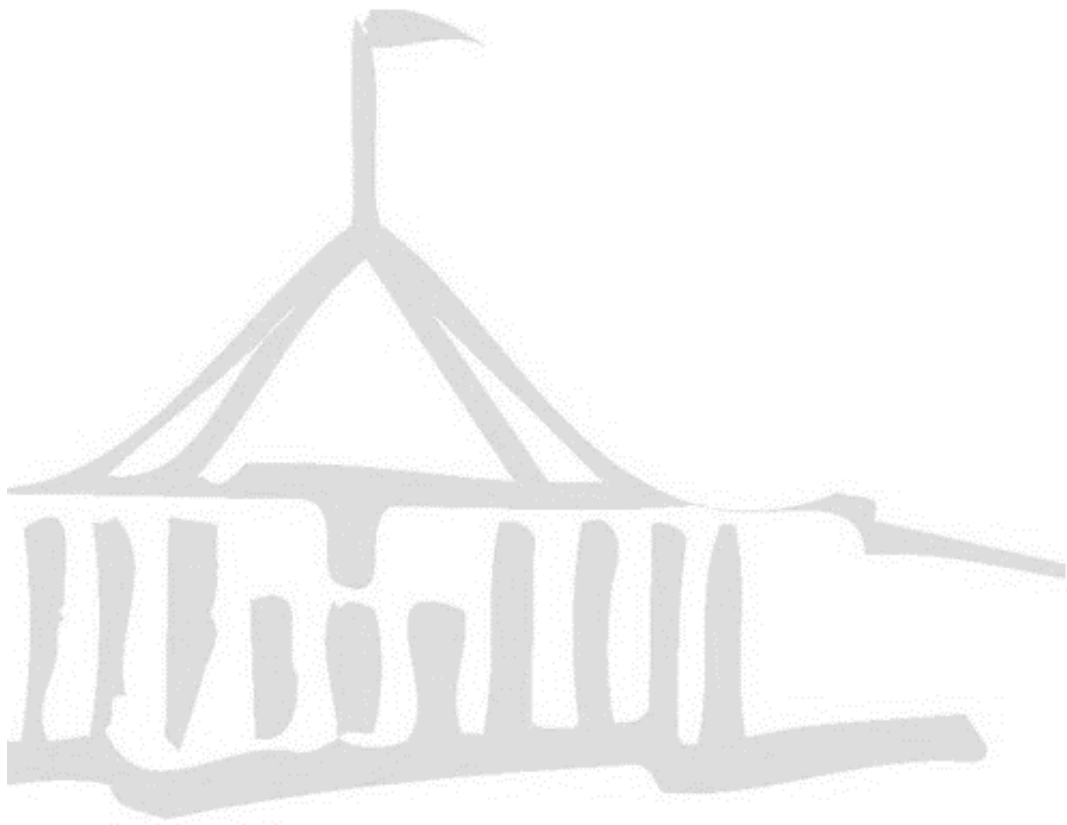


29th National Schools Constitutional Convention

Tuesday 19 - Thursday 21 March 2024

Student Pre-reading and Workbook



Museum of Australian Democracy
Canberra, ACT

29th National Schools Constitutional Convention

Topic: Section 96 of the Constitution allows the Commonwealth to grant funds to areas that fall outside those prescribed in Section 51. Should Section 96 be amended to decentralise the power of the Commonwealth?

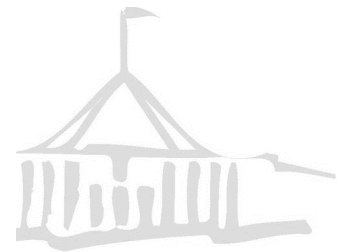
Context Statement

Australian Constitution section 96:

Financial assistance to States: During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Preamble

In the early years following Federation in 1901 the states had more financial autonomy; now they are seen to be more subject to the Commonwealth. In some respects the states operate like a large local government with responsibility for the administration of policy while the big policy decisions come from the Commonwealth government in Canberra. Section 96 of the Constitution allows the Commonwealth to dictate policy by specifying “terms and conditions” under which money granted by the Commonwealth can be spent. As the Commonwealth supplies most money to the states the Commonwealth controls many critical policy areas. **Is it time to reform this?**



Outcomes for students:

- Students will understand the difference between state and federal law and explain how that affects States and Territories.
- Students will understand the difference between state and federal funding, and apply this to section 51 of the Constitution.
- Students will understand the accountability of the states to the Commonwealth for Commonwealth funding and grants, including current and potential future tension.
- Using examples of residual powers such as health and education, students will debate whether the power of the Commonwealth should be decentralised.
- Students will vote on whether an amendment should be made to section 96 of the Constitution.
- Students will collaborate in teams and respectfully listen to each other's opinions.
- Students will communicate prior knowledge and critically think about the new content presented by keynote speakers.

