gender, religion or creed; the support for a culturally diverse community; and the recognition of the history and rights of the indigenous people of Australia. It was accepted that the recognition of rights includes the recognition of reciprocal responsibilities.

In addition to the preamble, the conference accepted that the Constitution itself must recognise and protect fundamental human rights, the right to privacy, the right of cultural identity and freedom of communication. It was conceded that these rights should be subject to the needs of a democratic society, such that there is a balance between individual rights, responsibilities and the public interest. A constitutional framework that enhanced basic social, economic and environmental rights was also considered vital. Health care,

housing, education and work were specifically referred to, being reflective of the classes of rights contained in the *International Convention on Economic, Social and Cultural Rights*.

Indigenous Australians

The special position of indigenous people in Australian society formed the basis of two future challenges to government. First, reconciliation must be achieved between indigenous and other Australians. Any reconciliation must acknowledge the prior occupation of Australia by the indigenous people. Secondly, our traditional legal system must give appropriate recognition to indigenous customary law.

These challenges were reflected in the principles accepted. Although the Australian Constitution and system of government is to recognise that all citizens are equal in respect of their

rights and responsibilities, the unique position of indigenous Australians, their culture and identity are to be accounted for. The recognition of the history of indigenous Australians before and after settlement, and the consequent right of self-determination of indigenous Australians, were of importance when considering any constitutional change.

Cultural Diversity

In the future, governments must manage the cultural diversity of Australia in a way that unites Australians and must ensure that the meaning of 'equality' reflects the diversity in Australia. The principles adopted require that Australia's democracy account for the diversity of Australian society. The participants also called for an affirmation that Australia is a culturally diverse, tolerant and open society. The civilised expression and tolerance of differing views was emphasised throughout the conference.

“the core principles that Australia aspires to as a nation should be included in a new preamble to the Constitution”

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Globalisation

The conference acknowledged that globalisation of society, economics and politics is happening and will continue to happen. The future challenges in relation to globalisation are to achieve a national economic performance that advances the well-being of all Australians, while striking a proper balance between economic performance and social justice. The challenge to participate in and benefit from the international community is to be tempered by the commitment to the preservation of the unique positive aspects of Australian values and culture.

The principles designed to address these challenges include the recognition of Australia as a participant in the international community and the rights and responsibilities that result from this. A formal procedure requiring parliamentary consent before the Executive are authorised to enter into international treaties was called for, replacing the current procedure where parliament has a consultative role. Because international relations affect many aspects of Australian society, the conference promoted the establishment of a framework within which state governments have the opportunity to participate in international relations and international economic activity.

The Environment

Many participants expressed concern about the environment during the conference. The challenge to future governments is to achieve development based upon ecological sustainability. The principle supporting this was the need for Australians to respect the natural endowments of land, water, air and biodiversity of Australia, and to ensure their preservation for future generations. It was recognised that to achieve this, long term planning beyond the life of individual governments was needed. On an issue such as ecological sustainability, partisan politics is a threat, such that a change from adversarial politics to co-operative politics may be needed.

Conclusion

The future challenge for the Convention is to assess the existing Constitution and system of government in light of these challenges and principles, and to devise a Constitution and system of government suitable for the 21st century. This may be a formidable task, but in the words of the Governor-General, Sir William Deane, "to support retention of the status quo or to support change is neither un-Australian nor disloyal and involves nothing more than the legitimate expression of a point of view in the course of democratic debate about what is or is not in our country's best interest."

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¹ The Federation Centenary Convention is a joint initiative of the South Australian Government and the Constitutional Centenary Foundation. Two hundred invited guests participated in the Convention. Participants were chosen because of their ability to contribute to public debate on the Australian Constitution and systems of government, either now or in the future.

² This document is available on the Internet (<http://www.fedcent.sa.gov.au>).

Criminal Law

8 July	Drink Driving Offences
15 July	Sentencing: Drug & Alcohol Offences
	Options & Principles of Sentencing

Property Law

22 July	Leasing- Commercial Retail Tenancies
29 July	Acting for a Vendor in the Sale of Land
5 August	Acting for a Purchaser in the Sale of Land.

Bankruptcy & Insolvency

12 August	Bankruptcy Proceedings in the Federal Court
19 August	Insolvency
26 August	Enforcement of Judgments

Employment Law

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9 September	Employment Agreements, Australian Workplace Agreements & Contracts for Service.

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