

Constitutional Reform In Australia

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Constitutional reform has never moved far from the political agenda in Australia. In the first twenty years of federation thirteen referendum proposals were submitted to the electorate, and as many as forty-five different bills for constitutional reform were introduced in the Federal Parliament.¹ There has followed a large number of official enquiries, continuing to the present day: the Royal Commission on the Constitution from 1927 to 1929, the Convention of Commonwealth and State Parliamentary Representatives of 1942, the Joint Parliamentary Committee on Constitutional Review from 1956 to 1959, the six plenary sessions of the Australian Constitutional Convention held between 1973 and 1985, the Constitutional Commission from 1985 to 1988, and the Constitutional Centenary Conference of 1991.

The objective is still alive. The Prime Minister's despondent withdrawal from constitutional reform attempts in 1988, has been capped quickly by the ALP National Conference decision in 1991 to push for a republican Australia.

Is there any realistic chance that the Constitution can be changed, particularly in a substantial way? Two issues arise: whether Australia's Constitution contains defects that can be corrected only by formal constitutional amendment; and if so, the approach that should be adopted for achieving reform.

The Need for Constitutional Reform

It is appropriate to start with the argument that Australia does not currently have a perfect Constitution. We may be a stable democracy, the Constitution may have survived two wars, a depression, and a revolution in technology and ideas, but the document is not ideal or flawless. Constitutional change will not be 'an irrelevant, time wasting and damaging distraction', as David Kemp, one of the perennial opponents, has recently argued.²

Nor is the support for constitutional change an isolated or idiosyncratic obsession. The Constitutional Commission in 1988, in an impressive 900 page report, took 30 pages to recommend textual alterations on nearly every subject dealt with in the Constitution.³ The same assessment has been expressed by another major forum, the Australian Constitutional Convention, which included representatives from Federal, State and local government, and from all major political parties.⁴

The argument for change can be traced briefly by reference to three different subjects of the Constitution: federalism; the institutions of national government; and protection of rights and freedoms.

1 See the table of referendums at the end of this paper. For a table of Bills proposing alterations, see *Final Report of the Constitutional Commission*, Australian Government Publishing Service, Canberra, 1988, Volume 2, p 1115.

2 *Canberra Times*, 14 April 1991, p 7.

3 *Final Report of the Constitutional Commission, op. cit.*, (hereafter '*Constitutional Commission Report*').

4 The Resolutions of the Convention are contained in the published *Proceedings of the Australian Constitutional Convention 1973; Proceedings 1975; Proceedings 1976; Proceedings 1978; Proceedings 1983; and Proceedings 1985.*

Federalism: Historically it has been the federalism structure that has been the focus for reform. Two thirds of the 42 referenda have proposed a change to this structure. It was of this aspect of the Constitution that Gough Whitlam made his famous criticism in 1957, that the ALP 'has been handicapped ... by a Constitution framed in such a way as to make it difficult to carry out Labor objectives.'⁵

Now of course it is the federalism structure that is the least rigid part of the Constitution. One important agent of change has been High Court interpretation. The broad construction given to a variety of federal powers - external affairs, corporations, executive power, and the appropriations power - has enabled Commonwealth Governments more easily to undertake the programs of national, social and economic reform for which they had earlier sought authority at referendums.⁶ The troublesome limitation provisions, like s 92, the guarantee of free interstate trade, have also been reinterpreted.⁷ The scope for judicial reform was well captured in the epigram attributed in a recent book to Neville Wran: 'If you want real social change, let me appoint the judges.'⁸

Another recent force for change has been intergovernmental agreement. We now have quite a different federal system, arising from agreements which allow court cases to move more freely between federal and state courts,⁹ which have extended state jurisdiction in Australia's coastal zone,¹⁰ and which have established a national corporations law.¹¹

These structural developments have been accompanied by a change in political style and objectives. Gone, from both sides of politics, is the 'crash or crash through' thrust of the Whitlam days, that provoked so many constitutional boundary disputes.

