

the donation of a voluntary gift of body parts. Particular care was given in the legislation devised by the ALRC, and enacted by the States and in the ACT, to ensure that the wishes of the donor were carefully respected. However, Dr Blewett signalled that, at least in some government circles, significant changes to this policy may be contemplated.

I believe this voluntary coordinated approach is the most effective immediate solution to Australia's donor organ shortage, but, if this response does not prove adequate, States will have to seriously consider the introduction of legislation of a type which has proved successful overseas [under which] the law deems all people willing to donate organs unless they indicate otherwise . . .

I believe that this country will be forced to move in a similar direction unless our non-legislative efforts achieve a marked improvement to the current unacceptable shortage of available donor organs.

the machine that goes 'ping'! All organ transplantation technology is high cost. The cost implications of increasing compulsorily the number of organs available were not lost on Dr Blewett, nor were the possibilities this prospect offers for increased government involvement in and direction of transplant programs. The high cost of advanced medical technology, including transplantation technology, places significant power in funding agencies and governments, to control, not only the use of the technology but the decision who benefits from it. As Dr Blewett said:

While the overriding issue of concern now is a shortage of organs for transplantation, any successful response to that dilemma will create equally pressing economic considerations down the track.

The present situation, said Dr Blewett, where there is a lack of donors, amounts to a rationing of access to transplant services. When this changes, perhaps by government action in making donations compulsory, Dr Blewett concluded that some other form of rationing would be needed. He cited, among other reasons

a clear potential for explosive escalation of cost to the overall health budget as more donor organs become available

competing priorities within the health budget.

Dr Blewett indicated that federal funding for transplant programs would be directed to formally designated national units of medical excellence, which would be required to charge at a level below that which would be incurred in setting up competing, non-federally funded units.

Medicare benefits would only be available for services provided through the national units

to prevent any entrepreneurial-driven proliferation of such [non-national] centres.

Unless this course were adopted, Dr Blewett said

a proliferation of private transplant programs could spread our medical expertise too thin, prompt an unjustifiable explosion in the nation's health costs and encourage unpalatable free-market competition for scarce donor organs.

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constitutional reform

The essence of a free government consists in an effectual control of rivalries.

John Adams, 1789

The possibility of amending the Constitution again became a matter for public debate with the presentation to the electorate by the Federal Government of four referendum questions on 3 September and the release by the Constitutional Commission of its First Report. The referendum questions were:

- instituting a maximum four year term of Parliament for both the House of Representatives and the Senate

- a Bill to enforce the principle of 'one vote one value' in both federal and State elections
- provision for local government which at present is dealt with only by State constitutions and
- improving the right to trial by jury and extending the provisions concerning freedom of religion and just compensation for acquisition of property to the States.

battlelines drawn. Although it appears that the shadow Cabinet recommended that the questions concerning four year Parliamentary terms and 'one vote one value' be rejected but those concerning recognising local government and the rights of trial by jury, freedom of religion and just compensation be supported (*Australian*, 11 May 1988), joint meetings of the Liberal and National Parties voted to advocate the rejection of all four proposals. This decision was not taken without some public manifestation of dissent. The Liberal Party's policy for the 1987 election included extending to the States the right to trial by jury and fair compensation for acquisition of property by government. The policies were drafted by the then shadow Attorney-General, Mr Spender who was quoted as saying that he had not changed his mind on those matters (*Sydney Morning Herald*, 17 May 1988). A South Australian Liberal Member of Parliament, Mr Ian Wilson, announced that he would support the proposals for recognition of local government and the extension of rights to the States (*Sydney Morning Herald*, 18 May 1988). On the day of the House of Representatives vote on the bills for the referendum questions, the Attorney-General, Mr Bowen, tabled a letter from the Leader of the Opposition Mr Howard supporting a request by a municipal council that a chapter concerning the recognition of local government be inserted in the Constitution (*Australian Financial Review*, 19 May 1988). When the vote on the Bills was taken, four Liberal members abstained from voting on one or more of the bills. Ms Kathryn Sullivan abstained on the 'one vote one value' pro-

vision, Tasmanians Mr Max Burr and Mr Bruce Goodluck and South Australian Mr Ian Wilson abstained on the local government Bill. Mr Wilson also abstained on the rights proposals (*Canberra Times*, 19 May 1988).

