

This is an uncorrected proof of evidence taken before the committee and it is made available under the condition it is recognised as such.



# ***AUSTRALASIAN STUDY OF PARLIAMENT GROUP (Queensland Chapter)***

## **THE CONSTITUTION AFTER THE VOICE**

### **TRANSCRIPT OF PROCEEDINGS**

**Monday, 15 April 2024**

**Brisbane**

## MONDAY, 15 APRIL 2024

---

**Mrs McCLUSKEY:** Good evening, everybody. Welcome to the Australasian Study of Parliament Group Queensland chapter's event on the Constitution after the Voice. My name is Diana McCluskey and I am the Graduate Centre Manager at the UQ School of Political Science and International Studies and I am the Chair of the ASPG. I would like to respectfully acknowledge the traditional custodians of the land on which we meet tonight and pay our respects to elders past and present. We are fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander people whose lands, winds and waters we all share.

We are lucky tonight to have a fantastic panel to discuss the future of Australia's Constitution. First of all we have Chris Whiting MP, member for Bancroft; Dr Peta Stephenson, lecturer in the School of Law at the Queensland University of Technology; David Muir AM, Chair, Real Republic Australia; and Professor Nicholas Aroney, Professor of Constitutional Law at the University of Queensland. Welcome and thank you so much for making the time to come along this evening. Mr Sam O'Connor MP, member for Bonney, was hoping to speak but is unable to do so and sends his apologies.

This event has been a long time in the making. As some of you will know, we initially hoped to hold this event in March. We rescheduled because we believed it was important to have a panellist who identified as Aboriginal or Torres Strait Islander. Unfortunately, despite repeated attempts, this was not possible. The ASPG is committed to including Indigenous voices in our seminars and to that end we are planning an event for later in the year that will specifically address the experience of Indigenous parliamentarians.

Before we start, there are a couple of housekeeping points to share. Tonight's panel discussion will be recorded by Hansard and a transcript will be available on the ASPG website in due course. Panellists will have the opportunity to review the transcript before publication. If you have a mobile phone, please put it onto vibrate or silent mode. In the unlikely event of an emergency, please follow the directions issued over the loud speaker as to where to go and also look to Kit, who works in parliament. I am looking at Kit if anything happens. If you require the rest rooms, they are out the door, turn right, down the hall and then left.

I would now like to introduce our MC for the evening, Mr Murray Hancock, Vice-President of the Brisbane Dialogues, who is chairing the panel event this evening. Over to you, Murray.

**Mr HANCOCK:** Thank you, Diana. The format for this evening is for each participant to speak briefly for about five minutes to offer their perspective on the future of the Australian Constitution. After all of the panellists have spoken, we will have a discussion for approximately 20 minutes followed by questions from the audience for about another 20 minutes. If I could ask the audience to restrain yourselves and leave questions till the end, that would be appreciated. Without further ado, let us turn to our speakers. I would like to ask Dr Peta Stephenson to speak first.

**Dr STEPHENSON:** Thanks, everyone, for coming. The Australian Constitution is difficult to change and this is entirely appropriate. Rules that establish the institutions of government and limit the exercise of governmental power should not be changed too quickly, frequently or easily. Having said that, constitutional change was not meant to be impossible either. I think many of us are probably pretty familiar with the statistics by now. The Australian people have been asked to vote on 45 referendum questions to change the Australian Constitution since 1901. Just eight of these have been passed after receiving the approval of a majority of nationwide electors and the majority of the states. The last successful referendum was in 1977, so we remain, constitutionally speaking, a frozen continent—at least since 1977. However, constitutions are meant to change. Maybe this change is gradual, but they are still meant to change. The framers of our Constitution recognised this and included a mechanism for change in section 128. The idea, I guess, was so the Constitution could adapt to meet new circumstances and challenges, to meet new technologies and societal expectations and standards.

My purpose in speaking tonight is not to dissect or analyse the Voice referendum and the reasons why it failed. I really just want to concentrate on a key lesson that we could learn from the Voice referendum and from our most recent attempt at constitutional reform in Australia. In *People Power: The History and Future of the Referendum in Australia*, which remains the most significant study to date of Australian referendums, George Williams and David Hume identified five key pillars for successful constitutional reform. They are, first, bipartisanship; second, popular ownership; third, popular education; fourth, sound and sensible proposals; and, five, a modern referendum process. I cannot talk about all these pillars tonight. I am going to focus on one and it is popular education. I think this is quite fitting because I teach constitutional law at QUT, so you could say I have a bit of an interest in this particular pillar.

I think the Voice referendum did expose a general lack of constitutional literacy in Australia—that is, the knowledge of Australia's Constitution, the principles underpinning it and, more generally, about Australia's democratic system of government and how it works. This is not a new issue. I have seen many first-year students try to plead the fifth, for example, in their first tutorial. Even later-year students still struggle to understand some concepts like the role and office of the Governor-General or the relationship between the parliament and the executive, or federalism and how it works in practice.

This lack of constitutional literacy is worrying because I think it does make it difficult for the Australian people to fulfil their constitutional role in changing and updating the Constitution. A referendum is different to an ordinary election, where people get to assess how well the government has done—or how poorly—or whether the country is better or worse off after three years. A referendum really requires the people to have an opinion on a technical amendment to the Constitution. That might concern the structure or institutions of government. It might concern the division of powers between the different levels of government, but it does presuppose some knowledge of Australia's constitutional system.