Nevertheless, while the pressure for change to the federalism structure has lessened, the need for reform has not disappeared. There has been general agreement on all sides and levels of politics that the taxing powers of state Parliaments should be clarified, so that states do not have to resort to convoluted schemes to tax cigarettes and liquor, and are not dependent on a miscellany of low yield but unpopular taxes. The Federal Parliament, in the view of the Constitutional Commission, would similarly benefit from constitutional amendment which clarified or extended its legislative powers over topics like communications, nuclear development, intellectual property, family law, social welfare, and industrial relations.¹²

The object of most of the proposed reforms would not to be rewrite the federal system in any radically different way, or to make it more centralist. The major purpose would be to confirm a federal arrangement that we already have. As it is argued, if a federal or state Government activity is already established, but

5 'Chifley Memorial Lecture' (1957), reprinted in E G Whitlam, *On Australia's Constitution* Widescope, 1977, p 16.

6 See Leslie Zines, 'What the Courts have done to Australian Federalism', also published in this volume of *Papers on Parliament*.

7 *Cole v Whitfield* (1988) 165 CLR 360.

8 Fia Cumming, *Mates: Five Champions of the Labor Right*, Allen & Unwin, Sydney 1991.

9 See *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth).

10 See *Coastal Waters (State Powers) Act 1980* (Cth), and *Coastal Waters (State Titles) Act 1980* (Cth).

11 See *Corporations Act 1989* (Cth), and the legislation in each state adopting the Commonwealth law, eg, *Corporations (NSW) Act 1990* (NSW).

12 *Constitutional Commission Report*, Chs 10 and 11.

implemented by a tangled or wobbly scheme, far better to construct a more secure constitutional foundation. In too many examples from the past, federal constitutional difficulties were a factor in costly anachronisms, like settlement of *de facto* marital disputes, food labelling, corporate regulation, the concentration of trucks on the roads, integrated regulation of the electronic and print media, and - the inveterate problem - different railway gauges.

Institutions or machinery of national government: It is in relation to this aspect of the Constitution that much of the dissatisfaction has been expressed in recent times. Some reform proposals in this field are clearly contentious, and support only a partisan argument for constitutional change. A topical example is the ALP initiative to replace the monarchy with a republican form of government. The Prime Minister's desire to extend the maximum term of the House of Representatives is probably contentious too. Equally, while most commentators endorse the desirability of insulating the Governor-General from constitutional controversy by creating a more predictable procedure for responding to a Senate failure to pass a Government's budget, there is sharp partisan disagreement on just what that response should be.

But some other proposals (one would hope) are of more certain merit. Among those must surely be the requirement for simultaneous elections for both Houses of Parliament, coupled perhaps with a requirement for a minimum parliamentary term. There is general agreement too that at least in most respects the Constitution is defective in the wholly misleading description it gives of responsible government, and the role to be played in that system by the Parliament, the Prime Minister and the Governor-General. As David Solomon pointed out in the 1970s in his polemic, *Elect the Governor-General!*, the Constitution does not inhibit the Parliament from converting to an American style presidential government, with an elected Governor-General at the helm.¹³ On the other hand, Parliament lacks any explicit power to declare that Australia shall have the same Monarch as the British Monarch - a point of obvious relevance if there is an abdication.¹⁴

Another curiosity are the antiquated conflict of interest provisions which specify who is eligible to be elected or to sit in the Parliament.¹⁵ A person can, for instance, be disqualified if convicted of a Commonwealth or State offence punishable by imprisonment for one year or longer. It was with good sense rather than faint heart that Commonwealth politicians participating in the famous public assembly marches in Queensland would vanish when the police came in view!

Protection of individual rights and freedoms: In this area too there are many disputed reform proposals - whether, for example, as recommended by the Constitutional Commission, formal constitutional protection should be given to many of the traditional rights and freedoms, such as freedom of thought, belief, opinion, expression, assembly, association, and movement.¹⁶

Here as well, however, it is possible to move to stronger ground, and to identify constitutional defects that are historical, rather than functional. There are rights which the Constitution currently protects, but the protection has proved to be

13 David Solomon, *Elect the Governor-General!*, Nelson, 1976.

14 See *Constitutional Commission Report*, paras 2.157 - 2.166.

15 Constitution ss 44 and 45: and see Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of Members of Parliament*, Parliamentary Paper 131/1981.

