

# COMMUNIQUÉ

Is Section 44 of the Constitution  
relevant in modern Australia?

Museum of Australian Democracy  
at Old Parliament House, Canberra  
20 to 22 March 2018

23RD NATIONAL SCHOOLS  
CONSTITUTIONAL CONVENTION



## 1. Introduction

The twenty-third National Schools Constitutional Convention (NSCC) was held at the Museum of Australian Democracy at Old Parliament House in Canberra from 20–22 March 2018.

One hundred and eighteen students from Government, Independent and Catholic schools from across Australia, covering metropolitan and country areas, attended.

The Convention topic that delegates were tasked to investigate and come to a conclusion about was, *"Is Section 44 of the Constitution relevant in modern Australia?"*

## 2. Convention processes

Through a program of pre-reading, working groups, keynote speakers, and soap-box sessions, delegates considered a wide range of issues around the topic before considering their preferred option for changing the Constitution.

The Convention was facilitated by Emeritus Professor John Warhurst AO.

### **Convention opening remarks were given by:**

- The Hon. Karen Andrews MP, Assistant Minister for Vocational Education and Training who welcomed delegates to the Convention on behalf of the Prime Minister, the Hon. Malcolm Turnbull MP.
- Senator the Hon. Simon Birmingham, Senator for South Australia, Minister for Education and Training welcomed delegates and officially opened the Convention.

### **Convention speakers were:**

- Professor George Williams AO, Dean Faculty of Law, University of NSW delivered the opening address, *"What is Section 44? Its purpose and impact"*.
- Mr Andrew Phelan delivered a keynote address on, *"The role of the High Court of Australia in determining if a person has contravened Section 44 – the process"*.
- Mr Ryan Goss, ANU College of Law, Professor Kim Rubenstein, ANU College of Law and Professor George Williams AO, Dean Faculty of Law, University of NSW participated in a panel on the questions, *"Are all subclauses of Section 44 still relevant to today's society?"* and, *"Do they really matter?"*
- Mr Charles Reeves, Deputy Commissioner, High Commission of Canada, Canberra and Mr Andrew White, First Secretary, New Zealand High Commission, Canberra provided overviews of current practices in their respective countries.
- Senator the Hon. Scott Ryan, Senator for Victoria, President of the Senate, delivered an address on the importance of democratic processes related to development of, and consideration of, changes to the Constitution.
- Ms Megan McCrone, Australian Electoral Commission, provided an overview of the referendum process to be followed by delegates.

### **Three working group sessions were held:**

Ten groups, comprised of twelve students each, gathered for the working group sessions.

- Working Group 1 considered aspects of Section 44 addressed in The House of Representatives Standing Committee on Legal and Constitutional Affairs Report, specifically subsections (i) and (iv).
- Working Group 2 dealt with issues concerning the question, *"Is Section 44 of the Constitution relevant in modern Australia?"*. Specifically delegates considered matters related to persons' eligibility to become members of parliament, other ways of dealing with Section 44 issues other

than changing the Constitution, and determining which subsections of Section 44, if any, should be amended.

- Working Group 3 considered the question, “*What changes if any, would you make to Section 44 of the Constitution?*” Using a survey requiring selection from a number of options that were distilled from keynote addresses and previous workshop discussions, working groups provided their collective decisions on preferred options and suggestions of wording for proposed amendment.

***Delegates decided:***

- Re-wording of Section 44 was required, and;
- A referendum was required to vote on the proposed changes to the Constitution.

### **3. Delegate deliberations**

Overall, delegates agreed that it was necessary to include in the Constitution the grounds for disqualification of persons becoming members of the Australian Parliament. However it was also agreed that in some instances amendments were required to reflect modern Australia and its history as a nation demonstrating a commitment to participatory, representative democracy inclusive of all.

#### **Workshop 1: Consideration of The House of Representatives Standing Committee on Legal and Constitutional Affairs Report on aspects of Section 44.**

***Overview of student views related to subsection (i)***

Delegates acknowledged the current complexities surrounding dual citizenship particularly for aspiring politicians who for a variety of reasons were unaware of their citizenship of foreign countries. In general it was felt that the language and meanings associated with particular words should be carefully reviewed and amended to reflect changes that have occurred in Australian culture and society over the past century. It was recognised that the concept of “allegiance” can be seen to embrace two significant ideas; firstly, formal connection with a foreign country with associated rights and responsibilities and, secondly, the cultural and heritage connections related to the country where current citizenship may be held. It was also generally held that due diligence and effective actions regarding citizenship matters should be undertaken by those wishing to enter parliament.