four year terms. The referendum proposal for a four year term of the House of Representatives differed significantly from the recommendation of the Constitutional Commission. The Commission recommended that there be a four year maximum term but a fixed three year minimum term for the House of Representatives and that the terms of Senators chosen in the States be two terms of the House of Representatives, except in the event of a double dissolution. The Attorney-General, Mr Bowen said that the government's proposal for parliamentary terms reflected the Constitutional Commission's principal objective of longer terms and more stable government but did not include the changes to the powers of the Senate recommended by the Commission (*Australian*, 20 May 1988). The Constitutional Commission recommended that, where the Senate rejects or fails to pass certain appropriation bills within 30 days of their transmission from the House of Representatives, those bills should be able to become law notwithstanding that they have not been passed by the Senate. The Commission further recommended that if, in the fourth year of a Parliament, the Senate rejects or fails to pass a bill within 30 days of transmission, a double dissolution should be permitted.

The *Australian* (10 May 1988) agreed with the Government's decision to reject a minimum three year term on the basis that, in times of crisis, governments should not be prevented from seeking an expression of the people's will. On the other hand, the Leader of the Opposition, Mr Howard, said that the Government had destroyed the chance of bipartisan support for four year terms by rejecting an eight year term for the Senate. He described the referendum proposal as an attack on the power of the Senate (*Sydney Morning Herald*, 11 May 1988). The Business

Council of Australia and the Australian Chamber of Commerce supported the four year term, with a spokesman for the Business Council, Mr Eric May er, saying that an increase to four years in the maximum term of the House of Representatives was 'absolutely critical' (*Australian*, 11 May 1988). However, the Australian Chamber of Commerce later withdrew its support (*Sydney Morning Herald* 30 August 1988). The director of the Horta Chamber of Commerce, Mr Vincent Farron, said that the previous stance had at no time had the support of the State Chambers, six out of seven of which favoured a 'No' vote to all four questions (*Launceston Examiner*, 1 September 1988).

democratic elections. The proposal to entrench constitutionally the idea of 'one vote one value' for both State and federal elections has been the most divisive proposal for the Liberal Party. The Queensland Liberal President, Mr John Moore, urged support for the 'one vote one value' referendum although he conceded that the Queensland Liberals should have acted to remedy the voting anomalies in that State themselves. Queensland Senator David MacGibbon opposed the proposal and questioned whether it would be a vote winner in Queensland (*Age*, 12 May 1988). The Liberal campaign on the referendum proposals in Queensland became somewhat complicated. Queensland Liberals called for a 'yes' vote on the 'one vote one value' referendum and a 'no' vote on the other referendum questions. Federal Liberals from other States campaigning in Queensland tried not to mention the 'one vote one value' referendum but called for a 'no' vote on the other referendum proposals. Federal Liberals from Queensland were not required to take a stand either way on the 'one vote one value' referendum but campaigned for a 'no' vote on the other three questions. In contrast, the federal and State National parties called for a 'no' vote on all four questions (*Australian Financial Review*, 16 May 1988).