16 *Constitutional Commission Report*, Ch 9.

inadequate or partial. The case for attempting to clarify or restore that protection - of religion, property and criminal trials - will be persistent.¹⁷

There is also the indefensible absence of basic democratic guarantees. As judges of the High Court have confirmed, the right to vote in federal elections can be restricted (as indeed it has been) on grounds of race, sex or lack of property.¹⁸ Electorate sizes can also be randomly set, contrary to the 'one vote, one value' aspiration.¹⁹ Nor is there any explicit guarantee in the Constitution that voting shall be secret, or that the electoral system shall not discriminate unfairly against non-Government parties. There are many examples, including within Australia, of how undemocratic practices can nurture governments corrupted to the point that they fail in any civilized recognition of what is right and what is wrong. In short, some rights are a matter for national constitutional concern.

The Referendum Record

A more challenging issue is to establish that constitutional change in Australia is a realizable goal. Pessimism takes root at this point. Of forty-two referendum proposals put to the electorate since 1906, only eight have been approved in the manner required by s 128 of the Constitution. The most recent attempt in 1988 struck a devastating blow at the process: all four proposals were rejected in all six states. Many saw the 1988 results as confirming the wisdom expressed many times before - by Professor Geoffrey Sawer, for example, describing Australia, constitutionally, as 'the frozen continent';²⁰ or Prime Minister Menzies, comparing the referendum process to the labour of Hercules.²¹

Many commentators have sought to explain away the Australian record by arguing that it is not substantially worse than that of kindred federal systems, like Canada and the United States. The particular reason for concern with the Australian record, however, is that so much of our federal history has been spent thinking of ways to amend the Constitution. As the record of inquiries and commissions illustrates, constitutional review functions as a resilient membrane in Australian political culture.

How could the task be undertaken more successfully?

In the first instance, it is necessary to engage in speculation, as there is little evidence to explain why people have rejected referendum proposals with the regularity and punch which they have. Are Australians particularly fond of the Constitution? Do people rely upon it as a protection against malpractice, against centralism, or against rapid change? Do voters simply dislike the particular proposals on which their vote has been sought? Or does it simply feel good to vote 'No'!

It is ironic that there is little information to answer those questions. Many millions of dollars have been spent designing reform proposals and staging referendums, but comparatively little has been spent on articulating a strategy for that objective.

17 See Constitution ss 51(31), 80 and 116; discussed in *Constitutional Commission Report*, Ch 9.

18 See *Attorney-General (Cth)(ex rel McKinlay) v Commonwealth* (1975) 135 CLR 1 (per Barwick CJ, Gibbs and Stephen JJ).

19 See *Attorney-General (Cth)(ex rel McKinlay) v Commonwealth* (1975) 135 CLR 1.

20 G. Sawer, *Australian Federalism in the Courts*, Melbourne University Press, 1967, p 208.

21 Quoted in L.F. Crisp, *Australian National Government*, Longman Cheshire, 4th ed., 1978, p 40.

The air is thick with inconclusive debate and conflicting opinion about how best to explain or change the reform landscape.²² But just as we are uncertain whether the results reflect a judgment of ignorance or a declaration of satisfaction, we can only speculate whether the wise strategy is to hold referendums at election time, or independently; whether proposals should be collected together in a package or a theme, or presented separately or specifically; or whether we should dramatize constitutional reform and associate it with a significant date or national landmark, or instead be phlegmatic.

There are, nevertheless, some observations about the referendum record that may be more secure than others. Following are four such observations, on which suggestions for a constitutional reform strategy will later be based.

Inadequate political management: The referendum record does not demonstrate unequivocally that the electorate is implacably opposed to constitutional change, or that change is necessarily a labour of Hercules. It is useful here to divide the referendum history into two periods. In the period prior to 1973 only five of the twenty-six proposals were accepted, but a further eleven were approved by at least 49% of the electors and by majorities in three states. Accordingly, during that period the great majority of proposals in fact stood a strong chance of passage.

The dark phase starts in 1973: of the thirteen unsuccessful proposals in this period, eleven were rejected by voters in at least five and usually in six states. There are many possible explanations - some of them to do with the questionable integrity of the opposition case - but what stands out, I would argue, is that the political management of the referendum process during this period has been inadequate.

