

The South Australian Constitutional Convention: Why did it fail?

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Introduction

The South Australian Constitutional Convention was held over the weekend of 8-10 August 2003. The brainchild of the Independent Member for the House of Assembly seat of Hammond Peter Lewis, the convention's purpose was to examine reform to a number of areas of the South Australian Constitution. In the days following the 2002 South Australian election, Lewis found himself in an unexpected position to influence the policy of the Government. He used this influence to gain Government support to hold a Constitutional Convention to examine changes to the Constitution in a range of areas that he thought needed reform. This paper will examine why the Constitutional Convention failed to secure any changes to the South Australian Constitution, even though the delegates to the Convention endorsed a range of reforms.

Before proceeding further, it is worth taking the time to define success and failure in terms of Constitutional reform programs. At its most basic, the success of a Constitutional reform program is defined in terms of whether the stated objectives for that reform program were achieved. This is the most useful definition to use because it is objective. Based on this, the South Australian Constitutional Convention clearly failed. The purpose of the Convention was to investigate a series of reform proposals, with a view to enacting those that received majority support. The reforms were never enacted, and so the Convention was unsuccessful.

Having defined how success or failure can be measured, a model of how a successful Constitutional reform program should be conducted will be proposed. This model is designed with the South Australian Constitutional Convention in mind, in which referenda were going to be required to introduce some of the changes. In a Constitutional reform program not requiring referenda to introduce changes, the design and priorities would be different.

Several factors have to exist for Constitutional reform to be successful. A desire for change has to be created at both the parliamentary and the popular level. Without this majority support, the Constitutional reform program will fail.¹ It has also been shown that reform will fail at the referendum stage in the face of divided opinion from political parties. It is thus necessary for the political parties to reach a consensus view on the reform proposals if they wish to see them enacted.²

Popular engagement is important to the success of a Constitutional reform program. If the public are not engaged in the process they will feel no attachment to it and will develop apathy which could turn into cynicism.³ In the face of this, it would be hard for the reform program to win approval at the referendum stage. To encourage popular engagement, the public should be provided with information on the reform program. This education on the reform program is important, as McMillan, Evans and Storey indicate:

At the end of the day, constitutional reform will occur in Australia, even with major party support, only if the electorate approves of it ... What this presupposes is some educated understanding of why constitutional reform in Australia is important, a recognition of the issues involved, and a lowering of the barriers of suspicion about the process of change.⁴

The public should have the opportunity to contribute to the reform process, for example, through participation in community meetings where they are presented with the opportunity to express their views. The public should also be consulted more formally through the acceptance of submissions relating to the Constitutional reform program.⁵

Finally, the terms of reference to the body considering Constitutional reform should be relatively open, and should leave that body room for interpretation, and the ability to debate the best solutions to the Constitutional issues with which they have been presented. The terms of reference should be expressed

in terms of outcomes or purpose. In other words, the terms of reference should have an eye to the problems perceived with present arrangements or the goals to be accomplished rather than limiting the process of examination of particular proposals for change, which may or may not achieve the desired result.⁶

The 2002 Election and its Aftermath

On 9 February 2002 the people of South Australia voted in a state election. The results of the election left neither the Liberal nor Labor parties with a majority of seats, the Labor Party holding 23 seats, the Liberal Party 20 seats, the National Party one seat, and Independents three seats.⁷ Peter Lewis, the Independent member for the seat of Hammond saw in this an opportunity and pledged his support for formation of government to whichever party would agree to his Compact for Good Government, a charter he had drawn which among other things called for a Constitutional Convention to be held to examine areas in which the South Australian Parliament might be reformed.⁸

A process of negotiation ensued during which both the Labor and Liberal parties signed the Compact, leaving Lewis free to choose which of the parties to support. He chose to support a Labor government due to numbers. Had he supported the Liberal Party, he believes that the Government would have lasted only as long as it took the Labor Party to convince one of the other Independents to support them. If this happened, then Lewis would have held no power to see that the Constitutional Convention occurred. To him supporting the Labor Party presented the only chance of reforming the Constitution.⁹ Thus the Labor Party gained government, and was also bound to the Compact, Lewis having made it clear that his continued support was contingent upon the Government continuing to act in accordance with the Compact.

In November 2002, the Government strengthened its support by making the Independent MP, Rory McEwen, a Minister. This move was strategically very important, as it gave the Government a working majority even if Lewis decided to shift his support to the Liberal Party, and this has ramifications for the events to follow.¹⁰

The development of the Constitutional Convention

A conference regarding the reform of the South Australian Constitution was held at the University of Adelaide on the weekend of 17-18 August 2002. The conference was opened by a declaration from Mike Rann that a convention to examine the reform of the South Australian Constitution would be held sometime in the next year, in

accordance with the Compact for Good Government. The papers presented at the conference focused on many of the areas of reform that were eventually examined in the Constitutional Convention.¹¹ Thus, this conference presented the groundwork upon which much of the rest of the process built. However, there has been some criticism of this process. Leigh Gollop was one of the people who attended the conference, and in a paper on the subject, he expressed concern at the composition of the conference. This concern stemmed from the fact that the conference was comprised of academics and political figures. He feared that this would lead to a program of Constitutional reform that was not endorsed by the people of the state, and one that they would see to be beyond them, an issue that they did not need to try to comprehend.¹² This was going to be one of the challenges that faced the Convention, the need to get the citizens of the state feeling that they had ownership of the issues that were being discussed.

