

## Foreword

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The Samuel Griffith Society's tenth Conference was held in Brisbane, and the papers delivered to it constitute the bulk of this Volume in its Proceedings, *Upholding the Australian Constitution*. The qualification derives from the inclusion also in this Volume of an Occasional Address delivered to the Society in Sydney last May by Professor Kenneth Minogue, on the topic *Aborigines and Australian Apologetics*. If these Proceedings had contained nothing else, they would have been worthwhile for that paper alone.

In fact, of course, these Proceedings contain a great deal else—namely the twelve papers delivered in Brisbane, together with the brief concluding remarks of the Society's President, the Rt Hon Sir Harry Gibbs.

As with all its predecessors, the Brisbane Conference dealt with a number of themes. In the aftermath of the Constitutional Convention held in Canberra last February, four papers provide various forms of post-mortem on that unhappy occasion. Despite the varying personal standpoints of the four authors (one of whom is a self-professed republican), all are united on one point: namely, that the malformed proposal which emerged from the Convention is not merely unsatisfactory, but positively dangerous—adding further, as it would, to the already excessive power which the Executive, and the Prime Minister in particular, now exercises within our constitutional system.

Four days after the conclusion of our Conference the federal Government launched its so-called “tax package”. That package includes provision for a Commonwealth-imposed goods and services tax (GST) which would worsen even further what students of our federal system call the “vertical fiscal imbalance” (VFI) between the taxing powers and the spending responsibilities of the Commonwealth and the States, respectively. Then, seventeen days later, the Prime Minister advised the Governor-General to dissolve the present Parliament so that a federal election may be held on 3 October, 1998.

As this foreword is being written, the election campaign is under way, and before these Proceedings are published early in November, we shall know the outcome. Suffice to say here that, against that background, the last three chapters in this Volume are directly relevant, not merely to the VFI issue, but to the issue of federalism more generally. As such, they go to the heart of the concerns to which, from the outset, this Society's efforts have been directed.

In particular, Professor Geoffrey Walker's paper on *Ten Advantages of a Federal Constitution* provides a heart-warming re-statement of the positive virtues of federal systems of government. In doing so, it reminds us of some of the reasons why in our increasingly centralised Australia today we have a growing sense of alienation between government in Canberra and the people — particularly those in the outlying States. At a time when political observers have been puzzling over the reasons for the rise of Pauline Hanson's One Nation party, Professor Walker's paper may provide the more disinterested among them, at any rate, with some clues.

In his concluding remarks to the Conference, Sir Harry Gibbs referred to “the undemocratic suggestion that judges should remedy the omissions of the legislatures”. Three of the papers in this Volume touch, in one way or another, on that issue. That by Dr John Forbes, examining in some detail the regrettably non-illustrious history of the Federal Court since its unnecessary creation two decades ago by the Fraser Government, is of particular importance, having in mind the prospective role for that Court laid down in the recently amended *Native Title Act*. It will be interesting to see whether the Court's pronouncements in that area prove to be as open to question as, say, its performance during the waterfront dispute earlier this year to which, *inter*

*alia*, Dr Forbes refers. As Sir Harry Gibbs said, quoting an English judge, Lord Reid: “Where Parliaments fear to tread, it is not for the courts to rush in”.

For the rest, it remains only to say that, like its nine predecessors, this Volume contains a wealth of material which deserves to be widely read, and widely debated. Like them, it is to that objective that it is dedicated.