**A white drawing of a building

AI-generated content may be incorrect.**

A close-up of a sign

AI-generated content may be incorrect.

Student Pre-reading

and Workbook

|  |  |
| --- | --- |
| **Name:** |  |
| **State/Territory:** |  |

Museum of Australian Democracy

at Old Parliament House

Canberra, ACT

A close-up of a sign

AI-generated content may be incorrect.

## Topic:

**Revisiting Sections 51ii and 90 to Reimagine Australia’s Fiscal Federalism**

*Does the Constitution allow us to maintain national priorities while embracing new regional economic possibilities?*

## Context Statement

Australian Constitution Section 90:

* Part of the agreement of Federation was to make uniform the customs applied to the goods traded in and out of the existing colonies.
* Section 90 of the Constitution grants exclusive power to the Commonwealth Government to impose customs and excise uniformly across Australia on the production and export of goods.

Australian Constitution Section 51ii:

* Section 51 grants the Australian Parliament the power to make laws for the peace, order, and good government of the Commonwealth.
* Section ii specifically states Parliament has the power to make laws regarding taxation but imposes a restriction that in matters of taxation, laws passed must not discriminate between States or parts of States.

## Preamble

In the years since Federation in 1901, the financial autonomy of the individual States has gradually been eroded. Through both legislation and the interpretations of the Constitution by the High Court, the States have lost some of their capacity to raise funds through excise, taxes and levies. As a result, the States have become more dependent upon grants from the Commonwealth. At the same time, when the Commonwealth does levy taxation, the Constitution says it must not “discriminate between States or parts of States”. This means the Commonwealth is unable impose lower relative taxes upon smaller – and poorer – States or regions to encourage investment and population movement.

**Is it time to change the Constitution so that the States have a broader base for their income and the Commonwealth be able to levy variable tax rates?**

## Outcomes for students:

* Students will understand the difference between state and federal law and explain how that affects States and Territories.
* Students will understand the changing historical pattern of the sources of state and federal income and how that affects policy decisions.
* Students will understand ways that the tax policies of the state and federal governments might be used to overcome regional and inter-state inequalities.
* Students will understand why, under the current arrangements, States are not free to levy duties upon certain goods (i.e. the Victorian government was blocked from applying a tax on electronic vehicles).
* Students will understand the role of the Grants Commission in achieving fiscal federalism and providing States with revenue to deliver services.
* Students will vote on whether an amendment should be made to sections 51ii and 90 of the Constitution.
* Students will collaborate in teams and respectfully listen to each other's opinions.
* Students will communicate prior knowledge and critically think about the new content presented by keynote speakers.

Student Pre-reading

## Background preparation – Pre-reading and podcasts

To maximise engagement in the Convention, participants are asked to review prior knowledge by engaging with the pre-reading provided in this booklet. The readings will cover:

1.      Commonwealth-state relations

2.      Constitution sections 51 and 90

3.      Powers by which the Commonwealth and the states raise money

4.      Australian Constitution history

5.      The Australian Constitution and how it can be changed

6.      Federalism

## Compulsory Reading

1. Reading – Commonwealth-state relations (11 pages)

* Read a [chapter by Professor Alan Fenna](https://drive.google.com/file/d/1o3IPvbBk0dPY5SmxdwByVUI3TugsYcPu/view?usp=sharing). Take particular note of:
  + Pages 153-156 – Introduction, Origins and design, The division of powers, Safeguards
  + Pages 157- 159 - Fiscal federalism, Controlling the revenue, Commonwealth grants, The equalisation system
  + Pages 162-163 - Conclusions

1. Reading - Constitution sections 51 and 90 (2 pages)

* To understand the link between section 90 and section 51 of the Constitution read
  + [Section 51](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/chapter1/Part_V_-_Powers_of_the_Parliament)
  + [Section 90](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution/chapter4) – and scroll down to section 90.

1. Reading – Three levels of government (2 pages)

* Read page 12 (*labelled page 8 in the online booklet*) of [AEC’s resource ‘Voting in Australia’ resource](https://education.aec.gov.au/teacher-resources/files/voting-in-australia.pdf).
* For more information about each level of government read the information on this on the [AEC Education webpage](https://education.aec.gov.au/teacher-resources/three-levels.html).

## Recommended reading about equalisation of funds for the States by the Commonwealth.

1. Reading – with States responsible for the delivery of many services including schools, hospitals, roads and many others, the role of the Commonwealth in ‘governing for all’ by ensuring sufficient funds for all States is crucial for the smooth operation of the Federation.