A lack of understanding about the broader constitutional context can sometimes lead to a misunderstanding of a referendum proposal or why it has been made in the first place or just a general unwillingness to consider or vote for change. It also leaves electors vulnerable to conspiracy theories and fear campaigns that are based on misinformation and disinformation. Do not get me wrong: I am not saying that electors should vote for every single proposal for reform. What I am saying is that electors need to be properly educated so they are confident and well placed to cast an informed vote at a referendum that actually reflects their real beliefs.

The other issue is that this lack of constitutional literacy places a really high burden on the proponents for change because, first, they need to educate electors about our constitutional system and then they need to make the positive argument for the proposal—and the proposal itself can be quite technical—whereas all the opponents need to do, as we saw in the Voice referendum and before that, is to trot out the line, 'If you don't know, vote no.' Anne Twomey made the point in a recent opinion article that, if you do not know, you should find out. However, I think the failure to provide adequate education on our constitutional arrangements means that voters may not have the tools to distinguish fact from fiction and to sift through the sheer volume of information that is out there. I think a key lesson that we can take away from the Voice referendum is we cannot leave education about the Constitution until right before the referendum. These matters need to be part of an ongoing national conversation in Australia. It needs to be aimed at lifting participation, awareness and interest hopefully in constitutional reform.

I have got one minute left. Practically speaking, what can we do to improve education? Australia's Constitution was brought into being by a series of constitutional conventions, so it is perhaps unsurprising that some constitutional commentators, including George Williams, have suggested that we have a permanent constitutional convention every five to 10 years or so. This would serve multiple purposes. It could conduct an impartial and substantive review of our constitutional arrangements and issues and enhance public participation in the process of constitutional change. Furthermore, it will help to normalise the idea of constitutional change and the idea that we might be able to achieve it. I think this is really important because, when constitutional reform is perceived to be out of the ordinary and unfamiliar, it just gets harder to secure the approval of the people.

Our Constitution has endured and it was designed to do so, but I do not think it was meant to be frozen in the 1890s and it is our responsibility to ensure that it can still serve us today. To do that, Australians need to be equipped with enough knowledge to understand and fulfil their constitutional role in updating it. A constitutional convention might be one way to achieve that.

**Mr HANCOCK:** Thank you, Peta. Moving from right to left, at least the way we are looking at it from up here, our next speaker is David Muir.

**Mr MUIR:** Good evening, everybody. The purpose of what I am to say is not to rehash the Voice campaign but to look at what lessons we can learn from it in relation to the future of constitutional change here in Australia. One thing I think we have learnt from it is that we need a better process to identify and explain the tangible benefits of change. Australians will not vote for something if they cannot identify and understand the tangible benefits.

The next lesson I think is that we need to engage voters early in the process of change, and I will come back to that in a moment. We need that early engagement before we get to a referendum. The referendum is really the end of a process. We need to focus much more on the process before the referendum rather than just having a referendum. Having a good process also means that we can inoculate against misinformation and disinformation that is put out in terms of a debate. If you have a process which is rigorous and protracted, those urban myths can be put to bed as a part of that process.

The other thing that Peta mentioned is the importance of civics education here in Australia. George's organisation, Demos, have done some research recently which indicates that we have got a solid voter cohort of about 20 per cent who will not support change because they do not know enough about it. That is a big cohort of 20 per cent, so that is something to bear in mind. You also have another cohort of 20 per cent which says, 'If it ain't broke, don't fix it.' Clearly that speaks to the importance of identifying the issues and explaining the tangible benefits of them.

If you look at the Voice process, it was commenced by Turnbull and Shorten back in 2015 with the establishment of a Referendum Council. You then had the various Indigenous dialogues that went through 2016 and 2017, and ultimately the 2017 Uluru statement. That is a process which was, you could say, perhaps a rigorous process, a protracted process, but it is with respect to the Indigenous people in Australia only—not the other 97 per cent of the country who were asked to vote at the referendum. I think that is one of those critical things that we need to understand: we need to engage with the whole of the population on a particular constitutional change.

We have to do things better in Australia because, when you look at our strike rate with change here, as Peta mentioned, it is eight out of 45 attempts. That is pretty awful. That is less than a 20 per cent strike rate. In any other walk of life, getting a 20 per cent strike rate for whatever you do would not be seen to be very successful. We can contrast that with the Republic of Ireland where the strike rate is 29 out of 40, which is roughly 75 per cent. Their strike rate on change at 75 per cent is far superior to our strike rate.

We need to examine why they are more successful. I might come back to the recent referendums there this year, which I think have some lessons in them. They had two referendums this year which failed. I might mention them now that I am on the topic. I believe the reason they failed was because the wording was not good enough. It is interesting: the Citizens' Assembly is a process they have for a nonpartisan approach to constitutional change. It keeps the political parties out of it. Obviously the parliament is the final arbiter about whether you go to a referendum or not, but keep the equivalent of the Labor Party and the Liberal Party out of the equation. It is not a Labor change or a Liberal change; it is a nonpartisan change.

What happens in Ireland is that their parliament requires 99 people to be chosen at random; they are demographically representative of the country. They are then sent a task of constitutional change to deliberate over six to 12 months. It has an expert chair and they take evidence from laypeople and experts. They then make recommendations to the parliament about the constitutional change. What you have got is change being put forward by 99 randomly selected people, not a particular political party. That nonpartisan approach, we believe, is the approach that we ought to be adopting here in Australia, and we can do it through constitutional conventions. In fact, the federal government has a vehicle which nobody seems to know much about at the moment—call it the Constitutional Commission. Nobody really knows who is on it and what it is supposed to do. It is these sorts of mechanisms you need to engage. We are familiar here in Australia with constitutional conventions, and that is a way of approach. Once again, the last one we had in 1999 failed but it failed for other reasons, which I can mention.

