

*Recently a writer stated that the Australian Constitution had become "fossilised" and that changes were urgently required to modernise it. Briefly outline some of the changes that would assist this modernisation process.*

## Assignment 1 - Australian Constitution

The Australian Constitution is now approximately over a hundred years old. People that make up Australia has changed rapidly over time. Once a settled colony by the British Empire is now a multicultural hub where many different races all over the world have come to claim Australia as their home. The 1901 Australian Constitution no longer represents today's Australian society. Changes must be made to better represent Australia today and also give Australia an own unique identity that no longer resembles its predecessors. Human rights and the head of state are two of many current issues of debate in today's society. No matter how many proposed amendments to the Constitution are suggested the ultimate test is section 128 of the Constitution.

In order for any amendments to be made on the constitution, it must satisfy the processes stated in section 128. The process of changing the Constitution requires firstly an Act of by the Federal Parliament which requires a vote by both houses. An absolute majority of both houses must be reached. The next stage is then for the people to vote for or against amendments of the Constitution in a referendum. Again, it must be accepted by the majority of voters in the majority of states and by the majority of voters throughout the country (Thomson & Sarre, 2001, pp 32). One can see that amendments are very difficult to invoke. Personally, I support section 128 of the Australian Constitution. Every state in Australia is given equal weightings in votes and at the same time the system of voting also considers the entire population of voters. Thus, small states like Tasmania have equal say in amendments to the Constitution. The difficulty in performing amendments make the Constitution stable and representative of the majority of people. The Constitution only has value if the majority of people in Australia strongly believe in it. In the history of the Australian Constitution between 1901 and the present, there have only been nineteen referendums with only eight successful referendums passing. The low success rate of amendments being approved has been suggested that there is a lack of understanding about the Constitution by the public (Thomson & Sarre, 2001, pp 32). The Australian education system does not educate its youth about the Constitution. Through personal experience of Australian Studies in high school, it did not focus at all on the Australian constitution. Hence, I believe that education about the Constitution is of great importance as to increase the awareness. As a result future generations of Australians can form an opinion and be actively involved in the regulation of the Constitution.

One section of the constitution that is still pre-historic and needs changing is the Australia's head of state (section 2). Changing the identity and the process of selection of Australia's head of state is a must in modernising Australia. Currently the position is appointed through the Prime Minister and approved by the Queen which is undemocratic. Also, many republicans' ask: 'why is the Queen appointing our head of state if she has no formal ruling over Australia?' Just recently Dr. Peter Hollingworth was relieved of his position as Australia's head of state because of his questionable

background. This clearly demonstrates that appointment of the position through one person is flawed. As a result the current Labor leader Simon Crean has proposed several changes to the constitution in a republican model. The main change he has proposed is that Australia should become a republic with an Australian head of state. Simon Crean has also suggested changes to a preferred referendum model by the majority of Australians, which I strongly oppose as already mentioned. Other amendments by Simon Crean have proposed include fixed four year terms for the house and the senate. Simon Crean believes that fixed terms will require parties seeking election set out clear four year programs for transparency for the public (Crean, 2003, pp 11). In my opinion political parties indeed need transparency in its objectives and activities. Voters would have a better understanding on which political party they are voting for and are able to closely measure their performances throughout the four year term.

Other minor changes in parliament I believe should be written into the Australian constitution are the increase representation and views by females. Back in the period when the Australian Constitution was created the ideas were mainly male orientated and also over the century parliament has consisted largely of males. As many people say that the Australian Constitution is symbolic of its people: females are just as important in our society (Radio National Transcripts, 1997).

Another topic where important amendments must be made in the process of modernising the Constitution is human rights. An example of human rights violation occurring in the Constitution is Sections 25 and 51(xxvi). The two sections give the Australian government the power to disqualify people of any race from voting and the power to make special laws for certain races. In a country that is in its essence a multicultural society, a constitution that does not treat everyone with respect to race as equals is not appropriate. As Americans' first Amendment states: "we have the right to freedom of speech", I believe as Australians our Constitution should have: "we have the right to be treated as equals in all aspects regardless of race". As mentioned by George Williams, barrister and senior lecturer in Constitutional Law at the Australian National University:

*"Well I think if we're going to grade our Constitution, you'd give it one out of three. It does say what Government can do, but it is very poor in saying what Government can't do in the area of human rights."*  
(Radio National Transcripts, 1997)

Amendments should be made to prevent racial discrimination and to protect the highly valued multicultural society Australians live in. Currently, the judicial system is responsible for human rights agendas. This is due to the inheritance of the legal system from England during Australia's settlement. The result is a greater emphasis on common law as the means to which rights are protected in Australia unlike the United States of America and the Bill of Rights (Rosenberg & Williams, 1998, pp447). Other areas of human rights amendments should also extend to is immigration of boat people. In recent events the Liberal party have failed to effectively handle the issue of illegal immigrants coming to Australia. Written amendments should address problems of treatment and processing of the people.

Ultimately, in the end amendments are only successful if it has the full support of the nation. As already mention, awareness of the Constitution is lacking in today's society and greater education is required. Australians must be vociferous in their

opinions and ideas of a modern Australia. The government must open their ears to the pleas of its people. The nation must rise to its two own feet no longer binding to the British Empire. The head of state should be appointed by its own people democratically. Australians must engrave into its Constitution its best attribute: multiculturalism.

## References

Crean, S. 2003, *'Strategic amendments make for an empowered nation'*, The Australian, pp 11

Radio National Transcripts: The Law Report, April 29, 1997, Constituting Constitutions - Part 1, Part 2

Rosenberg, G.N. & Williams, J.M 1998, *'Do Not GO Gently into that Good Right: the First Amendment in the High Court of Australia'*, The University of Chicago.

Thomson, J. & Sarre, R. 2001, *'Butterworths Course Materials: Introduction to Law'*, Butterworths.

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