In 1973 it was clear that a combined referendum on Commonwealth control of prices and incomes would kill both proposals. In 1974, the 'one vote, one value' proposal was unnecessarily distorted in a way that appeared on its face to favour the Labor Party. There was a backwash of accusation and suspicion that possibly drowned three other good proposals.

Was the 1984 attempt premature? In the two years prior to Labor's election to office, a broadly-based project (which culminated in a book co-authored by Gareth Evans, Haddon Storey, and myself)²³ made the central argument that preceding any reform attempt must be a patient, long-term, thought out process of constitutional review. By contrast, 1984 was a rather eager process, preceded by an intense partisan debate about whether the government could allocate more money to the 'Yes' case than the 'No' case.²⁴

1988 was the real paradox: the referendum was held before the Constitutional Commission had finally reported, one of the four proposals was framed at variance with the Commission's Interim Report, there had been no real public debate, national and state opposition to the referendums seemed certain, and the Government adopted a low key strategy that the proposals should largely sell themselves.

22 For further discussion of constitutional reform, see Brian Galligan and J.R. Nethercote, Editors, *The Constitutional Commission and the 1988 Referendums*, Centre for Research on Federal Financial Relations and Royal Australian Institute of Public Administration (ACT Division), Canberra, 1989 and references quoted therein; Enid Campbell, 'Southey Memorial Lecture 1988: Changing the Constitution - Past and Future', (1989) 17 *Melbourne University Law Review* 1.

23 John McMillan, Gareth Evans and Haddon Storey, *Australia's Constitution: Time for Change?* Law Foundation of New South Wales and George Allen & Unwin Australia, 1983.

24 See eg. *Commonwealth Parliamentary Debates, Senate (Hansard)*, 7 December 1983, p 3368; and 7 June 1984.

Rejection of ALP initiatives: Referendum proposals which are identified exclusively as Labor Party initiatives seem certain to encounter vocal opposition and probable rejection. Just as Labor has aroused strong political passions in other areas of government (leading to many supply threats and two dismissals), so in this area it is Labor referendum initiatives that have met sharp opposition, including in 1988 two judicial actions to restrain the referendums.²⁵

The voting record is telling. Of twenty-five referendum attempts by Labor, only one was successful - on social services in 1946. The twelve most recent proposals have met rejection in the four least populous states on every occasion. The simultaneous elections proposal, when put to the vote by the Liberal Government in 1977 gained a 62% national approval, but when submitted by Labor on both an earlier and a later occasion gained significantly lower approval. At the risk of a simplistic comparison, it is interesting also to note the 1991 State referendum results, when the Queensland Labor initiative was rejected (to extend the term of the legislature) but the NSW Liberal proposal was approved (to decrease the size of the legislature).

Predictable opposition: It is predictable that all constitutional reform proposals will nowadays meet vigorous opposition. Even when the major political parties are agreed on a reform proposal, other substantial opposition will be voiced. If the Catholic Bishops can oppose the constitutional protection for religion, if some local government sectors can oppose protection of their right to exist, and if the Queensland Liberal Party and the Western Australian Labor Party can be indifferent to a proposal to guarantee fair elections, we can anticipate opposition as a regular phenomenon. There is a strong chance, moreover, that at least some segments of that opposition will choose as a major weapon the politics of exaggeration and distortion.

Negative voter inclination: In a referendum voters are more likely to vote no rather than yes, and most probably from instinct rather than consideration. That tendency has led indeed to the whimsical suggestion that we should harness the inclination to vote 'No', by phrasing all referendum questions as a negative proposition.²⁶ Here, it is necessary to add, there is quite a sharp disagreement. While the proponents of reform argue that ignorance and apathy are their major enemy, the opponents argue that the regularity of the 'No' vote reflects a considered political judgment.

The truth is speculative, but probably in the middle. On the one hand, voters may be preferring a stance which they perceive as anti-centralist or maintaining the *status quo*, or they may hesitate to approve any proposal which is the subject of political disputation. But what is hard to accept is that the vote is in aggregate terms a considered judgment on the merits of the individual proposals. Public knowledge of the detail of our Constitution, and of the reform proposals, is in fact quite weak - it was indeed put more strongly by Sir Maurice Byers, Chairman of the Constitutional Commission, who called it abysmal.²⁷ In a 1987 survey nearly 50% of Australians were not even aware that we had a written Constitution; the ignorance figure was as high as 70% in the 18-24 age group - the recent matriculants from the educational system!²⁸ (I gather too that people were more familiar with American constitutional expressions, like 'pleading the fifth' or 'crossing the State line'.)