The importance of all this is that there is a lot of constitutional change we can make which will bring financial benefit to this country—four-year fixed terms, for instance. I mention 'fixed terms', not just 'four-year terms'. The benefit could be a billion dollars over a period of 10 to 12 years. That is just one financial benefit that we are missing out on because we are not changing our Constitution. Another is local

government recognition so that federal money can go directly to, say, the Longreach Regional Council to build a road or whatever it might be without having to go through a state parliament and the bureaucracy that is involved there. That is another economic and financial benefit to the country—that is, efficiency.

Another one is the nexus for section 24, where we tie the Senate to the House of Representatives in numbers. We have this situation in Tasmania where they have 12 senators and five lower house representatives, which seems a bit top-heavy. Then we have the republic of course. We believe, particularly with the direct election republic, that we can get significant financial benefit to this country which I can elaborate on later.

They are the things we need to think about. Do not do these things we have been doing in the past. Let us think about a new way of changing our Constitution. Do not turn away from economic, financial and social benefit by being scared off by the process. When you think about it, the Australian Constitution is not a scary document; it is only a little one with 128 sections in it. We need people to have read that and have some understanding of how it was put together back in the 1890s and not be scared of it.

**Mr HANCOCK:** Thank you, David. Chris Whiting MP, over to you.

**Mr WHITING:** I will start by talking a little bit about the experience of the recent referendum and where I come from on this. I have been doing a lot of reading recently about the frontier history in Queensland—the frontier wars, the dispossession, the massacre and the genocide. I personally want to be ready for when we start truth-telling. I am always talking to people about how the evidence is there for what happened. It is beneath our feet every day; I feel it in my position. However, communicating that to people is difficult and getting them to act on that to vote for something is quite difficult.

Examining this also explains a bit about how people react to constitutional change. In this particular issue, we ask: how are people reacting when we talk about our First Nations people? The answer to that is already written by three great writers in Australia. Henry Reynolds talks about *Why weren't we told?* and also *This whispering in our hearts*. The first one is the reaction of people when it is explained what happened and the second one is that troubling of a conscience once they do know. I also point out what Stanner wrote about the great Australian silence. That is where most Australians not only fail to think about the past but choose not to think about it at all. David Marr in his recent book *Killing for Country* asked an Aboriginal colleague about contributing or helping with this book and his colleague said, 'You tell that story. That's your story, not our story.'

The defeat of a constitutional referendum is part of our story. It is an issue for all of us. It is not just some of us; it is all of our issues. One of the things I do want to say is that it is our story. How do you try to resolve a social issue through constitutional change? In this case, it did fail. What do we do with the Constitution? How do we do that? The answer is that I do not know: I do not know how this can be resolved. However, if you try to resolve an issue such as Voice, treaty and truth, it may be best to just put that resolution to that issue through the law itself and that may not involve the Constitution. If you are looking to resolve a social issue through the Constitution, you may need to look elsewhere.

The lawyers may not agree with me on this, but I always think in parliament here that the law follows society and the law is a codification and expression of what we want to become. It is the mechanism that we use to redress wrongs. If there is a will to redress those wrongs, that always ends up in the making of laws. For example, I recently chaired a parliamentary inquiry into the decriminalisation of sex work. The bill was introduced and the report was done last week. You may have seen it in the media. At the core of that bill was a concern, or an unease, about what is happening to these workers within Queensland—dangerous conditions, working outside an industrial relations framework—and people wanted to change that. That becomes a social drive, it becomes a political will and it then becomes a law.

When we are talking about this, I want to say to people that changing the law may be a better option than changing the Constitution. Changing the law does not need that broad, unanswerable drive that I think we all know we need to change the Constitution. You need a parliament; you need a dedicated interest group of people who can build that broader coalition to change that law. As we have heard, to change the Constitution you need everyone on board—or just about everyone on board. In this particular issue on Voice to Parliament, we needed to overcome the great Australian silence and we failed to do that. I think that is representative of sometimes a great Australian inertia when we need to change the Constitution. As David said, it is really not that scary but to a lot of people it is that scary.

We have talked about how we change the Constitution. What we have overlooked in many ways is a change in economic framework. We know that, once the economic structure of our society changes and those economic forces change, that drives changes to the social framework and the legal framework as well. That may be something that will happen in the future—that we will see great changes to our economic framework—and that can be used as a catalyst to push forward that social change and also that legal change.

For example, in the 1850s in Australia, the gold industry happens, migrants come in and there is great unease and concern about political representation. The Eureka Stockade happens and reform happens in all those colonial governments. That is an example of what I say. Let us not overlook the role of a changing economic framework and changing all those other structures—society as well. I cannot say when that is going to happen. When we are in a place in politics where we have one side caught up in culture wars instead of economic management, that makes it very hard to actually change that overarching political and legal structure of the Constitution. My suggestion is let us start with laws first. Thank you.