* Read the [Commonwealth Grants Commission article](https://www.cgc.gov.au/publications/occasional-paper-10-90-years-commonwealth-grants-commission) to gain a historical understanding of the role of the Grants Commission. (5 pages)

1. Reading - For further background about how different levels of government raise revenue and provide services between the States and the Commonwealth read the [article from the Parliamentary Education Office](https://peo.gov.au/understand-our-parliament/how-parliament-works/three-levels-of-government/three-levels-of-government-governing-australia).
2. Going deeper: to better appreciate the tension between fiscally strong and weak States read the [article by Saul Eslake](https://www.sauleslake.info/wp-content/uploads/Saul-Eslake-Distribution-of-GST-Revenue-the-Worst-Public-Policy-Decision-of-the-21st-C-20240202-website-version.pdf).
3. Going deeper: In the 21st century as the nature of the Australian economy changes is there a need to update our understanding of excise?

* read the [article by Professor Twomey](https://www.auspublaw.org/blog/2023/12/re-writing-section-90-vanderstock-and-the-new-meaning-of-excise)
* watch the [YouTube video exploring the meaning of ‘excise’ in s 90 of the Constitution and the Vanderstock case](https://www.youtube.com/watch?v=7NPTdAz_DX8&t=8s).

You may even want to explore more videos by Professor Twomey on the [“Constitutional Clarion” YouTube Channel](https://www.youtube.com/@constitutionalclarion1901).

## Australian Voting - familiarisation

Did you know that in 2023 there were 17,676,347 Australians enrolled to vote in the 2023 referendum? This represents 97.7% of all eligible Australians.

On day 2 of the National Schools Constitutional Convention, students will be asked to vote. Brushing up on prior knowledge is recommended below.

1. **History on Australian Voting**

* Australia is one of a minority of countries that has a system of compulsory voting. Today voting is conducted in an orderly manner but that was not always the case. We have evolved to democratic elections characterized by compulsory suffrage, a secret ballot and ultimately a smooth transition of power.
  + [Listen to the podcast featuring Emeritus Professor Judith Brett of La Trobe University](https://www.abc.net.au/listen/programs/latenightlive/how-australia-invented-secret-ballots-and-compulsory-voting/10868574), that provides some insight into the history of Australian voting.

1. **Reading – Constitutional Referendums** (4 pages)

* The Federal Parliament formed in 1901
  + A summary of how to approve or reject proposed changes to the Constitution - Read the [Constitutional Referendum brochure from the AEC](https://education.aec.gov.au/teacher-resources/files/constitutional-referendums-brochure.pdf).

1. **Reading - The Australian Constitution – what it is and who can change it?**

* When the Australian government is elected it receives a mandate via the ballot box to exercise power over citizens by making and administering laws*.*
* How power is regulated is an important feature of our representative democracy and the Constitution plays a crucial role in limiting the absolute power of government. This [short article](http://www.ruleoflaw.org.au/wp-content/uploads/Informed_Constitution-and-Purpose_FactSheet.pdf) provides some information about checks and balances on the executive power of government but also the importance of the Constitution in ensuring there is responsible government for all citizens.
  + Read page 24 (*labelled page 20 in the booklet*) of [AEC’s resource ‘Voting in Australia’](https://education.aec.gov.au/teacher-resources/files/voting-in-australia.pdf) resource.

## The Australian Constitution and Federalism – historical familiarisation

## 

1. **Podcast - History of the Constitution (24 minutes)**

* Listen to [***Episode 1*** of the Podcast 2023 Series ‘The Vibe’](https://podcasts.apple.com/au/podcast/its-not-just-the-vibe-its-the-constitution/id1700192230), presented by Professor Kim Rubenstein and Mr James Blackwell.

1. **Podcast - What is Federalism?** (33 minutes)

* Listen to [***Episode 2*** of the Podcast 2023 Series ‘The Vibe’](https://podcasts.apple.com/au/podcast/its-not-just-the-vibe-its-the-constitution/id1700192230), presented by Professor Kim Rubenstein and Mr James Blackwell.