Following the announcement at the conference, a Parliamentary Steering Committee was convened and was given the duty of organising the Convention. The Parliamentary Steering Committee was bipartisan and was chaired by Peter Lewis.¹³ The Parliamentary Steering Committee worked to further define the issues that Lewis had raised in his Compact for Good Government. Next formed was the Constitutional Convention Secretariat. This was an executive body that consisted of the “Constitutional Convention Project Manager, a Senior Public Affairs Manager, a Legal Adviser and Administrative Assistants.”¹⁴

The Discussion Paper

One of the first decisions made was to have a Constitutional Convention Discussion Paper drafted. To do this, a Panel of Experts in Parliamentary and Constitutional Reform was assembled, chaired by Dr. Clement Macintyre.¹⁵ The Discussion Paper prepared by the Panel of Experts addressed the five areas in which the Parliamentary Steering Committee had defined that reform would be discussed. The Discussion Paper addressed the following questions:

1. Should South Australia have a system of initiative and referendum (Citizen Initiated Referenda) and if so in what form and how should it operate?

2. What is the optimum number of parliamentarians in each House of Parliament necessary for responsible government and representative democracy in the Westminster system operating in South Australia?
3. What should be the role and function of each of the Houses of Parliament?
4. What measures should be adopted to improve the accountability, transparency and functioning of government?
- 5.1 What should be the role of political parties in the Legislative Council and what should be the method of election to the Legislative Council?
- 5.2 What should be the electoral system (including the fairness test) and method of election to the House of Assembly.¹⁶

To each of these five questions the Discussion Paper provided balanced information from both sides of the debate.

The Constitutional Convention Discussion Paper was an important weapon in the public relations battle that was being fought from the time of the announcement of the Convention. Pamela Schulz outlines this public relations struggle, which sought to inform the population of South Australia on matters pertaining to the Constitutional Convention. She reports in her paper that the task facing the Secretariat was a difficult one. A study undertaken in November and December 2002 showed that fewer than 14 per cent of people surveyed had heard of the Constitutional Convention. In some of the areas surveyed, as few as four percent of respondents had heard of it.¹⁷ Schulz identifies five public relations objectives that the Secretariats tried to achieve. The first of these was to get people interested in the Constitutional Convention by holding a series of meetings around the state.¹⁸ At the meetings, the issues that were to be debated at the Constitutional Convention were presented and debated. At ten of these meetings a team of professional moderators was employed to monitor and record the concerns expressed by the attendees, who discussed the issues in small groups.¹⁹ The second objective was to encourage people who were unable to attend the meetings to become informed about the Convention through other means such as “mail drops; implementation of a Constitutional Convention Hotline; poster distribution; coterie communication; profiling the Convention and its aims on talkback radio; song and essay competitions; and maintenance of a comprehensive website.”²⁰ The third objective involved the distribution of an information package to encourage members of the public to follow up on their interest in the Convention. The fourth objective concerned making sure that the media presented a balanced view of the Convention.

Finally, the Secretariat sought to engage the media, in particular, talk back radio.²¹ This was often difficult as a Constitutional Convention is not a traditionally interesting news item, and for much of the time that the Constitutional Convention was being organised there was more interesting political news occurring, including in the latter part of 2002 Peter Lewis's battle to retain his seat in Parliament.²² Some of the ways in which the media were managed were through the staging of publicity events, such as Peter Lewis taking part in the Australia Day parade driving a 1934 car and holding a copy of the Constitution; the handing out of media kits and the giving of media releases; related stories such as the mystery of the missing Constitution; and appearances on news programs by people involved in the Convention.²³ The most widely used media format for the promotion of the Convention was talkback radio. Many of the people involved in the Convention appeared on talkback radio across the State. This helped to raise awareness of the issue and increased the turnout to the public meetings that were held.²⁴

Whilst the public relations battle was being waged, the Parliamentary Steering Committee decided that the Convention would be run as a deliberative poll and Issues Deliberation Australia were chosen to conduct it.²⁵ Issues Deliberation Australia matched the resource commitment of the South Australian Government.²⁶

Deliberative Polling

Deliberative polling is a specialised form of opinion poll developed by Professor James S. Fishkin, the head of the Centre for Deliberative Polling. The deliberative poll grew out of Fishkin's desire to overcome rational ignorance and non-attitudes held by respondents to conventional opinion polls.

Research shows that few people have a sound understanding about policy positions and other political issues.²⁷ Public opinion polls can suffer because of this lack of knowledge on the part of the voting population. It can be hard to find a representative sample of people; the issues in the opinion polls are often of little interest to the respondents, as they know nothing about them; and finally, the respondents can answer questions about which they know nothing simply to avoid appearing ignorant in front of the interviewer.²⁸ A response such as this has been termed a "non-attitude."

On other issues, people are rationally ignorant. That is, they make a conscious decision not to have knowledge about the political process. Fishkin expresses this attitude as:

If I have one vote in millions, why should I spend the time and effort to become well informed on complex issues of politics and policy? My individual vote, or my individual opinion, is unlikely to have any effect. Most of us have other pressing demands on our time, often in arenas where we can, individually, make more of a difference than we can in politics or policy.²⁹

However, the deficit is not just one of information; it is also one of deliberation. As well as remaining uninformed about political issues, people do not discuss them.³⁰ Thus, Fishkin developed deliberative polling as an attempt to overcome these problems.