**Prof. ARONEY:** It is wonderful to talk to you all today. To open up our conversation—and I hope that we have a good conversation—I want to make essentially three simple points. The first point is that while it is true that the Australian Constitution is moderately difficult to amend as a matter of formality, it is worth remembering that it was actually harder to bring it into being in the first place than it is to amend it by quite a considerable margin. The Constitution was brought into being through a process that took a whole decade in the 1890s. It went through a conference and then a convention and then a second convention and then several referenda. We should look back at that process and we should look back at not just the process, but the spirit in which that undertaking occurred to reflect on our record since then. They were able to bring a Constitution into being under circumstances far more difficult in that sense, at least formally, than our formal process of amendment. That is the first point.

The second point is that when we go back to the design of the Constitution that those framers decided to create, they actually set up a Constitution that has several different mechanisms of constitutional amendment. We tend to focus on only one of them, the formal process in section 128, but, in fact, they made the Constitution more flexible than we often realise. The first way in which they did that is that there are a lot of provisions in the Constitution that are prefaced with these words: 'until parliament otherwise provides'. The parliament has made full use of that capacity to enact laws altering the constitutional framework under which we operate and has continued to exercise those powers very significantly.

A second mechanism that they put into the Constitution was to enable the states to refer powers to the Commonwealth. Again, this is a process which has been utilised quite extensively as well. A third one is that when the framers were deliberating about the Constitution and the way that the Federation would operate, they recognised that the Constitution could set up a system whereby it would have certain institutions that would enable them to make decisions and therefore create laws and execute those laws, but they always bore in mind the possibility and the reality that the states themselves could cooperate in order to achieve certain objectives. So there is this further mechanism which effectively is addressing the same issues as the Constitution whereby the states and the Commonwealth enter into agreements and arrangements whereby they achieve objectives that have a constitutional quality, not in the formal sense but in the substantial sense as well.

We could also talk about that backdoor mechanism of amendment whereby the powers of the Imperial Parliament can be exercised in Australia if the Commonwealth parliament and the state parliaments unanimously agree to exercise those powers. We have used that mechanism as well to introduce some of the most fundamental change in our country: the Australia acts in 1986 were enacted through that process and they were the acts by which the British parliament abdicated power to legislate for Australia.

It is always important to bear in mind these mechanisms of constitutional change and I have not even mentioned perhaps the elephant in the room and that is the High Court when it interprets the Constitution and even parliaments when they make decisions about what laws to enact will always push the envelope about their powers and their capacities and so we have a process of constitutional change that happens through those mechanisms. That is my second point: the Constitution is actually more flexible than we realise.

The third point in some sense picks up on something that David said. Let me put it this way: we have to recognise that the Australian people on the whole have a certain pragmatism about them. That is often said. In fact, I have written books where I have argued that the framers of the Australian Constitution were

more philosophical than we normally have given them credit for and that they were inspired by certain ideals. But nonetheless they were very pragmatic people and very practical people. One wonders whether that is still the case in Australian culture. When one is reflecting on whether we ought to change the Constitution or what changes we could make, I think we have to recognise that people have a not irrational disinterest in the Constitution to the extent that it does not demonstrably affect their daily lives. David has drawn attention to that in a different way in his remarks, I think.

One way of putting this is that some philosophers of politics suggest that there are different types of rationality at play here. We can have the rationality of theory—theoretical rationality. We as academics, and sometimes maybe politicians in a way, can be quite theoretical and idealistic in our rationality. But there is a second type of rationality that could be called practical rationality. It is the sort of rationality which is about how to do things, about how to achieve something. How will it work? What will it do in practice? What difference will it actually make? I think we need to attend to that question because I think that we do see in the Australian population as a general whole a very great interest in questions of practical rationality and not just idealistic rationality. That would be the third point I would make to open up the conversation. Thank you.

**Mr HANCOCK:** Thank you, Nicholas. I was sitting listening and wondering where there might be some points of possible agreement just to start a discussion on. The only obvious one is not so obvious because Nicholas has not mentioned it, so I might come to you first Nicholas. There seems to be agreement that civics advocate education or constitutional education as a key element going forward one way or another. Perhaps I should try to paraphrase your position on that. Maybe you do not think that is so necessary because there is an inbuilt character and basic awareness and so on. You are probably saying that we do not need too much more. Is that a correct assumption about your position on civics education?

**Prof. ARONEY:** It is a very good question. During the referendum debate I did speak a lot to groups and what I found was an experience that reminded me of the republican referendum as well. There was a great deal of hunger in the Australian population, or at least in the people I encountered, to understand better and to learn more and to want to understand what practically this meant or why we should do it and those sorts of things. The approach I deliberately took was not to expressly advocate for or against the proposal, but to try to help people to understand what it meant and help people to understand how the Constitution works.

Although I have made those comments about the pragmatism of the population, nonetheless I think that there is a sense in the Australian population that we have a Constitution that, broadly speaking, serves us well, even though there are so many things that we on the inside would like to see improved, and I certainly think there are things that we could improve about our system, but on the whole when you compare the way our democracy has operated over more than a century federally and more than 1½ centuries throughout the states, I think Australians recognise we are a pretty lucky country. I know that expression was used with some irony to describe our country, but I think people have that sense about it. That expression ‘if it ain’t broke don’t fix it’ I think has real resonance in our population because people say, ‘Let’s not muck around with something that seems to be working well.’ It does mean that the case for change has to be a very imperative one, but it has to be a very practical one as well. I do not want to put words in David’s mouth, but I took him to be saying something like that as well.