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Background preparation – Pre-reading and podcasts

To maximise engagement in the Convention, participants are asked to review prior knowledge by engaging with the pre-reading provided in this booklet. The readings will cover:

1. Commonwealth-state relations
2. Constitution sections 51 and 96
3. Financial relations between the Commonwealth and the states
4. The Federal power to spend public money
5. History on Australian Voting
6. History of the Australian Constitution
7. The Australian Constitution and how laws are changed
8. Federalism

Compulsory Reading

1. Reading – Commonwealth-state relations (11 pages)
 - Read a chapter by Professor Alan Fenna. Click [HERE](#). Take particular note of:
 - Pages 153-156 – Introduction, Origins and design, The division of powers, Safeguards
 - Pages 157- 159 - Fiscal federalism, Controlling the revenue, Commonwealth grants, The equalisation system
 - Pages 162-163 - Conclusions
2. Reading - Constitution sections 51 and 96 (2 pages)
 - To understand the link between section 96 and section 51 of the Constitution read
 - Section 51 – Click [HERE](#)
 - Section 96 – Click [HERE](#) and scroll down to section 96.
3. Reading – Three levels of government (2 pages)
 - Read page 12 (*labelled page 8 in the online booklet*) of AEC’s resource ‘Voting in Australia’ resource. Click [HERE](#)
 - For more information about each level of government read the information on this one webpage. Click [HERE](#)

Recommended Reading for the debate around residual powers

4. Reading – The financial relationship between the commonwealth and the states (2 pages)
 - Read article from Professor Anne Twomey. Click [HERE](#)
5. Reading - The federal power to spend public money (2 pages)
 - Read article from Professor Anne Twomey. Click [HERE](#)

Australian Voting - familiarisation

Did you know that in 2023 there were 17,676,347 Australians enrolled to vote in the 2023 referendum? This represents 97.7% of all eligible Australians.

On day 2 of the National Schools Constitutional Convention, students will be asked to vote. Brushing up on prior knowledge is recommended below.

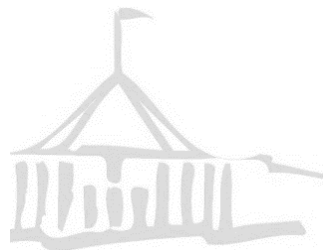
1. Reading - History on Australian Voting (2 pages)
 - For a brief overview of Australian Voting History, read pages 6 & 7 (*labelled pages 4 and 5 in the booklet*), of this document from the Australian Electoral Commission (AEC) – click [HERE](#)
2. Reading – Constitutional Referendums (4 pages)
 - The Federal Parliament formed in 1901
 - A summary of how to approve or reject proposed changes to law in the Constitution
 - Read the Constitutional Referendum brochure from the AEC. Click [HERE](#)
3. Reading - The Australian Constitution – what it is and who can change it? (1 page)
 - Read page 24 (*labelled page 20 in the booklet*) of AEC’s resource ‘Voting in Australia’ resource. Click [HERE](#).

Note: Although participants are only asked to read one page of the ‘Voting in Australia’ resource, the entire document provides an excellent overview for brushing up on prior knowledge.

The Australian Constitution and Federalism – historical familiarisation

1. Podcast - History of the Constitution (24 minutes)
 - Listen to **Episode 1** of the Podcast 2023 Series ‘The Vibe’, presented by Professor Kim Rubenstein and Mr James Blackwell. Link [HERE](#)
2. Podcast - What is Federalism? (33 minutes)
 - Listen to **Episode 2** of the Podcast 2023 Series ‘The Vibe’, presented by Professor Kim Rubenstein and Mr James Blackwell. Link [HERE](#)

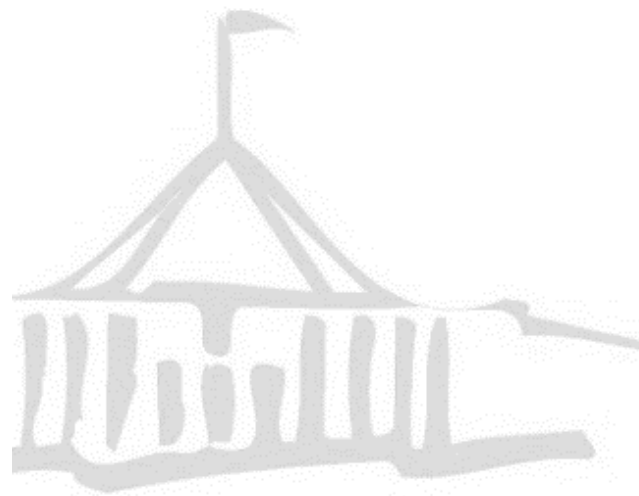
Note: Those interested may like to go deeper by listening to the entire series of 8 podcasts.



