

Introduction

- 1.1 Since 1901 when Federation was declared, the political, economic and social life of Australia has undergone profound changes. Despite the change and growth of Australia as a nation, the Constitution remains very much as it was originally drafted in the 1890s.
- 1.2 Over that time there have been forty-four referenda of which only eight have been successful. Another five have failed because, despite passing on a majority of national votes, they did not pass in the majority of States.
- 1.3 With the last successful referenda to amend the Constitution in 1977, we are now in the longest period without even minor reform to the Constitution since Federation. Despite the lack of reform, there has been no lack of national debate on the Constitution.
- 1.4 Calls for constitutional reform have been continual since 1977 – from Parliamentary committee reports, a variety of conferences and in academia and the wider community.
- 1.5 One of the most thorough reviews was conducted by the Constitutional Commission in 1988 which considered the changes required if Australia was to become a republic. As part of that extensive consultation and report process, the Commission made a number of recommendations to bring the distribution of powers as set out in the Constitution more into line with the practicalities of governance practices in Australia. Many of the issues examined by the Commission are raised in this report.

The need for a roundtable

- 1.6 Despite the extensive debates over the need for constitutional reform that have taken place in the thirty years since a successful referendum, all too often these debates are limited to academic spheres. While the Constitution is, and always will be, of great interest to academia it belongs in the public arena, to the nation as a whole.
- 1.7 In undertaking a roundtable on constitution reform, the Committee hoped to free the subject from being considered solely in an academic, legal or political context. Constitutional reform should be a debate about principles, about the appropriateness of existing provisions and, most fundamentally, about a set of democratic and governance structures that best give voice to the people of Australia.
- 1.8 The roundtable and subsequent report aims to show that debate about constitutional reform continues to be vital and relevant. Unresolved issues continue to mount and, particularly in regards to the distribution of powers, the complexity of these issues increases with successive layers of intergovernmental agreements, High Court challenges and State referrals of powers.

Building on the 2020 Summit

- 1.9 In resolving to undertake the roundtable, the Committee was also hoping to build on the momentum of the 2020 Summit held in Canberra in April 2008, and the discussions in the governance session of that Summit.¹ A major theme of the Australian Governance stream of the Summit was the 'strengthened participation of Australians in their governance'.²
- 1.10 Among the ideas put forward from the governance stream were:
- a review of all levels of governance to build a modern Federation;
 - innovative mechanisms to increase civic participation;
 - national consultation on a Charter or Bill of Rights; and

1 The Prime Minister, the Hon Kevin Rudd MP, convened the Australia 2020 Summit at Parliament House on 19 and 20 April 2008.

2 Department of Prime Minister and Cabinet, *Australia 2020 Summit – Final Report*, May 2008, p 317. < australia2020.gov.au/final_report/index.cfm> accessed 13 June 2008.

- a new preamble which formally recognises Indigenous Australians.³
- 1.11 These ideas also featured prominently in the more than 800 submissions received for the governance stream, along with calls for the accessibility, transparency and open dialogue with government required to achieve greater civic participation.⁴
- 1.12 During the roundtable, Summit ideas were raised on several occasions, as was the model of public consultation of both the Summit and the National Apology to Aboriginal and Torres Strait Islander peoples delivered on 13 February 2008.
- 1.13 The topics of the Committee's roundtable also responded to some of the issues raised at the 2020 Summit.

Conduct of the roundtable

- 1.14 The roundtable was held in Canberra on 1 May 2008. All members of the Committee participated as did fourteen invited individuals. Individuals were invited based on their experience in engaging with issues of constitutional reform and their ability to discuss them in a manner that was open and accessible to all. The list of invited participants is at Appendix A.
- 1.15 The Committee did not seek to undertake an extensive inquiry into constitutional reform. Wanting only to open a public discussion on the issues, submissions were not sought. However, the roundtable was open to the public and was webcast. The full transcript of proceedings is available on the Committee website.⁵
- 1.16 The roundtable consisted of five separate sessions focussing on processes and possible areas of constitutional reform. The sessions were:
- processes for altering the Constitution;

3 Department of Prime Minister and Cabinet, *Australia 2020 Summit – Final Report*, May 2008, pp. 307-317. <australia2020.gov.au/final_report/index.cfm> accessed 13 June 2008.

4 Department of Prime Minister and Cabinet, *Australia 2020 Summit – Final Report*, May 2008, p. 308.

5 House of Representatives Standing Committee on Legal and Constitutional Affairs, Round Table Seminar – Reforming the Constitution, at: <aph.gov.au/house/committee/laca/reformcon.htm>

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- parliamentary terms and qualifications of Members of Parliament;
 - recognition of Indigenous people and a new preamble;
 - harmonising Federal-State relations; and
 - citizenship and a Bill of Rights.

Report structure

- 1.17 The sessions outlined above form the structure of the report. Each chapter gives a summary of the issues raised during roundtable discussions and provides some Committee comment on possible future directions for both reform and ongoing debate.
- 1.18 This report does not make any recommendations for change to the Constitution itself. While the roundtable directly identified some outmoded provisions of the Constitution, and some which warrant further scrutiny, it was not the Committee's purpose to add to the volume of recommendations for constitutional reform.
- 1.19 It is intended that the report makes the issues identified at that roundtable accessible and of interest to the broader public. While the participants at the roundtable are all eminent professionals in their field, as their discussions revealed, these are not esoteric issues. They are among the issues that define us as a nation.
- 1.20 Many of the reforms debated at the roundtable and elsewhere have at their core the desire to expand the Constitution beyond its current purpose of establishing our systems of government, to encompass a document that provides a modern identity to Australia as a nation of people.
- 1.21 The report makes no conclusions on these points beyond the insistence that the debate on constitutional reform belongs in the public arena and mechanisms for ongoing public engagement are critical.
- 1.22 The roundtable and this report are intended as initiating dialogue that brings constitutional reform onto the Parliament's agenda. It also seeks to renew the call for public debate and engagement on these issues.

- 1.23 In essence, the aim of this report echoes that of John McMillan, Gareth Evans and Haddon Storey in their text *Australia's Constitution: Time for Change*, written a quarter of a century ago:

This book is intended to stimulate a serious national debate on the desirability and possibility of changing the Australian Constitution. Its aim is not to argue for any particular change, but simply to expose the problems that appear to exist in the present operation of the Constitution, to identify possible solutions to those problems, and to suggest some ways in which constructive debate might actually be encouraged.⁶

- 1.24 Through this report, the Committee hopes to invigorate the debate on constitutional reform, to question how the people of Australia engage in constitutional debates and identify areas of reform, and to consider what Australians might want from our Constitution in terms of its role in defining the governance, democracy and identity of our nation.

⁶ J McMillan *et al*, *Australia's Constitution: Time for Change?* Allen and Unwin, Sydney, 1983, p. ix.

