

Professional Development Seminar for parliamentary staff

January 2013

Against the odds – Lessons from the framing of our Constitution

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Our Constitution was established by peaceful development, not by war or revolution. The agreement of the people of a number of separate, self-governing colonies to join in a federal union created a nation. Making that agreement required determination, patience, vision, and considerable political and legal skills.¹

Former Chief Justice Murray Gleeson

The terms of Australia's Federation were negotiated at two Conventions in the 1890s. This paper deals with the story of those Conventions². It is a compelling story. In it we see dedicated and skilled political leadership and we see both idealism and pragmatism. As well as debates about issues which had to be resolved if Federation was to proceed, such as the tariff³ and the powers of the two Houses in a Federal Parliament, matters as diverse as the possibility of the Governor-General being elected and the Murray-Darling river system were debated.

This seminar is intended to help us all prepare for the challenges of the future. I suggest that the deeper our understanding of our heritage, the better placed we will be to help meet those challenges. Comments by Mr Stephen Gageler about those who practice in and administer constitutional law can be adapted to the more limited role of parliamentary officers: we are custodians for the present of traditions which we must help interpret, the issues with which we deal should be put in a long-term perspective, and this work is not a matter of science, it is a matter of responsibility: to the past and for the future.⁴

¹ *The Rule of Law and the Constitution*, Boyer Lectures (2009), pp 20-1.

² This paper is based on one prepared for training purposes in the Department of the House of Representatives. Thanks are due to Professors Geoff Lindell AM and Anne Twomey, each of whom read a draft of the paper and made valuable suggestions for its improvement, and to Lynnette Eager for her great help. Professor La Nauze's *The Making of the Australian Constitution* (1972) has been recognised as a pioneering and authoritative work on the history of the Conventions. More recently Professor John Williams, in *The Australian Constitution: A Documentary History*, has done all interested in the development of the Constitution a great service by assembling and publishing many key documents, including successive drafts of the Constitution, and including very helpful explanatory essays. For the cultural forces and background that may be thought to have shaped the making of the Constitution, see also Professor Helen Irving, *To Constitute a Nation: A Cultural History of Australia's Constitution* (1997) and also Professor Irving (ed) *A Woman's Constitution?* (1996). Dr Hirst's *The Sentimental Nation* is also particularly helpful in outlining the wider context, including the events of 1891-97.

³ At that time the main sources of government revenue were customs and excise duties and a key condition of Federation was free trade between the states. Tariff policy was also an issue – sentiment in New South Wales was considered to be 'free trade' and protectionist in Victoria.

⁴ Stephen Gageler, *Beyond the text: A vision of the structure and function of the Constitution*, (2009), p 24. Mr Gageler was the Commonwealth Solicitor-General at that time.