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Student Workbook

Note: This workbook will be used during the Convention. A hardcopy of this workbook will be provided to you in Canberra.



Convention Outline - Day 1 and 2

Working Group Information

There are three working group sessions. The task of each working group is to consider and discuss the keynotes. There will be guiding questions provided as a starting point.

At the commencement of the first working group session, each group must select:

- *one **Group Leader** to Chair all three working group sessions*
- *one **Scribe** who takes notes for each session. This may be a different person each session*
- *one **Representative Person (Spokesperson)** who will report back to the Convention. This person **must** change for each session.*

Responsibilities of the Group Leader

Wellbeing of the group

- Ensure introductions of each member of the group – name, school, state/territory
- Monitor respectful sharing, interactions and engagement
- Ensure that the discussion is not dominated by one particular person
- Find opportunities to involve people who are not participating in the discussion
- Identify, via group consensus, who will be the Spokesperson reporting back to the Convention
- Ensure that the Spokesperson is set up for success with succinct dot point notes that reflect the group discussion (2 minutes sharing only)

Focus of the group

- Ensure that the discussion addresses the questions and stays on track
- Be aware of the time
- Allow time to review points
- Ensure that the group position is recorded by the end of the session by the Scribe
- Ensure the report reflects the range of views if there is not group consensus. It is not necessary to reach consensus although it may be the case that there is a majority view.
- Ensure that there is group agreement about the accuracy of the summary report



Working Groups – Session 1 – Day 1 – Tuesday 19 March 2024

Keynote 1: The difference between state and federal law and how that impacts States and Territories.

Professor Kim Rubenstein, University of Canberra

Keynote 2: The difference between state and federal funding, linked to section 51 of the Constitution.

Professor Emerita Anne Twomey, The University of Sydney

Context

It is important that all participants understand the three levels of government, and how each of the levels of government receives income and funding from the Commonwealth.

Laws specific to this are outlined in section 51 and 96 of the Constitution:

***Section 51. Legislative powers of the Parliament** - The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to: ...*

(ii) taxation; but so as not to discriminate between States or parts of States;

***Section 96: Financial assistance to States:** During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.*

Group discussion

This provides opportunity for group participants to make comments, ask questions or seek points of clarification. Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

- 1) Discuss the difference between state and federal law.
- 2) Identify the most significant implications of the state and federal legal division.
- 3) Discuss the effects, including any advantages or disadvantages for States and Territories, of the impact from state and federal law.
- 4) Identify the red flags or areas of concern in state and federal funding that is linked to social justice and equity for all?
- 5) What are the important lessons you can take from Professor Kim Rubenstein and Professor Emerita Anne Twomey's presentations as you prepare to hear about accountability and tensions that exist with funding? How do we use this key information to make informed decisions for the future?

Keynote 3 - Accountability of the states to the Commonwealth for Commonwealth funding and grants, and tensions that may or may not exist as a result.

Dr Andrew Banfield

Context

It is important participants understand the accountability of the states to the Commonwealth for Commonwealth funding and grants, and the associated challenges.

Group discussion

Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

- 1) Discuss Commonwealth funding and grants, including tensions that may or may not exist.
- 2) Examine the most significant implications of the accountability processes.
- 3) Discuss the effects, including advantages and disadvantages, of Commonwealth funding and grants for states and territories.
- 4) Are there any red flags or areas of concern you have identified about state and federal funding accountability linked to social justice and equity for all?
- 5) List any additional questions not yet explored.

Notes:

Keynote 4 – Residual powers including health and education – what are they and how do they work?

Should the power of the Commonwealth be decentralised?

Professor Alan Fenna

Context

Participants are asked to reflect on residual power examples in health and education, to consider whether the power of the Commonwealth should be decentralised.

Group discussion

Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

- 1) Discuss the reality of residual powers.
- 2) Examine the way the Commonwealth supplies funds for state residual powers (eg. health and education).
- 3) Describe any red flags or areas of concern from Question 2.
- 4) Develop alternatives to the current funding arrangements to assist residual powers.
- 5) Consider arguments for and against making a change to section 96 of the Constitution which currently allows the Commonwealth to dictate policy with regard to grants made to the states.
- 6) List aspects of the Convention which have been tabled over the last two days that have challenged thoughts and opinions.

Notes:
