



RETHINK AUSTRALIA

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Author – Rodger Hills

Submission to the Senate Select Committee Inquiry into Reform of the Australian Federation

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Abstract

This submission by *Rethink Australia* makes fourteen recommendations to reform the Australian Federation including: 1) Improve our Federal Structure of Government; 2) Improve the Financial Arrangements of our Federal System; 3) Hold Deliberative Referendums; 4) Improve the Qualification, Disqualification and Entitlement Requirements of Members of Federal Parliament; 5) Recognise Local Government; 6) Embed Sustainability Principles; 7) Recognise Indigenous Peoples; 8) Create a Human Rights Bill; 9) Government Responsibility and Public Service Delivery Standards; 10) Create Civic Engagement and Non-Adversarial Political Processes; 11) Establish an Australian Republic; 12) Improve Commonwealth, State, Territory and Local Government Relations; 13) Adoption of Sustainability Principles by Regional Australia; 14) Create a Cooperative Regional Financial Market.

Keywords: federation, reform, constitution, referendum, political governance, federal system, deliberative referendums, members of federal parliament, local government, sustainability, indigenous peoples, human rights bill, government responsibility, public service delivery standards, civic engagement, non-adversarial political processes, Australian republic, government relations, regional Australia, cooperative financial market.

Introduction

This submission strongly supports the Senate Select Committee and its Inquiry into Reform of the Australian Federation. As a project with the mission of creating a modernised Australian Constitution, *Rethink Australia* welcomes the opportunity to comment on the need to review the effectiveness of Australia's Federation.

It is quite clear that there is a need to rethink how our Federation works (or as some would have it, doesn't work) so it can cope with the demands of the 21st century and meet the expectations of a modern Australian society. *Rethink Australia* proposes fourteen recommendations to the Committee that would help improve our Federation. While these recommendations appear extensive, they are in *Rethink Australia's* opinion, the bare minimum of changes necessary to improve the health of our democracy, yet much more could be done.

(b) (i) Distribution of constitutional powers and responsibilities between the Commonwealth and the states (including territories).

The Australian Constitution is noted for its comprehensive and generally robust Commonwealth/State provisions however, there is considerable room for improvement.

Recommendation 1 – Improve our Federal Structure of Government

- The Commonwealth grants the States of Australia the right to have their own republic constitution, independent legislative authority, laws and administration. However they shall remain subordinate to the Commonwealth and the Constitution, and have no independence other than that granted by the Constitution.
- Federal laws and regulations shall apply universally throughout the nation with no preference or penalty to any State, Territory or Local Government. Federal law takes precedent over State, Territory and Local Government law. States, Territories and Local Governments shall fulfill their duties flowing from this Constitution or resulting from federal laws. There shall be no duplication of laws, courts, jurisdictions or organs of executive administration by the Commonwealth, States, Territories and Local Governments. States, Territories and Local Governments shall have the power to legislate where this Constitution does not confer existing power or jurisdiction.
- On matters needing a coordinated national approach and commonality, the Commonwealth shall pass framework legislation for the States, Territories and Local Governments to legislate within.
- The States, Territories and Local Governments of Australia are a common market and there shall be no barriers to trade and commerce within Australia.
- The States, Territories and Local Governments shall ensure that workers are able to move freely and without prejudice or disadvantage within Australia and their training certificates, registrations, credentials, accreditations and qualifications gained in one State, Territory or Local Government Area shall have complete acceptance in all other States, Territories and Local Government Areas.
- The States, Territories and Local Governments shall make acts, records and judicial proceedings available to the public, one another and the Commonwealth and shall give one another legal and administrative assistance.
- The Commonwealth shall protect every State, Territory and Local Government from foreign invasion and from civil violence.
- Only on the combined consent of each affected legislature shall a:
 - a) State surrender property or assets to the Commonwealth.
 - b) Local Government or Territory become a State or a State become a Territory or Local Government Area.
 - c) New State, Territory or Local Government Area be created, existing ones merged or boundaries redefined.
- A Territory or Local Government Area may only advance to statehood after its population has increased past a threshold population to be determined by Federal Parliament. No State, Territory or Local Government shall secede from the Australian Commonwealth.

(b) (ii) Financial relations between federal, state and local governments.

The ongoing power struggle between our three tiers of government, particularly in relation to financial relations, needs to be resolved before many of the public services the public relies on can be properly delivered.

Recommendation 2 – Improve the Financial Arrangements of our Federal System

- The Commonwealth, States, Territories and Local Governments are autonomous and independent of one another in their budget management but together and in partnership, shall maintain the economic balance and competitive advantage of Australia.
- The Commonwealth may take over or manage State, Territory or Local Government public debt. The States, Territories and Local Governments where this occurs shall insure the Commonwealth for the debt and the interest payable on the debt shall be taken away from revenue payable to the State, Territory or Local Government.
- The Commonwealth shall not impose any tax on property of any kind owned by a State, Territory or Local Government. States, Territories and Local Governments shall gain their income from the Commonwealth Treasury or other commercial means and not create taxes, levies or duties.
- A State, Territory or Local Government shall carry out federal laws as directed by the Commonwealth and the Commonwealth shall provide the necessary funding to do so. Where a State, Territory or Local Government fails to comply with its duties, the Commonwealth shall enforce such compliance by federal compulsion in the form of binding instructions.
- The Commonwealth shall provide States, Territories and Local Governments with sufficient funds to preserve overall economic balance, equalise differences of economic capacities within the Nation, pay for public services, promote economic growth and for any other significant purpose. The States, Territories and Local Governments receiving funds shall: use them only for purposes for which they were provided; keep spending records and be audited annually by the Auditor-General.
- The Commonwealth, States, Territories and Local Governments shall use non-monetary means to attract and retain foreign investment in this Nation. No negative taxes, subsidies, gifts, industry handouts, rebates, kick-backs or other financial inducements shall be allowed.

(b) (iii) Possible constitutional amendment, including the recognition of local government.

The following recommendations address either areas of weakness in our Federal system of government, or where we have fallen behind international best practice.

Recommendation 3 – Hold Deliberative Referendums

The Constitution should be altered to allow for a Deliberative Referendum process. Deliberative Referendums are a legitimate alternative to both government-initiated and citizen-initiated referendum processes. However, they also have much wider application by allowing changes to government policy, departmental rulemaking, treaties, impeachment of public wrong-doers and other matters of public governance.

In overcoming the limitations of traditional referendums, Deliberative Referendums present a viable public participation process for a nation that currently has no means of engaging the public in deciding the nature and scope of constitutional changes that might be proposed from time to time. It would use citizens selected at random to serve in deliberative forums and could proceed as follows:

Step 1 - Community wants to: change the constitution; propose, change or remove a law, policy, treaty or rule; remove or impeach an elected representative. Electors sign a petition to make their commitment and their name public.

Step 2 - Australian Electoral Commissioner registers petition and initiates a Deliberative Forum/Citizens' Assembly. Randomly selected citizens hear from pro and con supporters of proposed change, panel experts and public submissions before deliberating on the change. After deliberation they can approve, modifying or reject the change.

Step 3 – If the change is approved or modified, the Legislative Counsel's office prepares the proposed law, policy, rule, treaty or constitutional change and the Australian Electoral Authority disseminates condensed proceedings of Deliberative Forum/Citizens' Assembly to all registered voters.

Step 4 - The Australian public at a referendum votes to accept or reject proposed law, policy, rule, treaty or constitutional change.

Recommendation 4 – Improve the Qualification, Disqualification and Entitlement Requirements of Members of Federal Parliament

QUALIFICATION FOR OFFICE

All candidates for election or appointment to office in the Federal Parliament, or to the board of a third party service provider to the public shall:

- Be natural born persons, citizens of Australia and over the age of 21.
- Be living and working in the electorate they represent for not less than three years before they run for office.
- Be in control of their full mental and emotional faculties and be in good physical health.
- Display the highest standards of ethical conduct in both their private and public lives and command a high level of respect and admiration from their peers and the public.
- Show consistent and distinguished service in responsible positions in the service of Australia or humanity at large.
- Display superior leadership, decision-making and administrative abilities, including taking responsibility for their decisions and actions and not claiming personal success for the efforts of others.
- Display a high standard of education and commitment to lifelong learning.
- Understand and wholeheartedly uphold the principle of the separation of powers, and demonstrate a detailed understanding of the Constitution as well as a complete commitment to the duties and responsibilities it demands.

DISQUALIFICATION FROM OFFICE

All elected or appointed officers of the Federal Parliament, or members of the board of third party service providers to the public shall not:

- Have been convicted of any serious crimes, corrupt practices or improper influence, by a court in Australia, another country or international jurisdiction.
- Be a judge or hold any other judicial office, be a member or employee of the Federal, a State, a Territory, or a Local Government public service, be a member of the Defence Force, be a member of any other Australian Parliament or legislature, be a member, officer or employee of certain public authorities or be a member any religious organisation.

Parliament has the power to disqualify members of the Parliament who hold interests which constitute a conflict of interest between their public duty and private interests.

On leaving office and for at least five years afterwards, no member of the Federal Parliament shall work for, be paid a fee, or represent any person or organisation that benefits from public money, is contracted to the Commonwealth, State, Territory, or Local Governments, or speculates on Commonwealth, State, Territory, or Local Government activity and policies.

