

Lost Opportunities and Political Barriers on the Road to Constitutional Reform in South Australia

Clement Macintyre and John Williams*

This article is a study of the recent attempts to secure parliamentary and constitutional reform in South Australia through a representative Constitutional Convention held in August 2003. It examines the political context of this Convention from its political genesis at the hands of the independent Speaker of the House of Assembly though to the delivery of the final report to the Parliament. It is argued that the case for reform to sections of the South Australia Constitution, the electoral system and the administration of the Parliament is compelling, but concludes that the prospects of meaningful reform from this exercise are slight. The paper offers an assessment of the proposed changes and considers alternatives. It concludes by arguing that a representative convention is a less successful vehicle for securing constitutional reform and amendment than a process that emanates from, and is supported by, the principal political parties and the parliament itself.

Introduction

The Constitutional Convention held in Adelaide over the weekend of 8–10 August was the second South Australia Convention devoted to consideration of the State Constitution and the first held as a ‘Deliberative Poll’. The 2003 Convention came about as a result of the agreement between the Independent member for Hammond (Peter Lewis) and the ALP. In the aftermath of the State election of 9 February 2002, it became clear that neither of the main parties would be able to command a majority on the floor of the House of Assembly. Labor had been returned with 23 members in the 47 seat House, while the Liberal Party had 20 members. In addition, one National Party and three independents were elected. Given that the three independent MPs were either ex-Liberals, or loosely aligned with the Liberals and

* Dr Clement Macintyre, Politics, University of Adelaide and Dr John Williams, Law, ANU.

that they came from seats that had traditionally supported the Liberal Party, there was a fair expectation that the Liberal Government, under Rob Kerin would be returned, but dependent upon a larger group of independents.

This expectation was shattered when, just after 5.00pm on Wednesday 13 February, Peter Lewis announced that he would support a Labor government Manning, 2002; Stock, 2002; McCarthy 2003). Over the preceding few days, Lewis had conducted negotiations with both Parties and presented each of them with a 'Compact for Good Government' (Lewis 2002). Securing the support of both Parties for the same terms was a shrewd move by Lewis as it subsequently made it harder for the Liberals to attack the detail of the Compact. The Compact included a series of policy initiatives specific to Lewis's seat, as well as a demand that the Government must 'Facilitate Constitutional and Parliamentary reform by establishing a South Australian Constitutional Convention to conduct a review of the Constitution and Parliament' (Lewis 2002). In truth, neither Party was especially enthused by the idea of Constitutional reform, but it was a price that both were prepared to pay if it meant securing a working majority in the House of Assembly.

South Australia does not have a history of regular Constitutional Conventions. Prior to the August 2003 meeting, there had been only one other formal 'Conference' — a meeting of some MPs addressed by a number of academics held in 1981 (South Australia, Constitutional Conference 1981) It is fair to say that little in the way of real reform came from this. From the outset, the 2003 Convention was designed to be different in two clear respects. Firstly, it was given a clear agenda. The Lewis Compact had a series of quite specific reform proposals and the Convention was expected to deal with each of them. Secondly, it was to be a people's Convention in that it was to be preceded by a series of open meetings across the State and, most importantly, it was to be attended by a randomly selected sample of South Australians meeting as a Deliberative Poll.

In August 2002, the Premier, Mike Rann, opened a conference at the University of Adelaide on constitutional and parliamentary reform with an announcement that a convention would be held in mid 2003 (*Advertiser* 17 August 2002; Macintyre and Williams 2003). The processes associated with the convention were to be overseen by a parliamentary steering committee convened by Peter Lewis who had since been elected as Speaker of the House of Assembly. By late 2002 a small secretariat had been appointed and a 'panel of experts' assembled to produce a preliminary discussion paper. The steering committee set the panel the task of considering five questions that were relevant to the Lewis Compact. These were:

- citizen initiated referenda (CIR),
- the optimum size of the South Australian Parliament,
- the role and function of each of the Houses of the Parliament,
- measures to improve the accountability, transparency and functioning of government,

- the role of parties in the Legislative Council and the electoral systems used in the upper house and the House of Assembly.

The discussion paper was released in January 2003 (Constitutional Convention Secretariat 2003a). Over the next few weeks, the Speaker, the Attorney-General (Michael Atkinson, MP), the Shadow Attorney-General (Robert Lawson, MLC) and the President of the Legislative Council (Ron Roberts, MLC) toured the state and addressed approximately 2000 citizens at a series of ‘town and country’ meetings. A report based on the discussions at the meetings was prepared for the steering committee (Constitutional Convention Secretariat 2003b).

The Convention

By the time of the actual convention, the questions had been consolidated into four central issues. They were:

- measures to improve parliament and government,
- the size, structure and role of the upper house (Legislative Council) of the South Australian parliament,
- the size, structure and role of the lower house (Legislative Assembly),
- representation and The South Australian Electoral System.

The processes and methodology of the Deliberative Poll used to conduct the Convention is explored elsewhere (Lehman and Cavanagh 2003). This article will concentrate more upon the nature of the recommendations that came from the Convention and offer an assessment of the prospects for reform. Firstly, however, some general points bear making.

The Convention indicated that there is a fair degree of support for the broad terms of the existing political structures. In contrast to the expectations of some commentators — and in the face of a fairly regular campaign by the sole South Australian daily newspaper (*Advertiser*) — there was no clear call to reduce the number of MPs or to abolish the Legislative Council. Indeed, before the convention 57% thought the size of the House of Assembly was ‘about right’ and only 6% wanted it enlarged, but by the end of the Convention 50% reported that the House of Assembly should be expanded (Issues Deliberation Australia 2003 all subsequent figures are drawn from this source). Similarly, there was increased support for maintenance of the bi-cameral system.

Perhaps the one area that provoked a more radical proposal was the idea of citizen-initiated referenda (CIR). This was an idea that received considerable support from Peter Lewis in the lead up to the convention — and one that occasioned much debate over the Convention weekend. In fact the level of support for CIR in principle remained steady (from 65% to 64%) and no one clear preferred model

emerged. While delegates were generally of the view that any form of CIR should apply to both existing laws as well as to the initiation of new laws, there was a split over the preferred process with 37% supporting direct CIR (by-passing Parliament) and 49% in favour of indirect (decision ratified by Parliament) CIR.

It would appear that in addition to increased support for a bi-cameral system, the process of discussion and learning undergone by the delegates acted to improve their support for other aspects of the current models. For example, there was drift towards greater recognition of the effectiveness of the current system (from 54% to 67%) and of appreciation of the job done by MPs (from 66% to 83%). Similarly, the delegates started their considerations with a majority in favour of replacing the current model of State-wide PR for the election of Legislative Councillors with one based on a mixture of PR and direct regional representation (56% support), but by the end of the weekend the existing model had become the most popular with support moving from 35% to 62%.

However, when we turn to a finer consideration of the electoral systems, the figures suggest that the Convention was prepared to endorse some modest reforms. Two key areas of change were proposed. The first was a proposal to reduce the terms of members of the Legislative Council from eight years to four years (supported by 75%). This would mean electing all 22 MLCs at the same time and reducing the quota for election from approx 8.3% to just over 4%. Conventional wisdom suggests that the lower the quota, the easier it is for small parties to be elected. Yet despite this, there is evidence to suggest that overall balance of the Upper House would be unlikely to change. Given the pattern of votes in recent South Australian Legislative Council elections, it is by no means clear that minor parties would increase their representation. Moreover, even if they did, this would merely reinforce, rather than challenge, the existing pattern in which no government has been able to win a majority of seats since the mid-1970s. The second electoral issue was support for optional preferential voting along the lines operating in New South Wales and Queensland. While the exact consequences of this can again only be guessed, it is fair to assume that while it would tend to diminish the influence of minor parties, the specific mix of parties in South Australia is such that the fracturing of the non-Labor vote that has assisted the ALP elsewhere (especially Queensland) would be less evident in South Australia.

There was also a series of more general outcomes from the Convention that relate less to the specifics of the questions posed. Among other matters, the delegates endorsed the idea of an independent Speaker (from 76% to 84%) though they were unable to suggest a model to ensure this, they also called for improvements to Question Time and made the case that there should be more and better education about politics in general and the Parliament in particular. While no specific solutions were posed in relation to these issues, each of them indicates a level of dissatisfaction with the current arrangements. Whether this amounts to a measurable democratic deficit is open to debate, but there can be no argument that it indicates a level of distance from the key democratic institutions.

In February 2004 a small number of the delegates re-assembled in the House of Assembly and endorsed a 'final' Report' of the Convention. This contained five draft Bills that would give effect to three substantive recommendations: the introduction of four year terms for the Legislative Council, CIR and optional preferential voting (Report of the Delegates 2004). Whether both houses will pass any of these Bills is not yet clear. The early indications are that the first of these proposals may be supported, but there are real doubts that either CIR or optional preferential will receive anything more than minimal support. Similarly, at the time of writing it appears unlikely that any other significant reforms will be realised as a result of the Convention. Before addressing a number of possible reforms we would like to address a significant element of the proposed reform agenda. That is the question of the CIR and the possible constitutional questions that it raises. In doing so it should be made clear at the outset that there is no intention to enter into the debate as to the merits or otherwise of the proposed reform. Others have argued that it is entirely consistent or inconsistent with our form of responsible government (Walker 1987 and 2003; Hill 2003). The focus here is to consider the narrower issue of any constitutional impediments to the proposed changes in South Australia.¹

Constitutional Implications

The relationship between the Commonwealth, State and United Kingdom constitutions and parliaments is a starting point in any discussion of authority and capacity of Australian parliaments to bind or reinvent themselves. There remains a debate as to what is the authority of the Australian Constitution. Is it the merely the authority of the Imperial Parliament of 1900 or has evolution of the Australian nation meant that sovereignty now resides in the Australian people? This point, which is of significance for Commonwealth constitutional law, is less prominent when discussion turns to the States. The emergence of the colonies as self-governing after 1850 was bolstered by the passage of the *Colonial Laws Validity Act 1865* (Imp). This Act attempted to cure not only the heretical views of Justice Boothby but to provide further liberation to the Colonial parliaments.

A feature of the *Colonial Laws Validity Act* and the *Australia Acts 1986* (Cth) and (UK) that superseded it was the ability of the States to entrench certain constitutional provisions. The passage by the Imperial and Commonwealth Parliaments of these virtually identical Acts was at the request of the States.² Section 5 of the *Colonial Laws Validity Act* provided that colonial parliaments had 'full Power to make Laws respecting the Constitution, Powers, and Procedure of such Legislature; provided that such Laws shall have been passed in such Manner and Form as may from Time to Time be required by any Act of Parliament'. Section

¹ In writing this section we have been greatly assisted by the work of Chris Bleby, Rebecca LaForgia and Laura Grenfell. See Bleby *et al* 2004.

² This article focuses solely on the Australian version given the High Court's treatment of it as the relevant Act to secure the Act's operation.

6 of the *Australia Act* (Cth) replicates in similar terms section 5 of the *Colonial Laws Validity Act*. The so-called ‘manner and form’ provisions have been a feature of State Constitutions and have been prominent in litigation regarding the abolition of upper houses in the States and more recently in Western Australia with proposed amendment to the electoral system (*Attorney-General (NSW) v Trethowan* (1931) 44 CLR 395; *Attorney-General (WA) v Marquet* [2003] HCA 67). Whilst there has been some discussion as to the source of legislative authority for the Australia Acts and the power to achieve their end (*Port MacDonnell Professional Fishermen’s Assn Inc v South Australia* (1989) 168 CLR 340 at 381), it appears that the theoretical questions regarding their authority has now been put to rest.

Beyond the ‘manner and form’ provisions of section 6 of the *Australia Act* (Cth) there remains a further, though not unrelated, limitation upon the manner in which States may entrench provisions. In light of the decision in *Marquet*, the principle in *Bribery Commissioner v Ranasinghe* [1965] AC 172 is no longer considered applicable to the abdication question in the operation the States’ legislative capacity. As the majority said in *Marquet*:

the express provisions of s 6 can leave no room for the operation of some other principle, at the very least in the field in which s 6 operates, if such a principle can be derived from considerations of the kind which informed the Privy Council’s decision in *Bribery Commissioner v Ranasinghe* and can then be applied in a federation. (*Attorney-General (WA) v Marquet* [2003] HCA 67 [80])

However, it is now well established that State legislatures cannot abdicate their legislative authority to another entity. Famously, in *In Re The Initiative and Referendum Act* (1919) the Privy Council held as invalid an Act that purported to establish as system of citizen referendum ([1919] AC 935). Speaking for the Council Viscount Haldane noted that a Provincial Legislature may entrust some authority or seek assistance from a subordinate body but it could not ‘create and endow with its own capacity a new legislative power not created by the Act to which it owes its own existence. Their Lordships do no more than draw attention to the gravity of the constitutional questions which thus arise’ ([1919] AC 935, 945). Though it is a fine line between delegation of authority and abdication, the Courts have consistently stressed the distinction. For instance, in *West Lakes Ltd v South Australia* (1980) Chief Justice King stated that the compliance or approval of an extra-parliamentary body, such as a company or (to take the extreme example) the governing body of a political party, would amount to ‘a renunciation *pro tanto* of the lawmaking power’ ((1980) 25 SASR 389, 398).

These two related, though distinct features of State constitutional law — the manner and form and delegation/ abdication distinction — lead to a consideration of the role of the citizen initiated referendum proposals. The South Australian *Constitution Act* 1934, like many State Constitutions, has a number of doubly entrenched provisions. For example, section 10A requires a referendum in the case of an act that would attempt to abolish the House of Assembly, the Legislative Council or alter the ‘powers’ of the Legislative Council. These provisions are clearly entrenched as they

deal with 'the constitution, powers or procedure' of the South Australian Parliament (*Australia Act 1986* (Cth), s 6).

The Direct Democracy (Citizen-Initiated Referendums) Bill 2004 establishes a system of petitioning, verification, referendum and enactment of Acts initiated from the electorate.³ The Electoral Commissioner, who is charged with the registration of petitions, must not do so when the petition; deals with two or more unrelated issues, 'affects the rights or liabilities of a named person', provides for the appointment or removal of a person from public office or is inconsistent with the Australian Constitution or a Commonwealth law (Direct Democracy (Citizen-Initiated Referendums) Bill 2004 Clause 7(2)(b)(i)-(iv)). Under the Schedule of this Bill, Clause 7 is subject to entrenchment under Section 6 of the *Australia Act* (Cth). This, of course, remains the contentious constitutional issue inasmuch as these provisions may not classically relate to the 'constitution, powers or procedure of the Parliament of the State' (*Australia Act 1986* (Cth) s 6). In relation to the issues mentioned above, the Act inasmuch as it creates an opportunity to amend the Constitution, by the enactment of an inconsistent Act (such as to change the powers or abolish the Legislative Council) would need to comply with the entrenched provisions in the State Constitution.

Further, the Bill inasmuch as it creates an extra-parliamentary body does not appear to offend the strictures of *In Re The Initiative and Referendum Act*. A Bill approved by the people at referendum is, according to clause 27 (2) 'a request to the Governor that the Governor assent to the approved law'. Leaving to one side the political ramifications, a Premier could, at this point advise the Governor to withhold her consent. This issue is highlighted by the conflict between the traditional notion of responsible government and the reforms supported by the proponents of citizen initiated-referenda, where the Governor might be confronted with competing advice from the Premier and the people, indirectly through the Parliament (Direct Democracy (Citizen-Initiated Referendums) Bill 2004 clause 35). Notwithstanding this point, the amendment of a constitution or acts by popular referendum is a feature of modern constitutional law and would not amount to an abdication of the legislative authority of the Parliament.

Further support for the argument that this Bill represents a delegation rather than an abdication of authority is found in the fact that an Act passed under system becomes as if it is an Act of the Parliament. Clause 35 states:

35—Effect of approved law

(1) A law approved by electors at a referendum and assented to by the Governor under this Act will be taken to be an Act of the Parliament of South Australia for the purposes of any other Act or law (and may then be subject to the operation of a subsequent Act of the Parliament).

³ As at April 2005, this Bill is still before the South Australian House of Assembly.

(2) A law approved by electors at a referendum may itself effect amendments to an Act of Parliament (including an Act within the ambit of subsection (1)).

(3) An irregularity in compliance with a provision of Part 2 does not affect the validity of a law approved by electors at a referendum and assented to by the Governor under this Act.

Thus Parliament retains supervision of the Act and may by ‘subsequent Act of the Parliament’ amend or repeal the citizen initiated Act. Again leaving aside the political dimension it is reasonable to suggest that this aspect indicates a mere delegation of authority.

If the most that the processes of the Constitutional Convention can generate is this (at best) modest level of reform, then it is fair to conclude that the Convention should be seen as an opportunity lost. At the same time, if as it seems clear, there is a need to improve the standing of Parliament and of politicians in the eyes of the electorate, how might this be achieved? Firstly, the prime consideration in any proposals for reform must be that they start from the premise that accountable, open and transparent government should be the goal. Secondly, that the best way to secure accountable, open and transparent government is to equip the Parliament with sufficient means to keep the executive accountable. With these thoughts in mind, the following the following reforms are offered for consideration.

The Independence of the Parliament

The Parliament needs to secure an independent appropriation of funds. If the Parliament is to have — and be seen to have — the capacity to hold the government of the day accountable, then it needs to be in charge of its own budget insofar as it relates to the administration and resources of the Parliament (not the remuneration or benefits of Members, which are properly a matter for the Government and independent tribunals to determine as appropriate). If the Parliament has genuinely independent control over its budget, then its capacity to resource committees, research services, the Library and the like would enable effective scrutiny of the government and would act to emphasize the independence of the legislature.

Committees

The Parliament needs a viable Committee system. For committees to work, they need to have sufficient resources. At present South Australian committees have the *legal* capacity to undertake significant and far-reaching investigations and, for instance can compel witnesses to attend (*Parliamentary Committees Act 1991*, ss 16 and 28). However, this legal capacity must always be viewed against the reality that the Committees are regularly dominated by members of the governing party. For instance, while section 16 allows ‘Any matter that is relevant to the functions of a Committee’ to be investigated, that process must be first initiated by ‘by resolution

of the Committee's appointing House or Houses, or either of the Committee's appointing Houses; ... or by the Governor, by notice published in the Gazette; ... or of the Committee's own motion' (*Parliamentary Committees Act 1991*). Yet, where a government has a majority of the members of a Committee, this power can be, and is abused. The requirements should be relaxed so as to allow a mover and seconder to place a matter on the agenda of a Committee. Similarly, consideration should be given to the practice of some other Parliaments whereby some Committees are chaired by the Opposition.

The threshold of support for the establishment of Select Committees should be reduced from a majority of the House (which can simply mean it remains a power of the government of the day) to a smaller percentage of the members (say 30 per cent). As the government can rarely, if ever, expect to control the Legislative Council the current arrangements tend to disadvantage Members of the House of Assembly when compared to Members of the upper house. Moreover, the functions of the existing Legislative Review Committee should be expanded so that it receives all legislation prior to the Second Reading speech. Bills could be considered for language, manner and form and structure and be rectified in a less partisan environment than the House. This Committee should also identify the key, contentious issues for debate in the House and request the Minister to deal with these in the Second Reading Speech. The outcome of this proposal would be a system in which the routine matter of technical revisions to bills would be dealt with in a less contested manner and the House of Assembly would concentrate its debates on matters of substance.

Further reforms should include a significant increase in the level and quality of research support for committees and consideration of a recent recommendation to the British House of Commons that parliamentary committees remain in existence to monitor the implementation of their reports (House of Commons Select Committee on Liaison).

Deadlock Provisions

Deadlocks between the lower and upper houses of parliament appear to be a perennial subject of reform in Australia. A proposal to reform of section 57 of the Commonwealth Constitution and to streamline deadlock provision was released in 2002 (Department of Prime Minister and Cabinet 2002). The outcome of the subsequent discussion appeared in 2004 (Department of Prime Minister and Cabinet 2004). Despite this, it remains doubtful whether this reform will in fact be put to the people at referendum.

The South Australian deadlock provision is contained in section 41 of the Constitution and makes provision for the calling of an election, after meeting the requisite conditions, by the Governor when there has been a deadlocked Bill (Section 41 (a)-(f); Jaensch 1986, 366-74; Selway 1997, 54). Curiously, as well as

requesting an election the Government may attempt to swamp the Legislative Council by advising the Governor to ‘issue writs for the election of two additional members for each Council district’ (Section 41). Prior to such dramatic action the houses have through Standing Orders attempted to negotiate deadlocks through a system of conferences between the managers of the respective houses (South Australia House of Assembly Standing Orders 218–28).

While the current system appears to be working it can be contrasted with more prescriptive provisions in other jurisdictions. Moreover, the ‘swamping’ provision appears to be something of a dead letter when seen against current political realities. Some reform may be necessary given to the current provision when seen against the backdrop of fixed terms and upsurge in independents in the upper house.

Electoral Reform

In addition to support for four-year terms for the Legislative Council, the current system of proportional representation that operates for elections to the upper house should be entrenched in the Constitution. It is clear that proportional representation tends to produce parliaments with a more diverse range of parties. In the Australian context it is generally the case that proportional representation in at least one of the chambers of the Federal or State Parliaments allows small parties a level of representation that they would not otherwise win and thus tends to deny governments a clear majority in both houses. If the parliament is to have the capacity to act as a check upon the executive, then it is often only in the upper house that this can be achieved.

In South Australia some review of the ‘fairness clause’ is also appropriate. As it stands, the fairness clause requires the South Australian Electoral Boundaries Commission to redraw boundaries after every election in a way that

as far as practicable, ... the electoral redistribution is fair to prospective candidates and groups of candidates so that, if candidates of a particular group attract more than 50 per cent of the popular vote (determined by aggregating votes cast throughout the State and allocating preferences to the necessary extent), they will be elected in sufficient numbers to enable a government to be formed (*Constitution Act 1934* s 83).

While there can be no quibble with the idea of ‘one vote one value’, there is a problem with the fact that there is a requirement to re-distribute after *every* election. This can lead to regular confusion over boundaries and difficulties for Members who may ‘lose’ some of their electorate shortly after the election. Moreover, the system has been criticised because it is predicated upon the Commissioners’ ability to predict future voting patterns and fails to allow for independents and minor parties in the calculation of the two-party preferred vote (Sumner 2003, 27; Constitutional Convention Secretariat 2003a, 46). There are two possible means by which these problems might be minimised. One is to define the ‘communities of

interest' used as one of the criteria for re-distributions in a more considered way that would direct the Boundary Commissioners to give greater weight to keeping identified groups together in the one district. The other is to amend the section of the Constitution so that any re-distribution would occur every eight years (after every second election).

Bolder Constitutional Reforms

The current Constitution of South Australia has a perfunctory introductory preamble. Increasingly, preambles in Constitutions (such as South Africa's) serve an educative, aspirational and historical role. Consideration should be given to incorporating a preamble that will give expression to the shared historical, social and cultural values of the people of South Australia. One possible mechanism might be through a public competition for either a set of words or to define the values that should shape our principal political institutions. Any such a preamble could be a significant gesture towards reconciliation. Similarly, there could also be greater public involvement in the nomination and selection of the State Governor in a way that is consistent with current Constitutional arrangements. For example public nominations could be considered and scrutinised by a public Committee with recommendations forwarded to the Premier.

Conclusion

The fact that these — and other possible reforms — did not emerge from the Convention should not surprise. At one level, some of the issues discussed above are fairly abstract and to ask a representative sample of the South Australia population to develop an expertise of sufficient depth to reflect upon them with real meaning is, perhaps, an unreasonable expectation. It is also true that there was little incentive for many of the politicians engaged in the Convention to push these issues. For the government there was little incentive to assist the legislature to maintain scrutiny over the executive. Across Australia it is generally the case that any enthusiasm a party may have for reform while in opposition tends to wane once they make the move to the Treasury benches. So while the ALP had raised various reform issues during its time in Opposition, and while it was prepared to fulfil its commitment to Peter Lewis to hold a Convention, there was never any undertaking that as a government it would become an active sponsor for change. During the tours of the State the Attorney-General admitted that the Government would not have considered Constitutional reform had it not been forced to it. For their part, the Liberal Opposition in South Australia combined some natural 'reform caution' with considerable resentment towards Lewis (an ex-Liberal who had installed a Labor government). Despite a fair degree of willing co-operation from the Shadow Attorney-General, there was never likely to be strong support for the process while the Convention was seen as Lewis's creation.

So where does this leave any consideration of the role of Parliaments as sponsors of Constitutional reform? On the one hand, the experience of the 2003 Constitutional Convention in South Australia demonstrates that unless there is a level of bi-partisan support there is not much prospect of real reform. At the same time, it cannot be denied that the process of broad community consultation undertaken ahead of, and as part of the recent Convention acted to stimulate interest in possible reforms. Clearly, there is some mood for change in parts of the electorate, but to what and how remains part of the conundrum. If the Parliament is able to discern this mood and initiate appropriate changes, then it may go some way towards restoring some of the declining faith in our democratic institutions.

While the Convention showed that there was broad endorsement of the structure and general arrangements of the Parliament and related institutions, it also indicated that there was clear support for a range of measures that would act to improve the transparency and accountability of them. However, the Convention was unable to suggest a means by which proposed reforms might be accepted by the Parliament. For its part, the Parliament has so far been unable, or perhaps unwilling, to articulate which of the reforms it believes to be appropriate and achievable and it is this threshold matter that remains the greatest barrier to reform (though it risks further disaffection of the population if appropriate and sensible reforms are not placed squarely on its agenda). There is little prospect of significant constitutional reform or revision to parliamentary procedure unless the Parliament itself is open to reflection upon its processes, and open to some consideration of change. In other words, the Parliament will not change until it wants to change.

The task for reformers is to convince the Members (and the Government) that certain reforms are worthwhile and should be accepted. Here the Convention may be of some use. When the causes of some of the most significant recent reforms in the South Australian Parliament are considered it can be seen that it was public opinion (albeit opinion led by articulate advocates of reform like Dunstan) that pushed the Parliament along the road to change. The acceptance of three significant electoral reforms: the ending of the malapportionment generated by the rural weighting of votes for the House of Assembly; the acceptance of universal suffrage for elections to the Legislative Council; and the entrenching of the 'fairness clause', were all motivated by campaigns arguing that the maintenance of the status quo was unacceptable. Perhaps, if the mood for reform generated by the Convention can be maintained and encouraged, there is some prospect that the Parliament of South Australia may, in time, recognise the need to embrace those reforms that will improve its transparency and accountability. Until then it stands a pace behind other jurisdictions that have undertaken significant steps to modernise their colonial heritage. ▲

References

- 'Report of the Delegates to the South Australian Constitutional Convention 8–10 August 2003', available at <http://www.constitutionalconvention.sa.gov.au/main.php?page=repdel>
- Advertiser*, 17 August 2002.
- Attorney-General (NSW) v Trethowan*, 1931, 44 CLR 395 and *Attorney-General (WA) v Marquet* [2003] HCA 67.
- Attorney-General (WA) v Marquet*, 2003, HCA 67.
- Australia Act 1986* (Cth), s 6.
- Bleebey, C, LaForgia, R and Grenfell, L., 2004, 'Citizen Initiated Referendums and Parliamentary Supremacy', *Law Society Bulletin of SA Inc.*, vol. 26.
- Lehman, M. and Cavanagh, P., 2004, 'The Parliament and the People and the Role of Deliberative Polling in the South Australian Constitutional Convention', paper delivered at ASPG Conference, Perth, May, and this volume.
- Constitutional Convention Secretariat, 2003a *Discussion Paper*, <http://www.constitutionalconvention.sa.gov.au/main.php?page=discussionpaper>
- Constitutional Convention Secretariat, 2003b *Report on Meetings*, <http://www.constitutionalconvention.sa.gov.au/main.php?page=townandcountry>
- Department of Prime Minister and Cabinet, 2002, *Resolving Deadlock: A Discussion Paper on Section 57 of the Australian Constitution*, <http://www.pmc.gov.au/conschange/>
- Department of Prime Minister and Cabinet, 2004, *Resolving Deadlocks: The Public Response*, <http://www.pmc.gov.au/conschange/>.
- Direct Democracy (Citizen-Initiated Referendums) Bill 2004, http://www.parliament.sa.gov.au/Internet/DesktopModules/Display.aspx?CALLER=habills_search.htm&IS_QUERY={phrase}direct%20democracy{/phrase}&IS_PAGE_SIZE=20&SEARCH_PAGE=habills_search.asp&DOC_INDEX=2&HIGHLIGHT_HITS=True&RESULT_COUNT=2&DOC_URL=http://www.parliament.sa.gov.au/catalog/habills/504/50-04-025.htm&DOC_TITLE=
- Hill, L., 2003, 'Democratic Deficit — Is Citizen Initiated Referendum a Solution to a Problem that Compulsory Voting has Already Solved?', C. Macintyre, and J. Williams (eds), *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, Wakefield, Adelaide, pp. 133–49.
- House of Commons Select Committee on Liaison, 2000, *Shifting the Balance: Select Committees and the Executive* First Report, March, para 52.
- In Re The Initiative and Referendum Act*, 1919, AC 935.
- Issues Deliberation Australia, 'South Australia Deliberates: The Future of Our Parliament: Final Report to Parliament', 29 October 2003, available at http://www.constitutionalconvention.sa.gov.au/pdf/finalreport/final_report.pdf
- Jaensch, D., 1986, 'Parliament and Government' in D. Jaensch (ed.), *Flinders History of South Australia — Political History*, Wakefield, Adelaide, pp. 366–74.
- Lewis, P., 2002, *Compact for Good Government*, February. Available at www.constitutionalconvention.sa.gov.au
- Macintyre, C, and Williams, J., (eds), 2003, *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, Wakefield, Adelaide.

- Manning, H., 2002, 'South Australia: January to June 2002', *Australian Journal of Politics and History*, 48(4): 576–83 December.
- McCarthy, G., 2002, 'The Revenge of the Legislature: The South Australian Election of 2002', *Australasian Parliamentary Review*, 17(2): 22–34.
- Port MacDonnell Professional Fishermen's Assn Inc v South Australia*, 1989, 168 CLR 340 *Constitution Act 1934 (SA)*.
- Selway, B., 1997, *The Constitution of South Australia*, Federation Press, Sydney.
- South Australia House of Assembly Standing Orders 218-228.
- South Australia, Constitutional Conference, 1981, *Proceedings of the South Australian Constitutional Conference*, Parliament House, Adelaide, 27 and 28 November 1981, Government Printer, Adelaide.
- Stock, J.T., 2002, 'The South Australian Election of 9 February 2001', *Australian Journal of Political Science*, 37(3): 537–46.
- Walker, G. de Q., 2003, 'Direct Democracy — Advantages and Options for South Australia', in Macintyre, C, and Williams, J., (eds), *Peace, Order and Good Government: State Constitutional and Parliamentary Reform*, Wakefield, Adelaide, pp. 104–26.
- Walker, G. de Q., 1987, *Initiative and referendum: The People's Law*, Centre for Independent Studies.
- West Lakes Ltd v South Australia*, 1980, 25 SASR 389.