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HOLD A CONSTITUTIONAL CONVENTION IN YOUR CLASSROOM

This time last century, an Australian Constitution was a hot topic of conversation in the colonies. Our forebears held Constitutional Conventions, where people met to talk, argue and, eventually, to agree, on a blue-print for Australia in the twentieth century.

One hundred years later, life in Australia has moved on and the world around us has changed. Our Constitution has served us well. Our nation is free, democratic, stable and prosperous. We should ensure however, that our Constitution continues to meet our needs into the twenty first century.

Last year, during Law Week, and sponsored by Apex New South Wales, People's Constitutional Conventions were held around New South Wales. They provided a forum for ordinary Australians to gain a better understanding of constitutional issues and to have a say about constitutional change. The ideas and opinions expressed were sent to local media and parliamentarians and put on the internet.

As Legal Studies students, you are in a privileged position to gain an in-depth understanding of our Constitution. As citizens of the twenty first century, you can contribute to the development of Australian society. Part of this is ensuring that the Constitution stays up to date and relevant in the modern World.

In this issue, we use the Law Week model to show you how to hold a Constitutional Convention in your classroom. In the course of planning for, and holding such a Convention, you will cover the constitutional issues required by your Legal Studies Syllabus. More importantly, you will be better equipped to deal with some of the most fundamental questions confronting our country.

WHAT WILL IT INVOLVE?

About six weeks, altogether. You'll need a couple of lessons to allocate tasks, plan and acquire a

basic understanding of what our Constitution is, its main features, and how it affects our lives.

Then each student will have an agreed period of time to prepare his or her contribution to the Convention. Each student will prepare a written paper which can be an assessment task in itself.

The Convention itself will then be held over a number of sessions. The amount of time you wish to spend will depend on your interest and the number of students in your class. There are, however, three questions to be addressed by the Convention. These are:

Who should be our Head of State and how should such Head of State be elected?

Do we need local, state and federal governments?

Does Australia need a Bill of Rights?

Legal Eagle recommends that you allow at least one period to discuss each question. Each session should commence with speakers outlining the issues, followed by discussion of these issues in one or more small groups, depending on how many people you have in the class.

A further period may be used as a plenary session, pulling together all the arguments and taking a vote.

WHAT DO WE HAVE TO DO?

There are a number of jobs to be done which may be allocated among the class.

The Forum Leaders organise speakers and groups, lead the plenary session and conduct the vote. They could be one or two students or the teacher.

Speakers are needed to introduce the Australian Constitution, and to present the affirmative and the negative answers to each question. Speakers could address the whole class before the small group discussions, or each small group could have both an affirmative and a negative speaker. Speakers' papers may be assessed as essays.

Group Leaders who are not

speakers are needed for each small group session to summarise the views of the group and to present them at the plenary session. Group Leaders' summaries could be assessed as essays.

Reporters are optional but will enable the views and ideas of your class to be heard by the wider community. They could prepare items about your Constitutional Convention for your school newspaper, local paper, Legal Eagle or other media outlet. Contributions to Legal Eagle should be sent to Margaret White, 56 Third Ave, Willoughby, 2068. Obviously, articles prepared by reporters can be used as assessment tasks.

THE "BIRTH CERTIFICATE OF A NATION"

That's how the Australian Constitution was described by Windeyer J. in *Western Australia v Chamberlain Industries Pty Ltd* (1970) CLR 1.

At the introductory session of your Constitutional Convention, one or more speakers should address the class on the topic of the Constitution. The issues which these speakers should address are as follows:

What is a constitution?

How was the Australian Constitution framed and when did it become law?

What are the main features of our Constitution?

What are the three arms of government, how are they provided for and what is the role of each of them under our Constitution?

What is the separation of powers doctrine?

What is a federal system of government and why did our founders choose such a system?

What is the effect of s.109 of the Constitution?

What is the effect of s.51 of the Constitution?

What human rights are guaranteed under the Constitution?

What was decided in the case of

Australian Capital Television Pty Ltd v The Commonwealth (1992) 177 CLR 106?

How can the Constitution be changed?

DO WE NEED A THREE TIER SYSTEM OF GOVERNMENT?

The Federal system of government, set up under our Constitution, has many staunch supporters and many equally determined opponents. Your Constitutional Convention will need speakers for and against.

These speakers could address the following issues:

Are we over governed? (How does our system compare with that of comparable countries?)

What are the arguments for and against national unity as opposed to local independence?

What was the Tasmanian Dams Case (The Commonwealth v Tasmania (1983) 158 CLR 1) all about and what effect did it have on the balance between Commonwealth and state powers? What were the arguments for each side of the dispute?

Where do the powers of local councils come from and what is their role?

Those arguing for a federal

system should explain how it ensures:

- checks and balances
- a more democratic society
- policies made by the people
- closer accountability
- safer diffusion of power

Those arguing against a federal system should discuss:

- the erosion of states' powers
- the duplication of functions
- the lack of a single responsible government
- less competition between states

WHO SHOULD BE OUR HEAD OF STATE?

With the 2000 Olympics fast approaching, this question has suddenly come into focus. Under our Constitution, the Queen is our Head of State and her representative in Australia is the Governor-General. Speakers on this question should address:

The arguments for the retention of the Monarchy.

The arguments for a Republic.

The powers of the Head of State—are they too extensive or not extensive enough and why? What should they be?

How is the Head of State appointed? How should the Head of

State be appointed, or elected, and why?

What are the arguments for and against the election of the Head of State by a 2/3 majority of both Houses of Parliament?

What are the arguments for and against popular election of the Head of State?

How do some other countries elect their Head of State?

DO WE NEED A BILL OF RIGHTS?

The Australian Constitution contains no explicit statement of fundamental human rights. Australia is a party to the International Covenant on Civil and Political Rights and several attempts have been made to fulfil our international obligations by passing a Human Rights Bill. Each time, it was defeated in Parliament. In 1988, a referendum to introduce human rights into the Constitution was defeated.

Speakers on this topic should address, in addition to the arguments for or against the Bill of Rights, the question of whether or not it should be incorporated into the Constitution. They might also compare provisions in some other countries.

Arguments against a Bill of rights, which should be elaborated upon by the speakers include:

We don't need one

It wouldn't necessarily protect against abuses

It would give too much power to unelected judges

To define it as a right is to limit it

It won't accomodate changing ideas about human rights

"If it ain't broke don't fix it".

Arguments for a Bill of Rights include:

Democratic systems, sometimes unfairly, favour the majority

Courts are better able to deal effectively with rights issues, especially unpopular ones, than are Parliaments

It would clarify personal rights and reduce cultural tensions

It will place human rights above political debate

It will empower disadvantaged members of society to assert their rights.

During the framing of the Constitution...