In developing deliberative polling, Fishkin was inspired by the Athenian solution to many of their political issues. In ancient Athens, microcosms of the citizenry were employed for many of the deliberative functions of running the city. Groups of 500 citizens would be chosen at random by the drawing of lots. By fourth century Athens, committees were being chosen in this way to make the final decisions about legislation.³¹ Fishkin sought to recreate a system similar to this that could be useful for measuring opinions on political issues today.

Deliberative polling was developed “to meet the simultaneous requirements of providing voters with information about public policies, giving them also opportunities to discuss the information with people of diverse views, and measuring the resultant change” in their opinions.³² The first step in conducting a deliberative poll is to interview a random sample on the issue that is being tested. After the interview, the respondents will be invited to attend a meeting at a public conference centre, to be held over the course of a weekend. The respondents are then sent an information package on the issue being examined. This information package is also made available to other interested members of the public. At the start of the weekend meeting, all of the respondents who attend are assigned to small groups of about fifteen. These groups then discuss an issue, and develop questions to put before a panel of experts at a plenary session. Each of the groups is chaired by an impartial

moderator, who ensures that the group stays on focus; that no one member dominates the discussion; and tries to keep the environment one in which people are encouraged to talk and contribute their ideas. After the group discusses the first issue and develops some questions, the small groups recombine and attend a plenary session, where they can put their questions before a group of experts and policy makers in the field that is under examination. The plenary panelists will have been picked to provide a representative cross section of the various opinions in the field. This pattern repeats over the course of the weekend until all of the issues have been covered. In the final part of the exercise, the participants are given the same survey that they initially completed during the telephone interview, which allows the results before and after the weekend of deliberation to be collated and compared. This can then be used to illustrate the difference between the response that would be given by an uninformed member of the public, and a member of the public that had taken the time to become informed on the issues.³³

The Liberal Party does not believe that the use of deliberative polling was appropriate for the Constitutional Convention. Robert Lawson says that he would much rather have seen a group of experts, such as academics, people from Local, State and Federal Government, workers in the public sector, business people, and people with experience in Constitutional reform elsewhere, come together and examine the South Australian Constitution and propose changes to it. He sees the field of Constitutional reform as a complex one, and is concerned that the delegates may have been led somewhat in the formation of their opinions.³⁴

Recruiting the participants for the Constitutional Convention

The questions for the 25 minute telephone interview were devised in collaboration between Issues Deliberation Australia, Newspoll and two advisors to the Constitutional Convention. Newspoll used random sampling techniques to select respondents. The data were weighted by gender, age and location.³⁵ During June 2003 Newspoll conducted the series of telephone interviews. The interview respondents had to be registered to vote in South Australian elections, if they were not the interview was terminated. When the interviews were conducted it was recognised that to reach a more balanced sample, a call back system would have to be instituted so that people

who were rarely home could still be reached.³⁶ In total, 1201 people were interviewed. All of the interviewees were invited to attend the Constitutional Convention. Of the 1201 initial interviewees, 809 expressed interest in receiving further information about the Convention. Over the next few weeks a team of people kept in contact with these respondents and attempted to encourage them to come to the Convention. To ensure that as many people as possible would attend the Convention, arrangements were made to compensate employers and to arrange any assistance that the potential delegates might need. On the weekend of the Convention, 8-10 August, 330 people turned up to participate in the deliberations. Over the weekend, seven people withdrew, resulting in 323 people completing the deliberations.³⁷

The moderators for the Constitutional Convention were Ian Sinclair and Barry Jones. They had moderated the 1998 Federal Constitutional Convention as well as subsequent deliberative polls and so their knowledge of the role of session moderators was considered very useful. Group facilitators from several different backgrounds – faculty members of universities, psychologists, social workers, and members of private consultancy organisations – were trained in how to moderate the small group discussions required by deliberative polling. They were trained to maintain neutrality and to ensure an environment conducive to the discussion of the issues.³⁸

The Panelists for the Plenary Sessions were selected to give a broad representation of political backgrounds and viewpoints, as well as a mix of gender, age and ethnicity, and were approved by the Parliamentary Steering Committee.

The Events of the Convention

The participants in the Convention arrived at the Town Hall on 8 August 2003. They were welcomed by several people involved in the Convention. After this the delegates were randomly assigned to the groups that they would be working in for the next three days. The participants were then provided with a summary of the various options for reform and the pros and cons of each by Dr. Clem Macintyre. For the rest of the weekend, the Convention followed a set pattern. The participants would meet in their small groups and discuss set issues pertaining to the reforms. Whilst discussing these issues they would develop questions to put before the Plenary Panelists at the Plenary

Sessions. These Plenary Sessions were recorded by the television stations and excerpts were broadcast on the evening news programs.³⁹ On the final day of the Convention the participants were again surveyed, using the survey that they had initially completed over the telephone, as well as further questions regarding the various reform options. Following this, the participants engaged in a final group discussion where they addressed the question “What would be your three key priorities for parliamentary reform in South Australia?” The responses to the questions were then compiled and analysed.

