

## Foreword

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The Samuel Griffith Society's eighth Conference was held in Canberra, and the papers delivered to it constitute this Volume in its Proceedings, *Upholding the Australian Constitution*. The excellent attendance was more than matched by the excellence of the speakers' papers - to the point where, despite the invidiousness inherent in such comparisons, it may be fair to say that this Volume even outranks its predecessors.

Be that as it may, the Conference was again focused around a number of themes. At a time when it was still expected that the 1997 Constitutional Convention would not be confined solely to the republic, the papers on the opening morning covered not only that issue, but also the States' role in the appointment of High Court Justices, the need for the States to be able to initiate constitutional referendums, and the need to repeal the "race power" of the Constitution (section 51(xxvi)).

The Government's subsequent decision to confine next December's gathering to discussing only the republic has, however, lent added importance to what can only be described as Sir Harry Gibbs' definitive paper on that topic, *A Republic : The Issues*. That paper, which might almost be regarded as a "primer" for those wishing to inform themselves on the matter, has been separately printed by the Society as a booklet for wider distribution.

The Government's unwise decision to restrict discussion at the December Convention will not render the other constitutional proposals which the Society has been discussing for some time (including in Canberra), any the less desirable, or any the less necessary to prosecute. While there is much to be said, in politics, for masterly inaction, proposals which have real intellectual force, such as the need to amend the "external affairs" power of the Constitution, or the need to provide the States with a means of initiating constitutional referendums, will not go away merely by being, for the time, ignored. Their time, assuredly, will come.

Indeed, even as this Foreword is being written, we are witnessing an example of that kind in the native title area. Ever since the High Court's *Mabo* judgment brought about a judicial (read, legislative) revolution in June, 1992 on the nature of land title in Australia, more far-sighted observers have been pointing out the two most obvious consequences of that decision : the decline it would produce in public respect for the High Court, and the sharp deterioration it would produce in the relationship between Australians of Aboriginal descent and the rest of us.

When, eighteen months later, the Keating Government rammed through the Parliament its *Native Title Act*, to the applause of the Canberra Press Gallery assembled in the Senate for the occasion, the same observers again pointed out the quantum leap this would produce in the pace of deterioration of that latter relationship.

When, on the eve of Christmas Eve last year, the (somewhat differently composed) High Court again exercised what nowadays passes for its judgment in the *Wik* case, those same observers (by this time joined by a growing host of others) pointed out that this development, unless dealt with quickly and decisively by the Howard Government, would produce outcomes which would make the so-called "Pauline Hanson debate" look like a Sunday School discussion.

All these facts notwithstanding, for over three months now the Government has continued to refuse to face the bull : prevarication, `soothing' statements, the flying of one maladroit kite after another to a (still unrepentant) Canberra Press Gallery, these have been the "decisive" actions of

a Government with the greatest majority in over 60 years. Yet, like those constitutional questions referred to earlier, the bull has not gone away, nor will the feelings it is arousing throughout Australia now be assuaged by anything which falls short of resolutely taking it by the horns.

As to the outcome, we shall see - I hope, before this Volume appears. Meanwhile, however, as Mr S.E.K. Hulme, QC said, in introducing his paper herein on *The Wik Judgment*:

"I suppose that at no time after 1788 was there greater goodwill towards Aborigines throughout the whole of Australia, than at the time of the constitutional amendment of 1967  
.... .

"No politician dares say so, .... ; but I fancy that [today] general community goodwill towards Aborigines is also at its lowest since 1967."

Mr Hulme's paper apart, two other papers in this Volume, by Dr John Forbes (*Amending the Native Title Act*), and by Mr Roger Sandall (*An Australian Dilemma : Reconciling the Irreconcilable*) gave us further clues about that deterioration in "general community goodwill towards Aborigines", particularly in recent years. As our President, Sir Harry Gibbs, said in his concluding remarks:

"The relationship between the majority of Australian citizens and those of Aboriginal descent is perhaps the greatest cause of division in Australia today ....

"Mr Roger Sandall went to the heart of the problem. The claim made by some that the Aboriginal people should have the best of two irreconcilable worlds, and should have the financial benefits which a developed society can provide, and yet enjoy special privileges because they are Aboriginal people, lies at the base of the conflict that is arising in our society today."

Everyone wishing to inform themselves, not only about that conflict, but also about the many other issues of importance to Australia's future with which this Volume deals, will find much to interest them in it. It is to that objective that, like its seven predecessors, it is dedicated.

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