**Mr HANCOCK:** I might pass to Peta on that, because you have made it your main theme. What specifically do you think would have made a difference in terms of popular education, I think was the phrase you used, in the Voice campaign and what would you like to see before there is another referendum?

**Dr STEPHENSON:** Before I get there, I do want to make a point as well. Nick very correctly pointed out that there are different ways to change the Constitution. I focus on section 128, because it does have a unique claim to popular sovereignty. It involves the people in constitutional change. I think it is important to look at it in that context when I am talking about education because the people are essentially actors, they are really important actors, and they hold the key to substantive constitutional change in that mechanism in section 128.

To answer the direct question about education with the Voice, I completely agree with Nick’s observations as well that when we spoke to people, people were interested and there was an appetite for information, but I also think that there was some confusion about that particular proposal. For example, like what it meant by having representations to the executive or the parliament. There was a bit of confusion, I think, even just about the difference between the parliament and the executive branches of government.

I think when it comes to thinking and reflecting on the Voice it was difficult for proponents of change to really make the case because there were some technical issues that needed to be talked about, but it presupposes a level of understanding about the basic structures of government in Australia and I think that was not always there and that was evident from some of the more bizarre claims that were out there. Maybe people did not fully understand exactly what the Constitution does, what its role is, and what that particular proposal was about. I think there is a really important need for people in Australia to be educated before the next referendum. It just needs to be part of an ongoing conversation about what the Constitution is, what our arrangements are and when they come to vote, hopefully at the next referendum at least, that sort of basic knowledge will be there.

**Mr HANCOCK:** David, would you like to add anything to that?

**Mr MUIR:** We certainly see education as being really important in terms of constitutional change, acknowledging Nicholas's other mechanisms in the Constitution. The fact of the matter is that section 128 is the most democratic way of change where you are engaging with the whole of the people. We think that if you are going to use that process or mechanism for change, there are some issues which really lend itself to that. The republic is an obvious one. Some of the things that Nicholas referred to in terms of the other ways of, in effect, changing the Constitution, happened during war time and other places where it was seen as necessary that the Commonwealth have the power to do this or do that. Very pragmatic. I also agree with what Nicholas said earlier about the founding fathers—and they were all fathers, of course, there were no mothers involved.

When that Constitution was put together that was a huge task, a huge endeavour. They were very ambitious and they had a Queen, Queen Victoria, who was not very fond of this whole business. She thought that we should be counties of England rather than having some sort of federation. That was really challenging times. Pragmatic and I think tenacity and, obviously, understanding and a lot of engagement with people that were in the country at the time, they were the reasons it got over the line.

If you are going to engage with people you need to provide education. We, through the Clem Jones Group, Real Republic, et cetera, are providing funding at the Museum of Australian Democracy in Canberra in Old Parliament House to teach children around the country about our Constitution. We are doing similar projects here in Brisbane at the Museum of Brisbane. We see those as really important. If you educate the children, they will probably educate the parents too along the way. If you want to bring unity to the country you need to educate, you need people to understand, you need to engage and you need those really tangible benefits. It is all very nice to have an ideological view about this or that. That is not enough. If you are living in Cunnamulla, Charleville, Longreach or Wagga Wagga, you want to know how is this going to benefit us as a nation. All this involves people who can understand the issues, and they are the people who are educated. We see that education piece as a focus of our group over the next couple of years in Australia.

**Mr HANCOCK:** Could I make a gentle provocation, really thinking aloud? Do you think there is any conflict between your two approaches here—a lot more civic education and having citizens assemblies? Is it really having a bob each way to make sure you cover it one way or the other, or do you think that if there were enough civic education, enough engagement and a serious enough process of total national engagement you would not need citizens' assemblies?

**Mr MUIR:** Good question, Murray. I think you need both. Basically, citizens assemblies, as I said, work very well in Ireland. Interestingly enough, there were the two referendums that failed this year. That was because—we believe anyway that it is all about the wording, too. You have to get the wording right. The citizens assembly came up with some propositions. They did not do the wording. A joint parliamentary committee did the wording and then the government changed the wording. The wording that went to those referenda were not a creature as such from the citizens assemblies. That is just something I should mention, I think. The wording is really important. That has to be gotten right. We believe that both education of the people generally about our constitutional document as well as the representative democracy of citizens assembly, hand in glove, is the way forward to bring a sense of unity in whatever change we make, because we need to get away from this polarisation, this divisiveness. I think you need both of those things to achieve that.

**Mr HANCOCK:** Thanks, David. I would like to do a bit of a switch in the time we have left as a panel and ask Chris to kick off, because I would be interested in all of the panellists' views. Given where we are, what has happened recently and the general outlook—taking everything into account going forward—do you think there are going to be any successful proposals in the foreseeable future—changes by referendum? If so, which one or several do you think are the most likely?



**Mr WHITING:** We are talking about a span of years. I cannot believe it has been 25 years since the republic referendum. It just seems like the other day. It is a case of, 'Okay, when do we start that again?' How many times has the question about local government been put? It has been more than once, I think. Three times? 2½. I want to be positive, because my colleagues Linus and Ray are here from the parliament as well. We are constantly surprised by the generosity and the far-sightedness of our constituents—not all the time but constantly. I am prepared to be surprised. I am not sure what is the next field for constitutional change, but the thing is: if we try it and it fails, you are looking at 25 or 50 years before you try again. I do not want to say local government because I know we have gone down that, but I do think some form of recognition, acknowledgement or inclusion of our First Nations people has to be the next step. But I feel that can only really happen when our First Nations people have real economic power behind them. That is when I think things will change. Maybe there is an answer there. I do think we will come back to the area of justice or recognition for First Nations people, but I do not know what form that will take.

**Mr HANCOCK:** Nicholas, chances of any foreseeable change? If so, what is your best bet or bets?

**Prof. ARONEY:** I actually do not have a view about this, because I do not think it is possible to predict something like that. One of the observations I would make, though, that is relevant is that institutional political scientists say that a lot of these things are driven by a certain sort of what they call path dependency. That is a complex notion. Some people say that in simple terms it means history matters. It means that when institutions are set up in a certain way or thought forms are set up in a certain way, they tend to just follow a certain logic driven by the procedures, the institutions, the thought forms that exist. Yes, there can be evolution or development, but it is in one sense constrained by the starting point. I think that is very important to bear in mind.

In fact, the further observation I would make, perhaps about my own class, which is academics at universities, is that we do not quite recognise the extent to which we ourselves are subject to the same sort of path-dependent dynamics. I think that quite clearly, in my view, there was path dependency that occurred in relation to the Voice referendum. I will not go into detail about that, but I think when you look at the history of concern and argument about Aboriginal people and non-Indigenous people and our Constitution broadly, that whole debate has gone through several phases—suggestions of changing, for example, the race power, suggestions about introducing a non-racial discrimination clause into the Constitution, and recognition as that debate progressed that it might not manage to get support. The Voice proposal was very much a response to that debate and a response to, as it were, the institutional settings that led to those outcomes.

As academics who participate in these discussions, I think we need to look at ourselves in that sense and understand the extent to which we were operating within a framework that was shaping our own responses to these things. We were driven down the path that the way to address and improve Indigenous wellbeing needed to be constitutional, because we had started with that concept that we need to deal with the race power, we need to deal with discrimination and so forth. The Voice proposal was a way of addressing Indigenous disadvantage in a way that was seen as responding to criticisms of those other proposals, so you had a path dependency there.

The other observation I would make is that it seems to me that the people involved in drafting and debating the actual text that went to the Australian people perhaps did not reflect carefully enough collectively—although I think internally they did—about the way in which they were adjusting the wording of the proposal and adding things to it. Peter I think mentioned quite correctly the concern about the question around whether it was a voice to the parliament. That was the original proposal. Then it became a proposal that it would be to the executive government. When I saw the reintroduction of the words 'executive government', I almost fell off my chair. I went, 'Wow, that is such a significantly different proposition than a voice to the parliament.'

Then on top of that, what was added—do you want me to expand on this? Is it worth my going into some detail there? We need to understand the process, because it affected the consequences of whether it was a successful referendum or not. That is, once you introduce 'executive government' in chapter 2, that means the entirety of the government and potentially civil servants. There was this concern: how will it operate in practice? Then the focus of debate went to: 'Well, parliament will control this and let's just trust parliament to make sure it is in control of the system.' Then when they dealt with parliament's powers over the Voice, they added extra clauses to shore up the capacity of the parliament to control it and nobody asked themselves, 'Well, what sort of impact does this have on the parliament's power, per se, vis-a-vis the Federation?'

We have this sort of path dependency. Do you see? It is almost like a Hegelian antithesis and synthesis running its way through the process. Before you know it, you get to a proposal that has so many different dimensions to it which people find hard to understand which is a long way away from what the original idea was. I think we need to reflect on that going forward. If you want to propose change to the Constitution, you have to think really carefully about the path dependencies that shape the way you draft the Constitution or the constitutional amendment proposal.

**Mr HANCOCK:** Thank you, Nicholas. That was very interesting. You were very honest that you did not think you could answer the question. Peta and David, what do you think are the most likely reforms that could come out of a referendum in the foreseeable future?

**Dr STEPHENSON:** I may not answer your question directly, but what I might contribute—I cannot answer the question because, again, I am just not in the business of fortune-telling. Just reflecting again on George and David's pillars or factors that are required for a successful referendum, particularly reflecting on the Voice referendum and indeed the republic referendum, while I do not know what the proposal will look like, I do think we are going to need at least some, if not all, of these pillars to be present. We would need a proposal that has bipartisanship, that has popular ownership, where the people have been educated properly. We have talked quite a bit about that. It will need to be a sound and sensible proposal, and we might need to have a look at modernising the referendum process. That is looking at the machinery, particularly in light of social media, because, while I do appreciate the founders did amazingly well to draft our Constitution, I do wonder how they would go in the age of social media, where there is a lot of misinformation and disinformation.

I do think these pillars are quite significant. Again, assessing the Voice referendum against these pillars is quite a helpful framework, because I think we saw that not all of these pillars were met, if any of these pillars were met, in relation to the Voice referendum. I do want to make that point. I cannot look into the future, but perhaps in formulating these proposals I think taking into account these pillars will be really important.

**Mr MUIR:** Murray, I can answer your question.

**Mr HANCOCK:** I can almost have a bet on what you are going to say!

**Mr MUIR:** I can say that our focus in terms of further constitutional change will be four-year fixed terms, local government recognition, changing the nexus under section 24 and the republic. We are actively engaged particularly with regional Australia, because we think the constitutional change process better works from the ground up, rather than a top-down process. Over the years here in Australia, our constitutional process has been managed from the top down. We think it is more democratic, more engaging and likely to be more successful and more pragmatic to have a process which comes from the ground up. That is going to need to be an engagement with regional Australia. Local government recognition is just a lay-down misere in terms of that engagement. It is an obvious platform for us.

**UNIDENTIFIED SPEAKER:** It keeps getting rejected.

**Mr MUIR:** It got rejected 2½ times, but the next time—it is all about preparation, preparing the groundwork before you go to referendum. We will not be talking too much about referendums over the next year or two. That 'R' word—not the 'republic' word but the 'referendum' word—I think scares a lot of politicians in Canberra right now. We will be focusing very much on preparing the groundwork before we go to the next referendum. We think it is about engaging with regional Australia about some of these issues—if we can say, 'Look, you can save a billion dollars. You can make efficient road building and bridge building in this country with local government recognition.' If you can do these things, they are actually pragmatic, practical ways of change. That is going to be our focus. I have no crystal ball either, Murray, but that is certainly going to be our focus.

**Mr HANCOCK:** Thank you, David. We have another 15 or 20 minutes for questions from the audience.

**QUESTIONER:** I am possibly going to throw a few grenades—two grenades, in fact. The first grenade is: do not wish too hard, because look at Brexit. If something is very easy to do and you think it might not get over the line, you might be surprised—and people have different views as to whether or not that was a good outcome. The second grenade is along the lines of Nicholas's perspective: what determines whether an eight out of 45 strike rate is a success or a failure? How do we make that judgement?

**Mr WHITING:** If you are talking about Brexit, I do not think it was a legal or constitutional failure; it was a massive political failure where there was an issue on which one side did not want to make a decision, so 'let's throw it out to the people to try to get an answer or to make the problem go away'. I am paraphrasing that. That is an issue on which, if they were really serious about it, they would have spent years, as we have talked about here, preparing people, talking through it and having that chance for the issue to be thoroughly canvassed and discussed and all consequences discovered.

In a lot of ways I would say Brexit was a political problem of their own making, but it is a great example of what happens if you do not have that long-term vision of saying, 'Okay, we need to get a lot of people on board with this. We need to have huge discussions about how this is done and what the implications are.' I think that is one of the lessons: if you want to make a change like that, you have to have a long lead-in time and a lot of civic education about that. That is the only thing I will say on that.

**Mr HANCOCK:** Does anybody else want to comment?

**Prof. ARONEY:** As you might expect, I think that second question is a really important one. It is worth observing that, according to one study, the average national constitution in the world lasts—how long would you think?—19 years. Ours is an exception by a long margin. It is worth bearing that in mind because what does success mean in this context? Sometimes the perfect could be the enemy of the good, couldn't it? I think that goes back to the pragmatic point as well. I am making no reflection on any current referendum results at all by saying this, but some of the 'no' answers could have been a good thing. Maybe that is a good record overall. Maybe it is not, but how do you assess that? It goes to whether you assess each of those proposals as being good ideas or bad ideas and good text and bad text. Clearly, the Australian people have said no to most of them, so at the least they thought they were not good text. Perhaps some of us might take a different view, but I think that is a huge question.

To presuppose that the failure of a referendum is a negative thing is to beg the question about the proposal in the first place. As I say, I am not making any comment on any particular referendum in saying that.

**Mr MUIR:** One point I would like to make is: I think when the Australian people as a whole and as an electorate make a decision, they are usually right. It is called democracy. I agree with that philosophy behind that hand grenade in a sense that just because we only got eight out of 45 does not mean that the Australian people got it wrong on all those times when they rejected change. I think it comes back, though, to the fact that it is the proponents of those changes that need to learn the lessons of why they failed. I think that is the important focus for us. Once again, it is all about preparing the groundwork for change so that people embrace it, understand it and are unified by it rather than divided by it. I agree with your suggestion that the KPI of eight out of 45 looks pretty horrible, but behind it might be the fact that there were some good reasons for rejections of those ones that were rejected. We just have to learn from that.

**Dr STEPHENSON:** I would echo David's comments. Again, just bringing it back to education—and Brexit was another referendum that was decided, and it is a different age. It is an age of misinformation, disinformation and social media. Leaving that to one side, again, I think as long as voters are casting an informed vote, as long as they have a really good understanding of the proposal and the constitutional context, that is great. I do not think we can assess the eight of 44 as good or bad in that sense. Again, to me the main issue is just ensuring that when electors cast their vote they are confident that they are fully informed and that they fully understand the proposal. That comes back to the popular education point.

**QUESTIONER:** I have lived through a few referendum campaigns, as you can probably tell by looking at me. It seems to me that our politicians have lost the art of rhetoric. If you compare what we have read about the 1890s, there seems to have been a lot of politicians campaigning for the Constitution who could get in front of a town hall meeting and actually address positive arguments to the audience as to why they should be supporting the proposed Constitution. Every constitutional alteration proposal that I have lived through has gone through the sequence of something being proposed enthusiastically and then passed through parliament. Then the nay-sayers have often whipped up some fairly hysterical arguments against and those in favour have absolutely collapsed. I have not heard good, persuasive arguments as to why people should vote 'no' ever in any referendum that I have lived through. Take the Voice proposal. It was suggested by that big meeting at Uluru. It was then passed through parliament—

**Mr HANCOCK:** Is there a question for the panellists?

**QUESTIONER:**—with apparent widespread support. It then became apparent that the Indigenous people were not unanimously in favour of it and it was suggested that there was too much leeway left to parliament to formulate the details. None of those running the 'yes' case came back and argued in favour of that. The only argument I heard for 'vote yes' was, 'Please vote yes.' I did not hear any coherent arguments as to why we should vote 'yes'. David, in particular, if you want to run some future campaigns, please get in touch with the politicians and persuade them that they could learn a few tricks about rhetoric.

**Mr HANCOCK:** Has anybody got an actual question for the panel? Thank you for that very interesting observation.

**QUESTIONER:** I would like to know whether the panel really believes you can educate the majority of the voters in the whole country and then in a majority of the states?

**Dr STEPHENSON:** The answer is yes, I absolutely do believe that. Again, I teach at university; I see it. I am really fortunate to have some fantastic students. I think we absolutely can do it. I think we do need to think about how we get messages out there and how we communicate. I have mentioned it a few times, but we are living in a different age. We are living in an age of social media and I think that is relevant. It can be a good thing and it can also be a really bad thing. The short answer is: yes, I absolutely think we can educate people. Again, I think some kind of permanent, impartial standing convention or dialogue or just a forum to encourage participation is just so important. We need to make the Constitution an ongoing part of the national conversation, because that is the key to educating the majority of the people at the national level and at the state level as well.

**Mr MUIR:** I think a good place to start is in the schoolroom. That is certainly going to be our focus: to educate children in Australia and, once again, that perhaps has a knock-on effect to their parents. Regional Australia—when I was addressing the Longreach Regional Council last year on the issue of the republic and other constitutional changes, I found that the councillors there were very hungry for information. Because people do not go out there and talk to them about these sorts of issues, they find themselves neglected. I think there is a hunger in regional Australia to know more. We just need to know how to communicate with them and to engage with them. Everybody in Australia—I am not sure, Craig, but we can do a lot better than we are doing now.

**Mr WHITING:** The answer is: yes, I do believe we can, but we have to start small. It is those small spaces. We are used to the message going out, being broadcast at large, which may or may not work. If you start in local communities like Longreach and lots of those small events, that is how you do it. I represent the Deception Bay area. We created a forum called the Deception Bay Community Council, where each organisation sent a person along once a month and we had a discussion and we made decisions. We also had a program called community renewal happening and it was the community council that decided how the money was spent.

The answer is: yes we can, but it has to be small. You have to start with groups that actually have a real say in how money is spent—only a little bit, but if you have that responsibility you get greater engagement. In my experience, that is how spreading the word has helped in lots of those small meetings across all our communities.

**Prof. ARONEY:** I think it depends on how you define education, because you can clearly communicate certain messages with almost everybody in the country and hope that they will hear it. Even then I think that is going to be very difficult, because there are a lot of people who just do not listen, are not tuning in. Even for the ones who are tuning in, you have to ask yourself: what does it mean to be educated about a topic? Is it at a certain level—phase 1, phase 2 or levels of depth? When it came to the Voice proposal, even the experts were not sure exactly what it meant, or at least they disagreed amongst themselves. What does it mean to educate people when, in fact, you are discussing something that is somewhat intangible or there is some doubt about its meaning? That does not mean that you should necessarily reject a proposal, because you have to assess degrees of risk and degrees of uncertainty and judgements like that. I do think you have to bear that in mind. The answer could be 'definitely yes' at a certain level but 'probably no' at deeper levels. The real question then is: what is a sufficient level? That is a very debatable and unclear question.

The one other thing that I think we have lost sight of is that when Aristotle used to discuss the concept of democracy he did not regard it as a system that depended on the intelligence or virtue of the people—not at all. In fact, he expected the average person to be not very clever, and not necessarily very virtuous, either, and that the benefit of democracy just simply is the mass of people and, one hopes, in one sense a

sort of wisdom in the mass or at least an inertia in the mass or something like that. That is why he actually did not think democracy was necessarily the best form of government simply considered, and he very expressly argued for a more mixed constitution where you would have elements of aristocracy and monarchy.

The interesting thing I think in our culture is that we have so idealised democracy that we cannot even face up to the extent to which we have a system which is actually quite aristocratic and obviously monarchical. I do not mean simply having a hereditary head of state. Aristotle would call the American system monarchical in the sense that you have a single president in whom all of that executive power is vested. He was quite explicit that what makes monarchy work well or aristocracy work well is that you get intelligent people and virtuous people into those positions. He also pointed out that that could become the worst of systems because if you get a bad person into those positions of power that could be worse than a democracy gone bad, so he argued for a mixed system. I think because we have forgotten this and we have so idealised democracy, we cannot think straight about what is good about it and what is bad about it and, therefore, we tend to run it in an unintelligent way. I think that is very relevant to the question of what would be adequate education in a democratic system or a referendum proposal.

**Mr HANCOCK:** That has given us plenty to talk about over tea. I think we are out of time. Diana, is it true to say that those who did not get to ask a question are going to have a further opportunity over tea?

**Mrs McCLUSKEY:** Absolutely, yes. I want to thank our panel for a fantastic discussion. I think we are all better informed. I feel a little bit like a killjoy calling a halt to the discussion now because I think we are warming up to the topic very well. Can I please have a round of applause for our panel but in particular Murray Hancock, our emcee? I believe we have a small gift for our panellists, which is a token of our appreciation for your time and information. This marks the end of the evening. You are very welcome to join us for refreshments on the colonnade overlooking the Speaker's Green. I look forward to seeing many of you at our next event, which will be later on this year. Thank you so much for your support. Have a good evening and take care going home.