***Overview of student views related to subsection (iv)***

In general, delegates believe that amendments to this subsection are required to reflect significant changes in Australian demography, society and the work styles and economic circumstances of Australians. Delegates recognised that there is a strong need for truly representative democracy and acknowledged that the current wording of this section, seen by many to be archaic, is unfair and discriminatory leading to a reduced pool of candidates for office. Overwhelmingly, delegates believe that current jobs/paid work should cease at the time of election and not at the time of becoming a candidate.

#### **Workshop 2: Is Section 44 appropriate for Australia today?**

***Overview of student views***

In general, delegates agreed that reference to disqualification criteria for parliamentarians remains relevant to the Constitution. However, discussion of each subsection surfaced views that amendments to most of the subsections are required, the exception being subsection (iii) that all working groups believed should be retained as is.

***Subsection (i)***

It was unanimously agreed that this subsection required amendment, whilst maintaining the essential meaning, using clear modern day language enabling clarity of meaning and effective legal interpretation. The language construction was seen to be archaic and not necessarily reflective of modern Australian values, societal expectations and the multicultural aspects of Australian life.

*Subsection (ii)*

In the main, delegates saw value in retaining this subsection. However some expressed the view that if prisoners had served time and were rehabilitated then there should be no impediment to becoming a candidate for election.

*Subsection (iii)*

Delegates universally agreed that this subsection should be retained.

*Subsection (iv)*

There was general agreement that this subsection required amendment. Changes in how people earn their livelihoods in relation to Government funded remuneration or benefits, need to be taken into consideration. Overwhelmingly delegates believed that current work/employment where Government funds are provided should only cease at the time of election not at the time of announcing candidature. Teachers and nurses were cited as cases in point.

*Subsection (v)*

Views were split on whether or not this subsection should be retained or amended. Those delegates seeking amendment cited the need for this subsection to take account of the complexity of modern business practices and the nexus between private and public enterprises and projects. Those seeking to retain the subsection cited the potential for corruption or misuse of public funds for personal pecuniary gain.

**Workshop 3: What changes if any, would you make to Section 44 of the Constitution?**

Within working groups delegates considered a survey of options for addressing Section 44 and collectively agreed on preferred options for changes and the proposed wording for amendments.

Following Workshop 3, results of the survey were conveyed to Convention delegates who then agreed that a referendum should be undertaken to decide whether or not changes should be made to the Constitution together with the wording to be included in the referendum.

**4. The referendum**

*The proposed changes to Section 44 of the Constitution that delegates agreed be put to the referendum are as follow (changes shown in bold) –*

Any person who **at the commencement of their term in Parliament:**

- i. is under any **active** acknowledgment of allegiance, obedience, or adherence to a foreign power, or is an **active** subject or a citizen or ~~entitled to~~ **has sought** the rights or privileges of a subject or a citizen of a foreign power: or
- ii. is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- iii. is an undischarged bankrupt or insolvent: or
- iv. holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- v. has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth, otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of ~~being chosen or~~ sitting as a senator or a member of the House of Representatives.

But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Delegates then voted on the referendum question:

**Do you agree with the changes to the Constitution?**

Voting results were:

<b>National Tally Board</b>	<b>Formal YES</b>	<b>Formal NO</b>	<b>Is the majority in favour?</b>
New South Wales	20	9	Y
Victoria	20	4	Y
Queensland	5	17	N
Western Australia	8	6	Y
South Australia	9	3	Y
Tasmania	3	1	Y
Australian Capital Territory	2	3	
Northern Territory	3	2	
<b>NATIONAL TOTAL</b>	<b>70</b>	<b>45</b>	

As a majority of voters in the majority of States was in favour of the changes, and a majority of voters nationally was in favour of the changes, the delegates of the twenty-third National Schools Constitutional Convention voted in favour of changing the Australian Constitution.

## **5. Convention Outcome**

This Communiqué will be forwarded to Senator the Hon. Scott Ryan, President of the Senate who will present the Convention Communiqué to the Parliament for incorporation into Hansard.