The results of the Constitutional Convention

The first major finding of the Constitutional Convention was that there exists a strong belief in the effectiveness of the current system of Parliament and a high level of appreciation for the jobs done by the members of Parliament. The number of participants who believed each of these increased in the post-deliberation survey.⁴⁰ The second finding of the Convention was that the participants wanted to retain a bicameral Parliament. However, this contained the caveat that the system of accountability in Parliament be strengthened. A majority of the participants respected the system of checks and balances, but suggested that these too be strengthened.⁴¹ Thirdly, there was majority support for a more accountable Legislative Council. The main way in which the participants wanted to see this done was by shortening the term length of a MLC to four years, making them accountable to voters at every election, in the same way as the Members of the House of Assembly, rather than at every second election as is still the practice.⁴²

The opinion of the participants in the Convention was that the membership of the House of Assembly should be increased. This fourth result of the Convention directly contradicted one of the stated desires of Peter Lewis. As well as this, the participants believed that Ministers should continue to be drawn from both Houses of Parliament, again in contradiction to Peter Lewis, who wanted to see Ministers drawn only from the House of Assembly.⁴³ The fifth result from the Convention was the desire for the independence of the Speaker of the House of Assembly to be written into the Constitution. The participants could not agree on which model they desired to achieve this. The main proposals were that the Speaker could remain in the Party of which

they had membership, but would not be allowed to participate in any Party decisions; or that upon accepting the position of Speaker, the Speaker should resign from their party and become an Independent.⁴⁴

Citizen Initiated Referenda (CIR) were supported by a majority of the participants in the Convention. There were three models of CIR that gained some level of support from the participants. The model that gained the highest level of support called for CIR that applied both to existing laws as well as proposed new laws. Other participants believed that CIR should only be used to change existing laws, whilst others believed that CIR should only be used to propose new laws. The participants were asked further questions about CIR. These questions were designed to work out what form of CIR was most widely supported. The four options were direct CIR, indirect CIR, a two-step CIR and no CIR. The model that received overwhelming support was the two-step model of CIR, showing that whilst the participants were in favour of CIR, they were cautious about introducing a system that made CIR too simple.⁴⁵

The seventh result of the Constitutional Convention was that it greatly increased the knowledge of those who participated in it. When the delegates completed the initial interview questions again at the end of the Convention weekend, they displayed an increase in their political knowledge in all of the areas tested.⁴⁶ The eighth result of the Constitutional Convention was support for Optional Preferential Voting. This was something that was discussed a lot amongst the members of the groups.⁴⁷ This was not one of the initial areas of discussion and was included in the final results due to an open-ended question asking people what other reforms they would like Parliament to hear about. This reform was the most strongly supported by the delegates to the Convention. Of this level of support the Final Report to Parliament says this:

By rating Optional Preferential Voting as their single most important change to Parliament, the delegates are sending a strong message that they do not wish to complete all the boxes on the ballot paper. Further, the current choice to vote “above the line” or “below the line” for the Upper House, does NOT sufficiently meet the need of voters to be heard in their own individual way at election time.⁴⁸

Of the other reforms recommended in the Constitutional Convention the next most strongly supported was CIR, followed by four-year terms for the Upper House. After

these the delegates saw the next most important reform to be the implementation of other means of improving the accountability and transparency of Parliament. Following from their own experiences before and after participating in the Convention, the delegates suggested that work could be undertaken to better educate the public about the political process. The delegates felt that it would be beneficial to raise the general knowledge of the public about the political process and to achieve this they suggested that there should be political education programs in schools, and a widespread education program for the general public.⁴⁹

Thus, from the Constitutional Convention came strong support for a number of reforms to the South Australian Constitution. The delegates of the Convention did not support all of the reforms that Lewis wished to see. They compensated for this by proposing others that the architect of the Convention had not thought to examine. Thus, from the Convention came a clear support for the introduction of optional preferential voting.

At the end of the Convention the mood amongst the delegates was very positive. The overwhelming majority of the delegates believed that the work of the Convention had been worthwhile and they expressed a willingness to be involved in future Conventions. Yet, in contrast to the optimistic feelings at the end of the Convention, the results of the Convention did not enjoy a great deal of success in Parliament. The Final Report to Parliament on the results of the Constitutional Convention was finished in October. Yet it took a month for this report to be tabled in Parliament. After this report was read by the MPs, it was expected that the Government would introduce into Parliament the necessary Bills to enact the recommendations of the delegates to the Convention. This never happened and over the next year the Government stayed silent on the Constitutional Convention. This silence was maintained despite a steady effort by Peter Lewis to get the Government to take some action. In February 2004, some of the delegates to the Constitutional Convention met at the House of Assembly to give their approval to the Final Report of the Convention. This Final Report included five draft bills that if voted through Parliament would institute changes in three of the areas identified by the delegates to the Constitutional Convention – Citizen Initiated Referenda, four-year terms in the Legislative Council, and optional preferential voting.⁵⁰ Yet neither the Government

nor the Opposition showed any interest in following through on this. No one would table the Bills in Parliament so that they could be voted on. Peter Lewis tried to get Parliament to act on this by making speeches and presenting petitions to the Parliament signed by delegates to the Constitutional Convention.⁵¹ Eventually, Lewis was able to get Kris Hanna, who had quit the Labor Party and become a member of the Greens, to introduce the Bills. Yet, the legislation at the time of writing has not been voted on and it seems doubtful now that any vote will be taken. Peter Lewis, when asked what he would do differently if he had the chance to change the way the Constitutional Convention was conducted, said that Parliament should have been bound by legislation to enact the reforms of the Constitutional Convention prior to the Constitutional Convention taking place.⁵² During an interview conducted whilst the Constitutional Convention was in progress, Peter Lewis had this to say:

The parliament will debate it. I mean Mike Rann and the rest of the senior members of the Labor caucus are honourable people, and they've given that undertaking. They'll introduce the legislation that comes out of the convention, where there's substantial support for it from within the convention. And if parliament doesn't pass it, then those Members of Parliament who vote against it, they'll be pretty bold people I would reckon. Because what they're really doing is saying that the people of South Australia don't deserve the right to make up their own minds about what they think a better structure of governance for them would be. And that is the anathema of democracy. That's like saying 'The place will become impossible to rule, dammit.' Well those people, like me, who are elected to this place, are not elected to rule, we're elected to lead, and in this instance the public themselves are showing the direction in which they want us to lead through the expressions that'll come from this Constitutional Convention. And I reckon it would become an election issue for those members who voted against it.⁵³

Yet this did not occur. The Parliament did not debate the issues, and this has not caused a great deal of concern amongst the people of South Australia.

It is apparent then that the Constitutional Convention was a failure. Whilst part of Peter Lewis's Compact was followed, with the holding of the Constitutional Convention, the more important step of instituting the reforms never took place. The Labor Party held to the letter of the Compact, but did not hold to its spirit. It seems doubtful that any action will take place in the future, as Peter Lewis is no longer a Member of Parliament.

The Reasons for the failure of the Constitutional Convention

Power, above all else, is what will determine whether a Constitutional reform program will succeed or sink into obscurity. If the person holding the most political power in the Government is the person who wants the Constitution to change, then the most likely occurrence is that the Constitution will be changed. In most cases, the person who holds the greatest political power is the leader of the Government, as they can generally determine how the members of the governing party will vote in Parliament. Following the election in 2002, the Government of South Australia was dependent upon the good will of Peter Lewis to remain in power. In any vote of confidence in the Government that might occur, Peter Lewis held the casting vote. Lewis spelt this out in his Compact for Good Government. Thus, it could well be argued that Peter Lewis held the most power in Parliament at this time. It was from this position of power that Peter Lewis started the process leading to the Constitutional Convention. Had Lewis been able to retain this power, the outcome of the Constitutional Convention might have been very different. However, the Government was able to outmaneuver Lewis. In this, it was aided by the allegations of electoral misconduct that Lewis was fighting as a result of the 2002 election, which were taking up much of his time, and so did not allow him to move as quickly on the Convention as he otherwise might have.

In November 2002, Mike Rann made the clever move of appointing the Independent Rory McEwen to a position in his Cabinet. With this move, he had neutralised the power that Peter Lewis had in Parliament. Now, even if a motion of no confidence in the Government was called, the Government would survive without the support of Lewis, as it would be unlikely for McEwen to vote against the Government that had appointed him to a Cabinet position. This was reinforced when Karlene Maywald was appointed to a Cabinet position. From this point on the Government was able to conduct the Constitutional Convention according to its own wishes. At this point in time, the Government had no need to go through with the holding of the Convention. It was no longer reliant on the support of Peter Lewis to retain government. Yet, the Government of South Australia decided to continue with the Constitutional Convention.

The Government of South Australia had made a commitment to hold a Constitutional Convention and even though they did not agree with the need for a Convention, or the changes that were being proposed, they continued to work to make the Convention occur. The Attorney-General, Michael Atkinson, “admitted that the Government would not have considered Constitutional reform had it not been forced to it.”⁵⁴ Thus, after the Convention presented its report, the issue was simply ignored. Robert Lawson says “they [the Government] honoured the letter of that [the Convention], I’m not sure that they honoured necessarily the spirit of it.”⁵⁵ Despite petitions presented by delegates to the Constitutional Convention, and despite the fact that more than three years have passed since the end of the Constitutional Convention (at the time of writing), the Government has made no move to pass any legislation to enact any of the changes that were supported by the delegates of the Convention.

Less important than political power, but still an important factor in the success or failure of Constitutional reform is how widespread and strong the desire for change is. If there is a strong and widespread desire to change the Constitution, it is very hard for a leader to justify doing nothing. Conversely, if there is little recognition that the Constitution is in need of change, then it will be hard to convince a sufficient number of people that change is, in fact, necessary.

It is hard to see a level of widespread desire for change for the reforms presented at the South Australian Constitutional Convention. The reforms presented were ones that were not going to dramatically change the practice of Government in Australia, save for CIR. In the case of CIR however, there was no long-term movement to adopt it that had widespread support, as most of the people of South Australia had no idea what it was.

This widespread desire for change was absent not only amongst the people of South Australia, but also amongst the political parties. Neither of the major parties wanted to change the Constitution. Neither of them had campaigned in the 2002 elections on a platform of Constitutional change. The Constitutional Convention was imposed on the Parliament, it did not stem from the Parliament’s desire to change. This lack of desire to change the Constitution was heightened by a feeling amongst Parliamentarians that the methodology of the Constitutional Convention had marginalised them, when they

felt that they should have been at the centre of change to the Constitution.⁵⁶ This damaged the chances for success of the Constitutional Convention in two ways. Firstly, the fact that most of the members of Parliament did not want Constitutional change meant that there was no urgency to vote on the draft Bills that were tabled in Parliament. Were there a significant number of MPs that wanted the work of the Convention to succeed, it would be much harder for Parliament to ignore these bills. Secondly, if the bills were ever voted through Parliament, two of the proposed reforms, CIR and four year terms for the Legislative Council, were to be put before the people of South Australia in a referendum. It is clear from an examination of the referendum that followed the Constitutional Convention of 1998 that it is very hard for a referendum to pass successfully. One of the reasons proposed for the failure of this referendum is that it did not enjoy bipartisan support. Kirby argues that the people of Australia are naturally suspicious of Constitutional change and if they are going to support it, they need to see that it is something that all sides of politics support. Thus, he argues, one of the reasons that the 1999 referendum failed was that the Republic was seen to be something that was supported much more strongly by the Labor Party, with the Liberal and National Parties seen to be supporting the retention of the monarchy.⁵⁷ If it is the case that a Constitutional reform proposal needs bipartisan support before the people will support it in a referendum, what are the implications for the South Australian Constitutional Convention, where the parties were generally opposed to the reforms proposed? It seems very unlikely that the changes would have been supported if the reform proposals had reached the referendum stage, even with Peter Lewis saying that he would have spent large amounts of his money advocating the changes.

Might the Constitutional Convention have been conducted differently?

There were multiple causes for the failure of the South Australia Constitutional Convention. Was the Constitutional Convention doomed to failure from the outset, or might Peter Lewis and the organisers of the Convention have been able to do things differently to give the Convention a greater chance of success? This section of the article will address these issues.

Peter Lewis may have been able to better use the power that he held over the Rann Government at the start of the first Parliamentary session. At this time, Peter Lewis possessed the deciding vote in Parliament, including in a vote of no confidence. Had Lewis pushed harder for the Convention to be held sooner, he may have been able to have a greater amount of influence over the proceedings and he may still have held the balance of power at the time that the Convention gave its report. If he had retained this level of power in Parliament at the time that the report was presented, he could have used it to ensure that the Bills were voted on, at least in the House of Assembly, as he would not have had any control over the Legislative Council.

The second reason why the Constitutional Convention did not succeed was due to the lack of popular or parliamentary recognition of the importance of the reforms. Maybe, had there been a greater level of public or parliamentary consultation during the drafting of the issues that the Convention was going to discuss, the results of the Convention may have carried a greater level of weight with the Parliament and with the people. The delegates to the Convention showed that they were capable of recognising areas where the Constitution could be reformed, rather than simply deliberating over ideas presented to them, when they proposed optional preferential voting. Maybe, had there been more consultation with the Parliament and the people they would have felt a greater level of ownership of the reforms proposed in the Convention. This then may have made it much harder for the Members of Parliament to ignore the results of the Constitutional Convention and may have led to the adoption of at least some of the reforms proposed, as a way of showing support for the work of the Convention. Had this not been the case, if the people felt a greater level of ownership for the work of the Convention then they may have been much more willing to fight for the passage of the reforms through Parliament.

As it is, the Constitutional Convention seems to have fallen out of the public consciousness, making it a lot easier for the Rann Government to take no action on instituting any of the proposed reforms. Whilst there were a few petitions signed by delegates to the Constitutional Convention, the disappointment that nothing has resulted from the work of the Convention seems to be confined to those people who were directly involved in it. If the feelings were more widespread then the Government would be forced to deal more with the results of the Convention.

Another way in which the Constitutional Convention could have been sold better was if it had been reported more positively by the media. Whilst a lot of effort was made to bring the media on to the side of the reforms being proposed in the Constitutional Convention, for much of the time leading up to the Convention the media was quite hostile to it. This hostility continued through the Convention weekend, though by that time the media had become more welcoming of the work of the Convention. Possibly the most negative campaign was conducted by the South Australian newspaper, the *Advertiser*. It frequently referred to the Constitutional Convention as a “talkfest,”⁵⁸ and it opposed many of the changes that might result from it. It was strongly against any increase in the number of parliamentarians and believed that the Legislative Council should be abolished.⁵⁹ Had media outlets like the *Advertiser* been less critical of the work of the Constitutional Convention, this again may have helped to give a better public opinion and a more widespread desire to see the Convention succeed in reforming the Parliament.

Conclusion

The South Australian Constitutional Convention has been so far unsuccessful at achieving the Constitutional reforms desired by Peter Lewis and the Convention delegates. How closely did the Constitutional Convention follow the model for successful Constitutional reform presented in the introduction of this paper? Firstly, the terms of reference, such as they were, for the South Australian Constitutional Convention were quite rigid. The delegates to the Constitutional Convention were presented with five predetermined questions to address, which had been determined well in advance of their arrival to the Convention. This runs counter to the theory that it is better merely to define areas to discuss and to let solutions emerge through the process of debate. The rigidity was offset slightly though by the ability of the delegates to suggest what other reforms they wanted Parliament to consider. In this way, optional preferential voting became one of the proposed reforms. Another factor determining the success of a Constitutional reform program is the level of public engagement. In this area, the South Australian Constitutional Convention succeeded. The public was involved actively through the town and country meetings, and the call for public submissions, and more passively through the distribution of information

and through media coverage. Finally, the public were engaged through the Convention itself, where 323 randomly selected members of the public were brought together to discuss the potential reforms. Where the Constitutional Convention failed, however, was in securing a consensus in the Parliament. By the end of the Convention, the majority of the Parliament was opposed to the implementation of the proposed reforms. The Government had only started the Constitutional Convention process to keep Peter Lewis on their side and by the time of the Constitutional Convention, they were no longer reliant on his support. The Opposition never truly supported the work of the Convention. Thus, a consensus in favor of the Convention was not achieved, though a consensus against it was. Despite all of this, it is not fair to call the South Australian Constitutional Convention a complete failure.

Prior to the Convention, Constitutional reform was not a part of the public consciousness in South Australia. In holding the Constitutional Convention as a people's convention, where all of the delegates were 'ordinary' citizens, Peter Lewis involved the people of South Australia in our Parliament in a way that does not ordinarily occur. Even those who did not attend the Convention were still exposed to the event through media coverage. By holding the Constitutional Convention, Peter Lewis created a new group of politically aware citizens, who showed that they indeed care for the operation of the Parliament of South Australia. Many of them voluntarily gave up some of their time to attend a session organised by Lewis to confirm the legislation that would be introduced into Parliament to enact the Constitutional reforms properly reflected the final decision of the Convention. One of the worries expressed when the conference on reforming the South Australian Constitution was held at the University of Adelaide in August 2002 was that the conference was seen to be 'above the heads' of many of the people of South Australia.⁶⁰ Constitutional reform was seen to be an abstract topic that could only really be discussed by academics. The Constitutional Convention demonstrated the fallacy of this view. It showed that the topic of Constitutional reform is one that is relevant to all of the people of South Australia, and is not just an abstract concept debated by academics. This is further demonstrated by the fact that the reforms that received the most support from the delegates to the Convention were those proposed by the delegates themselves, and not by Peter Lewis.

The Constitutional Convention demonstrated too that the people of South Australia have a genuine desire to learn more about the political process in South Australia. The delegates to the Convention learnt a lot from the information that they were given, and this allowed them to engage in a level of debate that they had not been able to before. Their increased level of knowledge of the political system in South Australia tended to give them a greater appreciation of the work that is done by Parliament. Indeed, the delegates to the Convention recommended that more be done to educate the community at large about politics in South Australia. If this call is sustained and heeded, then this will be a positive outcome from the Convention and one that was not even intended. If this call for a greater level of political education is heeded, it may go a long way to solving another problem that exists in South Australia – the high level of political apathy that is so damaging to our system of government.

Lastly, Peter Lewis demonstrated another important thing through the holding of the Constitutional Convention. He showed that it is possible to talk about the reform of the South Australian Constitution and demonstrated that there are indeed areas where it could be changed to better serve the people of this state. Whilst this has not led to any Constitutional reform, and it does not seem as if it will lead to any reform of the Constitution during the term of this Government, Constitutional reform has become more of an issue. As it has now entered into the public's consciousness, it will be much harder to avoid the topic of reform in the future.

One of the reasons that the South Australian Constitutional Convention was going to struggle was that there was not sufficient widespread desire for the Constitution to be changed. Maybe, in its failure however, the Constitutional Convention has sown the seeds for a future convention's success. The popularisation of Constitutional reform may provide the impetus needed for a widespread desire for Constitutional reform to emerge. A Constitutional reform program that springs out of this widespread desire for reform will be much more likely to effect lasting change.

Notes

¹ McMillan, John; Evans, Gareth and Storey, Haddon, *Australia's Constitution: Time for change?* Sydney: Law Foundation of New South Wales, 1983, p. 33.

² McMillan *et al* *Australia's Constitution: Time for change?*, pp. 34-35.

³ Braithwaite, Valerie, "Managing constitutional change from a psychological perspective" in Coper, Michael and Williams, George, eds. *Power, Parliament and the People*, Sydney: The Federation Press, 1997, p. 17.

⁴ McMillan *et al*, *Australia's Constitution*, p. 33

⁵ Saunders, Cheryl, "Ways and means of Constitutional reform" in Macintyre, Clement and Williams John, (eds.) *Peace, Order and Good Government – State Constitutional and Parliamentary Reform*, Kent Town: Wakefield Press, 2003, p. 17.

⁶ Saunders, "Ways and means of Constitutional reform," p.16.

⁷ For detailed discussions of the 2002 election see, McCarthy, Greg, "The Revenge of the Legislature: the South Australian election 2002," *Australasian Parliamentary Review*, vol 17, no 2, pp. 22-34 and Stock, Jenny Tilby. "Commentary The South Australian Election of 9 February 2002," *Australian Journal of Political Science*, vol 37, no 3, pp. 537-546.

⁸ Lewis, Peter, "Compact for Good Government." available at <http://www.constitutionalconvention.sa.gov.au/main.php?page=compact> [accessed 29/09/05]

⁹ Interview with Hon Peter Lewis, MP, 13 October 2005

¹⁰ Macintyre, Clement, "Deliberating on the Constitution." available at http://www.apo.org.au/webboard/results.shtml?filename_num=12699 [accessed 30/09/05]

¹¹ The papers have since been collated into the book Macintyre, Clement and Williams, John (eds.) *Peace, Order and Good Government – State Constitutional and Parliamentary Reform*. Kent Town: Wakefield Press, 2003.

¹² Gollop, Leigh, "The South Australian Constitutional Convention: a new model for success?" available at <http://66.102.7.104/custom?q=cache:pIZKj0t9YT0J:www.onlineopinion.com.au/2002/Sep02/Gollop.htm+gollop&hl=en&ie=UTF-8c> [accessed 8/10/05]

¹³ 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, p. 10.

¹⁴ *Ibid.*, p.10.

¹⁵ *Ibid.*, p. 13.

¹⁶ Constitutional Convention Secretariat, 2003, Discussion Paper, available at <http://www.constitutionalconvention.sa.gov.au/main.php?page=discussionpaper> p. 4.