25 See *Reeth v Morling* (1988) 83 ALR 667, and *Boland v Hughes* (1988) 83 ALR 673.

26 Michael Coper, *Encounters with the Australian Constitution*, CCH Australia Limited, 1987, p 377.

27 Sir Maurice Byers, 'What the Constitutional Commission Achieved', in Galligan and Nethercote, *op. cit.*, at p 1.

28 *Constitutional Commission Report*, para 1.56.

The Approach for Achieving Constitutional Amendment

The orthodox view is that constitutional change should not be attempted unless two conditions exist: there is bipartisan support for a proposal; and the reform does not propose a choice between competing ideologies, such as centralism as opposed to federalism. That advice may well be astute, but it does have a dampening effect. Instinctively followed, it would discourage any significant constitutional change or renewal, and would probably exclude initiatives by the Labor Party - from whence the impetus for reform has come in recent years. With that in mind, the remaining discussion will focus instead on three more encouraging lessons that might be drawn from the preceding analysis of the referendum record.

Detaching the constitutional review process: It is important, so far as possible, that the process of constitutional review and reform be detached from the everyday federal political process. Constitutional reform should not have the vibrant colour of a staged presentation by the Federal Government of the day, particularly if it is a Labor Government. Referendum proposals should not appear as a proximate political selection.

Constitutional review should operate instead as a more regular, long term activity, that gives time for patient consultation, and public education; during which the focus can be partially shifted from Canberra; during which political parties can themselves ensure that their own state and local branches will actively support a referendum; and during which the building of a consensus can at least be attempted, layer by layer.

It may be that such an approach is being put in place,²⁹ with the recent creation of the Constitutional Centenary Foundation, operating currently from the Centre for Comparative Constitutional Studies in Melbourne University, and with support and funds from Commonwealth and state Governments, and the private sector. That initiative is to be the vanguard of a decade of reform, with the focus on the federal centenary year.

The critical stage, however, is still the referendum process itself - will the people be asked to vote on proposals that have matured from that decade of preparation, or will they vote on a government-chosen package? Will the public advocates for reform include people who have established their commitment during that decade, or will the electorate be addressed mainly by Government and political leaders?

There is here the dilemma of politics. Under s 128 it will be the federal government that initiates a referendum. A government would wish only to sponsor a proposal which it approves, and which it believes will gain public support. There is political kudos in staging a successful referendum, and discredit in failing.

Constitutional reform can never be an apolitical or non-aligned activity, but Governments may have to yield part of their discretion and leadership for the process to succeed. The Australian Constitutional Convention, for example, in which the Commonwealth Government was influential, provided an excellent forum that devised a great many sensible proposals, yet the process lacked a mechanism to ensure action on those proposals. The same fate currently befalls the measured and

²⁹ Although compare the selection by the ALP at the 1991 National Conference of republicanism as the pre-eminent objective - a selection that provoked an immediate and predictable opposition.

formidable report of the Constitutional Commission, which has not even been debated in the federal Parliament.

Another abandoned element of the Commission endeavour was the failure to recruit to the referendum campaign the talents of those who formulated the reform proposals. The Commission and its Advisory Committees comprised a widely representative group of distinguished Australians, prominent in the fields of politics, the judiciary, business, the union movement, public administration, community advocacy, universities, law reform, literature ... and rock singing. During the last decade a great many other Australians also identified themselves publicly with the constitutional reform cause. Whether as sponsors or supporters, they are a valuable resource that could be used more publicly.

Other strategies and options might also be considered for distinguishing the constitutional reform process from the regular political process. One promoted by Evans, Storey and myself was a restructured Constitutional Convention which would include, as well as federal and state parliamentarians, a smaller number of popularly elected or appointed delegates.³⁰ We envisaged that the Convention would meet more regularly, and that the federal government would undertake to put to referendum any proposal passed by at least a two thirds majority vote of the Convention. Reform along those lines, we argued, might invigorate the process, arouse greater public interest, legitimate the proposals differently, and create an apolitical pressure on politicians not to repudiate at referendum time proposals agreed to earlier. It may not be appropriate for a different option of that kind to be chosen at the moment - given the federal government commitment to the Constitutional Centenary Foundation - but the option at least illustrates the range of choices available for the future.