ENTITLEMENTS

All elected and appointed officers of the Federal Parliament shall:

- Receive a salary, superannuation and any other entitlements equal to the average rates and conditions applicable to the wider Australian work force. They shall be paid by the Treasury and the rate of salary and entitlements will increase or decrease with movements of the Consumer Price Index.
- Be entitled to a government pension equal to the rates and conditions applicable to the wider national community when retiring at the age of sixty five.

Recommendation 5 – Recognise Local Government

Local Government is no longer just about traditional services like roads, rates and rubbish removal. It has a greatly expanded role due to state governments and, to a lesser extent, the Federal Government, handing over governance functions. The problem is that no extra funding has been forthcoming to allow local government to perform these extra functions. Most councils are facing a funding crisis where they are trying to meet this new demand by eating into funding reserved for traditional services and infrastructure maintenance.

This is a major problem that threatens the delivery of community services across Australia such as roads and childcare facilities.

Constitutional recognition of local government is needed so the Federal government can guarantee the direct funding of these important community services. Councils should not be treated as political footballs and left to survive on the scraps that state governments throw their way. They are expressions of Australia's long commitment to community democracy.

Recommendation 6 – Embed Sustainability Principles

We need industries that provide environmental, economic and social benefits to the public and which secure Australia as an international model of sustainable practices and commerce. We need to protect our fragile environment and wisely use our resources. This means that Australia must come up with practical solutions to real world sustainability problems. We need constitutional safeguards that envision not only a better quality of life for all citizens, but that cannot be undermined by political apathy, greed or expediency. It is the Australian people who should set the standards that government and industry will work within.

Recommendation 7 – Recognise Indigenous Peoples

Indigenous people are not a minority within our society. Aboriginal and Torres Strait Islanders are a vital and respected part of the Australian community. Their ancestors were the original occupants and custodians, living on the land according to their own laws and practices, functioning the way any other sovereign peoples would with a system of informal 'nations', trade structure and economic activity.

Formal recognition of the First People by our Constitution will not only affirm the unique status of Aboriginal and Torres Strait Islanders within our society, but inspire generations of young Indigenous people to come, and help non-indigenous people to understand the significance and culture of the First People.

Our Constitution should reflect international conventions on Indigenous affairs, such as the UN Declaration on the Rights of Indigenous Peoples. It should align the fundamental sentiments which Australians of all origins hold in common. Formal recognition of Indigenous people in the Constitution will also help prevent the enactment of future legislation, rulemaking and policies that treat Aboriginal and Torres Strait Islanders unfairly.

Recommendation 8 – Create a Human Rights Bill

Rethink Australia recommends that individual rights and freedoms be protected under the Australian Constitution and that rights and freedoms already protected under the Constitution be extended and clarified. In this area particularly, Australia lags far behind international best practice like that demonstrated in the constitutions of other comparable federal systems, such as the United States of America and Canada.

Our lack of a constitutional Human Rights Bill is completely inconsistent with our official foreign policy of promoting human rights in other countries, our signing of various international agreements and covenants on human rights and being a major champion and architect of the Universal Declaration of Human Rights.

While we like to think of Australia as a tolerant society, significant inequalities exist throughout the community. A constitutional Human Rights Bill would formally establish the equality and dignity of people, no matter what their background, race, gender, religion or sexuality, while placing constraints on the exercise of executive power. Such a Bill would compel governments to be more sensitive to, and inclusive of the individuals, communities and organisations they serve.

Recommendation 9 - Government Responsibility and Public Service Delivery Standards

Australians increasingly expect more of government. Through the Constitution, citizens should be able to hold elected and appointed officials accountable to high standards of public service delivery in health, education, transport and so forth. These standards would not only improve the provision of services now, but would reflect the best way of running our public services in the future.

Like Service Level Agreements that are ubiquitous throughout the commercial sector, Public Service Delivery Standards would establish clear roles and responsibilities for a progressive relationship between government and the public.

The public would be able to set high standards of service and commitment for government, combined with the minimum standards offered by a Human Rights Bill. This would present government with a range within which to operate. At one end the government would have plans and accountability for achieving high standards. At the other end, there would be a set of punishments and consequences if it failed to meet minimum standards set by a Human Rights Bill. Ultimately, people would know exactly who was taking public responsibility, how they were doing it, and they would have the means to measure progress.

Recommendation 10 – Create Civic Engagement and Non-Adversarial Political Processes

At the moment Australia's political system is failing to make use of one of its most valuable sources of problem-solving talent and new ideas, the Australian public. As citizens we desperately need non-adversarial political processes where public policy, legislation and changes to the Constitution can be meaningful proposed and discussed by the wider community. Informed by a broad citizens' knowledge base, Australians want to be involved in public problem solving and government rulemaking. Such processes would require elected officials to 'share power' with citizens, take public advice and be transparently accountable for their actions.