¹⁷ Schulz, Pamela, "Public Relations Practice and Citizenship: Getting the citizens of South Australia interested in Parliamentary and Constitutional Reform," *Asia Pacific Public Relations Journal*, vol 5, no 2, p. 1.

¹⁸ Issues Deliberation Australia, 'South Australia Deliberates', p. 8.

¹⁹ Schulz "Public Relations Practice and Citizenship", p. 5. For a report of the small group discussions see, Constitutional Convention Secretariat, 2003, Community Discussion Meetings Report Volume One, available at http://www.constitutionalconvention.sa.gov.au/cmd_vol1.pdf.

²⁰ Schulz "Public Relations Practice and Citizenship", p. 2.

²¹ *Ibid.*

²² *Ibid.*, p. 7.

²³ *Ibid.*

²⁴ *Ibid.*, p. 8.

²⁵ Though not all of the members of the steering committee supported the use of the deliberative poll. Interview with Hon Robert Lawson, MLC, 11 October 2005

²⁶ Issues Deliberation Australia, 'South Australia Deliberates', p. 8.

²⁷ Fishkin, James, Luskin, Robert and Jowell, Roger, "Deliberative Polling and Public Consultation." *Parliamentary Affairs*, vol. 53, no. 4, p. 657.

²⁸ Fishkin *et al*, "Deliberative Polling and Public Consultation," p. 658.

²⁹ Fishkin J.S. and Rosell S.A., (Shepherd D. and Amsler T. eds.), "Choice, Dialogues and Deliberative Polls: Two Approaches to Deliberative Democracy," *National Civic Review*, vol. 93, no. 4, p. 57.

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- ³⁰ Fishkin J.S., Luskin R.C. and Jowell R. “Deliberative Polling and Public Consultation,” p. 658.
- ³¹ Fishkin J.S. “Deliberative Democracy.” In Simon R.L. (ed.) *The Blackwell Guide to Social and Political Philosophy*, Malden: Blackwell, 2002, p. 222.
- ³² Fishkin *et al*, “Deliberative Polling and Public Consultation,” p. 659.
- ³³ Fishkin *et al*, “Deliberative Polling and Public Consultation,” pp. 659-660.
- ³⁴ Interview with Hon Robert Lawson, MLC, 11 October 2005.
- ³⁵ Issues Deliberation Australia, ‘South Australia Deliberates,’ p.13.
- ³⁶ Issues Deliberation Australia, ‘South Australia Deliberates,’ p. 14.
- ³⁷ *Ibid.*
- ³⁸ *Ibid.*, p. 15.
- ³⁹ *Ibid.*, p. 19.
- ⁴⁰ *Ibid.*, p. 23.
- ⁴¹ *Ibid.*, p. 23-24.
- ⁴² *Ibid.*, p. 24-25.
- ⁴³ *Ibid.*, p. 25-26.
- ⁴⁴ *Ibid.*, p. 27.
- ⁴⁵ *Ibid.*, p. 28-29.
- ⁴⁶ *Ibid.*, p. 29-30.
- ⁴⁷ *Ibid.*, p. 33-34.
- ⁴⁸ *Ibid.*, p. 33.
- ⁴⁹ *Ibid.*, p. 34-35.
- ⁵⁰ Macintyre, Clement and Williams, John, “Lost Opportunities and Political Barriers on the Road to Constitutional Reform in South Australia,” *Australasian Parliamentary Review*, vol 20, no 1, p. 107.
- ⁵¹ See, for example, Parliamentary Debates – House of Assembly. 14 September 2004. <http://www.parliament.sa.gov.au/catalog/hansard/2004/ha/wh140904.ha.htm>, and Parliamentary Debates – House of Assembly, 19 July 2004. <http://www.parliament.sa.gov.au/catalog/hansard/2004/ha/wh190704.ha.htm>.
- ⁵² Interview with Hon Peter Lewis, MP, 13 October 2005
- ⁵³ Lewis, Peter, Interview on The National Interest, ABC Radio National, 10 August 2003, available at <http://www.abc.net.au/rn/talks/natint/stories/s919206.htm>.
- ⁵⁴ Macintyre and Williams “Lost Opportunities and Political Barriers on the Road to Constitutional Reform in South Australia,” p. 113.
- ⁵⁵ Interview with Hon Robert Lawson, MLC, 11 October 2005. (I contacted Michael Atkinson to try to get the Government’s viewpoint, but he declined to be interviewed.)
- ⁵⁶ Interview with Hon Robert Lawson, MLC, 11 October 2005.
- ⁵⁷ Kirby, Michael, “The Australian Referendum on a Republic – Ten Lessons,” *The Australian Journal of Politics and History*, vol 46, no 4, p. 524.
- ⁵⁸ Kelton, Greg, “Labor plan to take control of Lewis talkfest,” *The Advertiser*, 15 June 2002; Kelton, Greg, “Danger of convention becoming talk-fest,” *The Advertiser*, 19 April 2003.
- ⁵⁹ For example - “The Convention which needs the unconventional,” *The Advertiser*, 24 January 2003, and - “Good ideas and the courage to act,” *The Advertiser*, 11 August 2003.
- ⁶⁰ Gollop, Leigh, “The South Australian Constitutional Convention: a new model for success?” available at <http://66.102.7.104/custom?q=cache:pIZKj0t9YT0J:www.onlineopinion.com.au/2002/Sep02/Gollop.htm+gollop&hl=en&ie=UTF-8c> [accessed 8/10/05].