Public education about referendum proposals: A related theme is the need to influence voters to give greater consideration to the merits of the individual referendum proposals. In a practical sense, that probably means influencing people to consider properly whether a proposal really does endanger the federal or democratic system. To stimulate that enquiry in a dispassionate way will not be easy. One of the major reasons why Constitutions are entrenched is to protect the public against the misuse of political power. But constitutional reform will necessarily be initiated and conducted as a political process, and it will be tempting to suspect that politicians are trying to erode the protections which the Constitution presently establishes.³¹

From one perspective, however, this objective of making referendums a more considered or serious exercise should not present great difficulty. Politics is very much the art of selling ideas and a philosophy. As recent election campaigns and results illustrate, political parties, their advisers and consultants have quite a skill at understanding the public mind and persuading people one way or another. Compared to those performances, the techniques that have been used to promote constitutional reform in the past look quite amateurish.

Referendum proposals could never be packaged or glamorized like a soap powder, but they could surely be advocated by a technique more innovative than the quaint nineteenth century device of the 'Yes' and 'No' pamphlets.

30 McMillan, Evans and Storey, *op. cit.*, pp 364-370.

31 To that extent there is doubtful wisdom in the current political strategy of promoting a longer term Parliament as the most important of the constitutional reform issues.

There is a practical need too for political parties and other supporters of constitutional change to play an active role. Legislation enacted in 1984 restricts federal government expenditure to the preparation of the 'Yes' and 'No' pamphlets.³² The opponents, and particularly State governments, are under no such limitation. Accordingly, those who favour constitutional reform must simply be prepared to commit considerably greater time, money and effort to their cause.

It may be too that unorthodox solutions should be explored to ensure that voting is a more deliberate activity. One possibility is to make voting at referendums optional, at least where the referendum is held concurrently with a regular election. Arguably, none of the reasons for compulsory voting at elections apply to referendum voting with anything like the same weight. Nobody can predict with certainty just what effect such a change would have - the only people who care to vote may be those who are opposed to reform. It is interesting, nonetheless, to note that most of the thirteen proposals which were considered before the introduction of compulsory voting in 1924 went within a whisker of success. In any case, the purpose is not necessarily to increase the 'Yes' vote, but to make referendum voting a more considered and deliberate activity.

Reforming the referendum process: Close attention must be given to the current machinery for staging referendums.³³ Two of the problems were touched on above. There is firstly the problem of funds - the proponent of reform (the Commonwealth) is limited in the funds it can spend, but the opponents face no such limitation. A second problem is that the form in which the informational pamphlets have often been prepared at public expense bears little credit for the intellectual honesty of their authors - for example, should we adopt the Californian device, supported also by the Australian Constitutional Convention, of having an independent analyst or person write or vet the official pamphlets?³⁴

Adoption of measures of that kind could suitably be addressed by a special session of the Commonwealth Parliament, or a convention of Commonwealth and state parliamentarians. Agreement on the procedures for constitutional debate is as important as the proposals themselves. There are many matters, such as expenditure by state governments, on which it may be necessary simply to get agreement on practices or behavioural conventions. We rely heavily on conventions to provide a measure of stability and civility in all other areas of political life where competing forces are at work. Parliament, the executive, the judiciary, and the federal system, could not function as they presently do without the widespread acceptance of conventions of behaviour. Constitutional reform can be no different - yet at present there are virtually no recognized conventions to control debate and proceedings in this field.

Conclusion

My concluding sentiment is that constitutional reform does matter. It is true that Australia has managed very well with the present Constitution, and that the inability to change it has led to enterprise of other kinds, like intergovernmental co-operation and the development of conventions. But there are problems with the Constitution. While we can rightly celebrate the achievement of those who drafted the Constitution,

³² *Referendum (Machinery Provisions) Act 1984* (Cth) s 11(4).