The Opposition did, however, have a tactical victory in forcing the government to amend its referendum legislation relating to

the 'one vote one value' proposal. As originally drafted, it would have invalidated elections for the New South Wales Upper House as well as the Federal Government's own proposals for self government in the Australian Capital Territory (*Age*, 31 May 1988). However, psephologist Mr Malcom Mackeras and constitutional lawyer, Professor Tony Blackshield, have argued that the section of the Bill which says that 'the legislature of a territory . . . shall be composed of members directly chosen by the people' may invalidate the proposed system for the Australian Capital Territory since residents of the Territory will cast votes for parties or groups rather than for individuals (*Canberra Times*, 3 July 1988).

local government. Mr Howard criticised the local government question as mere tokenism designed to win 'cheapjack support from the local government community under the guise of parading as a friend of local government' (*Sydney Morning Herald*, 11 May 1988). The Opposition's decision to oppose the local government referendum was criticised by the President of the Australian Local Government Association, Councillor Peter Kyle, who said

Although there was strong support within the coalition parties for the local government question, it appears that a deliberate strategy has been adopted to oppose the package of four questions regardless of their individual merits (*Canberra Times*, 12 May 1988).

Mr Kyle later described criticisms of the local government referendum — that it would possibly permit mayors and shire presidents to call for a local government version of the Premiers' Conference and guarantees of revenue sharing and that it was a secret Labor agenda for network of regional government — as 'red herrings aimed at diverting voters' attention from the real issue: the fact that the Opposition has reneged on its commitment and is now assembling a series of excuses for its action' (*Canberra Times*, 22 May 1988). The Liberal Lord Mayor of Brisbane, Alderman Sallyanne Atkinson has stated that she

would be advocating a 'yes' vote on the question providing for constitutional recognition of local government as well as the 'one vote one value' referendum (*Australian*, 1 June 1988).

jury trial, religion and property. Mr Howard criticised the civil rights question as a 'mini bill of rights' (*Sydney Morning Herald*, 11 May 1988). He argued that, although religious freedom and trial by jury sounded good in principle, they were not under attack. He also contended that religious freedom may be impeded by an attempt to define it. He indicated that the Opposition's 1987 election policy supporting extension of trial by jury and adequate compensation for government acquisitions would be changed.

The question relating to freedom of religion also ran into problems from the Churches. The Anglican Dean of Sydney, the Very Reverend Lance Shilton, said

At present what is meant by freedom of religion in Australia is reasonably clear. But if there is an alteration to the Constitution, it could open up a Pandora's box of conflicts and confusions eventually restricting the freedom of religion we already enjoy (*Canberra Times*, 15 August 1988).

The Catholic Bishops Conference also expressed deep misgivings about voting 'Yes' to the proposal, saying that it could end up seriously restricting freedom of religion (*Australian*, 17 August 1988). The Minister for Justice, Senator Michael Tate, said that the bishops should note the 'warning bells' in society that the common law was not sufficient to defend religious freedom. For example, the Supreme Court of South Australia has said that the common law could not withstand a State Parliament intent on interfering with religious freedom (*West Australian*, 30 August 1988).

the outcome. The referendum resulted in the defeat of all four questions, with three of the questions receiving the lowest 'Yes' vote on record. The greatest support was for the democratic elections proposal (*Australian*, 5 September 1988). The Prime Minister, Mr

Hawke, and the Attorney-General, Mr Bowen said that the only hope of future changes to the Constitution rested with bipartisan political support (*Sydney Morning Herald*, 5 September 1988).

other recommendations of the constitutional commission. As well as the matters being put to the people in the September referendum proposals, the Constitutional Commission, in its First Report, dealt with many other matters. These include

- establishing the right to vote of every Australian citizen who has reached the age of 18
- repealing section 25 of the Constitution which recognises that people might constitutionally be denied the vote on the ground of race
- giving the federal Government express powers in relation to nationality and citizenship and defamation
- clarifying the procedure for the creation of new States
- permitting the interchange of legislative powers between the federal and the State parliaments and
- permitting the States to levy excise duties.

The recommendations of the Commission are supported by detailed reasoning and a careful examination of constitutional provisions in other countries.

The report is available from Commonwealth Government bookshops throughout Australia. The price is \$89.95

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minors' contracts

Children have never been very good at listening to their elders, but they have never failed to imitate them.

James Baldwin, 'Fifth Avenue, Uptown',
Nobody Knows My Name, (1961)