Citizen deliberations have been tested and proven extremely valuable around the world for over two decades. During the past five years, citizen deliberations across multiple countries have also been implemented successfully in Europe. They are excellent at putting highly complex issues under the scrutiny of informed citizens. The experience of the last twenty years has shown that when ordinary people are given the opportunity and information to contribute to complex and contentious issues, they rise to the challenge.

Recommendation 11 – Establish an Australian Republic

Our British history and traditions are important, but the next natural step in Australia's evolving democracy should be to become a Republic. While keeping existing political safety mechanisms in place, we need a new vision of what we might aspire to as a Nation.

Recent polls have shown wide support for an Australian President directly elected by the people from a pool of well qualified and high calibre candidates. Other surveys have shown that Australians like the idea of a President with limited powers beyond those of the current Governor-General, who acted as an umpire on our form of government. Like a champion of the Constitution, with the ability to reject legislation, rules and policy that wasn't consistent with the Australian Constitution. Or the President could be given power to appoint ombudsmen and the heads of committees and investigative agencies like the ICAC (Independent Commission Against Corruption).

Today, in the 21st century our globally connected, modern society deserves a Republic which reflects our independent sovereignty; which meets internationally recognised standards of best practice; which sets high benchmarks for government; which both strengthens and clarifies the important role that citizens play in the life of the nation and which also mirrors faithfully our modern culture, principles, values and aspirations.

(b) (iv) Processes, including the Council of Australian Governments, and the referral of powers and procedures for enhancing cooperation between the various levels of Australian government.

The very fact that we have needed to invent non-constitutional inter-governmental agencies like the Council of Australian Governments (COAG) to resolve issues between the Commonwealth, State and Territory governments is the best evidence that our Federal system of government does not work the way it is supposed to. While COAG is a clever temporary work-around, the Australian public should understand that it is a poor substitute for real reform of our Federal system. However, since it is one of the few things that is actually helping to smooth Commonwealth, State and Territory relations and engender inter-governmental cooperation, *Rethink Australia* believes its task could be made easier by the following recommendation.

Recommendation 12 - Improve Commonwealth, State, Territory and Local Government Relations

- Significant national infrastructure developments proceeding in a State, Territory or Local Government shall have not less than eighty five percent of the development's funding provided by the Commonwealth and the remaining fifteen percent funded by the State, Territory or Local Government in which the development occurs.
- The Commonwealth shall not make any law restricting a State, Territory or Local Government's reasonable use of a natural resource except where the use deprives or interferes with a neighboring State, Territory or Local Government's use of the same resource, is not in the National interest, or is in contravention of the Constitution or federal law.
- If States, Territories or Local Governments become engaged in a dispute which is likely to endanger the peace, economic balance and competitive advantage of the Nation, the Commonwealth shall compel the parties to seek an immediate settlement. Settlement may be done by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other conflict resolution measures of the party's choice.

(b) (v) Strategies for strengthening Australia's regions and the delivery of services through regional development committees and regional grant programs

Regional Australia will have a difficult time meeting the challenges of the 21st century given the predictions of greater climatic unpredictability, sharply rising costs and reduced availability of fuel, increasing land salinity, and remoteness from infrastructure and markets. *Rethink Australia* believes the following recommendations could help regional Australia to meet these challenges.

Recommendation 13 – Adoption of Sustainability Principles by Regional Australia

- Cease all further land clearing, provide a financial or in-kind reward for farmers who take care of their land, and withdraw sub-marginal land from agricultural purposes and return it to its natural state.
- Ensure that agriculture uses self-sufficient, sustainable and market-oriented production processes that conserve the ecology and natural landscape while providing food to the Australian public that is wholesome and nutritious.

Recommendation 14 - Create a Cooperative Regional Financial Market

- Establish a cooperative market currency for rural and remote groups, Local Governments and regions to fund, manage and improve local conditions and services. The cooperative economies shall work in parallel with the financial-competitive economy and be based on social capital and non-monetary community transactions.
- Establish rural and remote People's Banks (not credit unions or building societies) that work on a not-for-profit basis in the best interests of the depositors and lenders with low administration fees, flexible services and low interest loans.

Conclusion

This submission recommends to the Committee a list of fourteen actions that would bring Australia's Federation into line with current community expectations, while future proofing it to anticipate and meet the needs of the community in the years to come.

References

Andrews, P. (2008). *Beyond the Brink*. Sydney, HarperCollins

For information about *Rethink Australia* see: <http://www.rethinkaustralia.org>

Hills, R. (2007). *The Consensus Artifact*. Sydney, Astro Projects

Commonwealth of Australia. (2003). *Commonwealth of Australia Constitution Act 1900*. Canberra

Roosevelt, F D. (2009). *Looking Forward*. New York, Simon and Schuster