³³ For a comprehensive discussion, see Enid Campbell, 'Southey Memorial Lecture 1988: Changing the Constitution - Past and Future', *op. cit.* See also Colin Howard, *Australian Federal Constitutional Law*, The Law Book Company Limited, 3rd ed., 1985, pp 580-585. For proposals to reform s 128, see *Constitutional Commission Report*, Ch 13.

³⁴ *Proceedings of the Australian Constitutional Convention 1985*, pp 363, 424.

it is unrealistic to expect that a document drafted in a different century, by people with a different experience and a different world vision, will be a document of timeless foresight and wisdom.

Change will be possible, but only if it is patient, considered, and timely. This lecture series marks an event in 1891 that commenced a decade of preparation and consideration that culminated in the adoption of a new Constitution and system of government. One hundred years later, we can learn an important lesson from that event.

Constitutional Referendums 1901 to 1988

Year	Proposal	Gov't Submitting	States Approving	% of Electors Approving
1906	<i>Senate elections</i>	* Protectionist	6	82.65
1910	Finance	* Fusion	3 (Qld,WA,Tas)	49.04
	<i>State debts</i>	* Fusion	5 (all exc. NSW)	59.95
1911	Legislative powers	Labor	1 (WA)	39.42
	Monopolies	Labor	1 (WA)	39.89
1913	Trade & commerce	* Labor	3 (QLD,SA,WA)	49.38
	Corporations	* Labor	3 (Qld,SA,WA)	49.33
	Industrial matters	* Labor	3 (Qld,SA,WA)	49.33
	Railway disputes	* Labor	3 (Qld,SA,WA)	49.13
	Trusts	* Labor	3 (Qld,SA,WA)	49.78
	Monopolies	* Labor	3 (Qld,SA,WA)	49.33
1919	Legislative powers	* Nationalist	3 (Vic,Qld,WA)	49.65
	Monopolies	* Nationalist	3 (Vic,Qld,WA)	48.64
1926	Legislative powers	Nat. - C.P.	2 (NSW,Qld)	43.50
	Essential services	Nat. - C.P.	2 (NSW,Qld)	42.79
1928	<i>State debts</i>	* Nat. - C.P.	6	74.30
1936	Aviation	U.A.P.	2 (Vic,Qld)	53.56
	Marketing	* U.A.P.	0	36.26
1944	Post war powers	Labor	2 (SA,WA)	45.99
1946	<i>Social services</i>	* Labor	6	54.39
	Marketing	* Labor	3 (NSW,Vic,WA)	50.57
	Industrial employ't	* Labor	3 (NSW,Vic,WA)	50.30
1948	Rents, prices	Labor	0	40.66
1951	Communists	Liberal/C.P.	3 (Qld,WA,Tas)	49.44
1967	Nexus	Liberal/C.P.	1 (NSW)	40.25
	<i>Aborigines</i>	Liberal/C.P.	6	90.77
1973	Prices	Labor	0	43.81
	Incomes	Labor	0	34.42
1974	Simultaneous elections	* Labor	1 (NSW)	48.32
	Amendment	* Labor	1 (NSW)	48.02
	Democratic elections	* Labor	1 (NSW)	47.23
	Local government	* Labor	1 (NSW)	46.87
1977	Simultaneous elections	Liberal/NCP	3 (NSW,Vic,SA)	62.20
	<i>Casual vacancies</i>	Liberal/NCP	6	73.30
	<i>Territorial Votes</i>	Liberal/NCP	6	77.70
	<i>Retirement of judges</i>	Liberal/NCP	6	80.10
1984	Simultaneous elections	* Labor	2 (NSW,Vic)	50.60
	Inter-change of powers	* Labor	0	47.10
1988	Parliamentary terms	Labor	0	32.92
	Fair elections	Labor	0	37.60
	Local government	Labor	0	33.62
	Rights & Freedoms	Labor	0	30.79

Notes: *Referendum held at same time as a federal election.

Italicised subjects achieved sufficient majorities for alteration to the Constitution.

Source: Brian Galligan and J.R. Nethercote, *The Constitutional Commission and the 1988 Referendums*, Centre for Research on Federal Financial Relations and Royal Australian Institute of Public Administration (ACT Division), Canberra, 1989, p 137.