*Note: Those interested may like to go deeper by listening to the entire series of 8 podcasts.*

Student Workbook

***Note: This workbook will be used during the Convention. A hardcopy of this workbook will be provided to you in Canberra.***

**Logo, company name

Description automatically generated**

## **Convention Outline - Day 1 and 2**

## Working Group Information

*There are three working group sessions. The task of each working group is to consider and discuss the keynotes. There will be guiding questions provided as a starting point.*

*At the commencement of the first working group session of each day of the convention, each group must select:*

* *one* ***Group Leader*** *to Chair all three working group sessions*
* *one* ***Scribe*** *who takes notes for each session. This may be a different person each session*
* *one* ***Representative Person*** *(****Spokesperson****) who will report back to the Convention. This person* ***must*** *change for each session.*

## Responsibilities of the Group Leader

*Wellbeing of the group*

* Ensure introductions of each member of the group – name, school, state/territory
* Monitor respectful sharing, interactions and engagement
* Ensure that the discussion is not dominated by one particular person
* Find opportunities to involve people who are not participating in the discussion
* Identify, via group consensus, who will be the Spokesperson reporting back to the Convention
* Ensure that the Spokesperson is set up for success with succinct dot point notes that reflect the group discussion (2 minutes sharing only)

*Focus of the group*

* Ensure that the discussion addresses the questions and stays on track
* Be aware of the time
* Allow time to review points
* Ensure that the group position is recorded by the end of the session by the Scribe
* Ensure the report reflects the range of views if there is not group consensus. It is not necessary to reach consensus although it may be the case that there is a majority view.
* Ensure that there is group agreement about the accuracy of the summary report

## Working Groups – Session 1 & 2 – Day 1 – Wednesday 26 March 2025

**Keynote 1: Why do we have a Federal constitutional system?  Understanding how the Constitution was developed and interpreted and how that impacts on State and Territory powers, including the raising of revenue!**

* Professor Kim Rubenstein, University of Canberra

**Keynote 2: The impact on the States of the changing meaning of excise.**

* Professor Emerita Anne Twomey, The University of Sydney

***Context***

Federalism underpins the structure and operation of government in Australia. The history of Federalism and how it has changed over time is crucial to understand the convention topic.

In particular, economic outcomes and the ability of government to raise revenue to fund services for its citizens is an important point of debate.

Following the first two keynotes your discussion will explore:

* The tension between the autonomy of the States and the role of the Federal government to provide an adequate level of essential services for all Australians.
* In the context of a modern economy that is more oriented towards the provision of services than the manufacture of goods, is an updated definition required of excise and taxes?

Both keynote sessions will address the following sections of the Constitution

* Australian Constitution Section 90: Section 90 of the Constitution grants exclusive power to the Commonwealth Government to impose customs and excise uniformly across Australia on the production and export of goods.
* Australian Constitution Section 51ii:
  + Section 51 grants the Australian Parliament the power to make laws for the peace, order, and good government of the Commonwealth. Section ii specifically states Parliament has the power to make laws regarding taxation but imposes a restriction that in matters of taxation, laws passed must not discriminate between States or parts of States.

***Group discussion***

This provides opportunity for group participants to make comments, ask questions or seek points of clarification. Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

You might like to use the following thinking routine to organise your own thoughts prior to participating in a more formal group discussion.

After listening to the two keynote presentations the following is what:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **I ALREADY knew** | **Idea outline**  **I NOW know** | **Questions outline**  **I’d like to KNOW more about** |
| **Keynote 1:**  Professor Kim Rubenstein, University of Canberra | **Checkbox Checked outline** |  |  |
|  | **Checkbox Checked outline**  **I ALREADY knew** | **Idea outline**  **I NOW know** | **Questions outline**  **I’d like to KNOW more about** |
| **Keynote 2:**  Professor Emerita Anne Twomey, The University of Sydney |  |  |  |

The following questions are provided as a guide only for group discussion:

1. Explain the difference between the ability of state and federal governments to raise revenue and provide services to their constituents
2. Discuss any advantages or disadvantages for States and Territories, about the current provisions for raising revenue.
3. Identify and explain areas of concern in state and federal financial arrangements that is linked to social justice and equity for all?
4. What are the important lessons you can take from Keynote 1 and Keynote 2 with regards to economic autonomy of individual States and equitable outcomes for all Australians regardless of where they live?

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

## Working Groups – Session 2 – Day 1 – Wednesday 26 March 2025

**Keynote 3 -** **The role of the Grants Commission in Building a Federation**

* Dr Angela Jackson*,* Commonwealth Grants Commissioner

***Context***

Fiscal Equalisation is an important concept that underpins financial Commonwealth/State relations. It seeks to ensure that the living standards of all Australians are maintained and improved by providing adequate funding from Federal revenue so services can be adequately provided by the States.

***Group discussion***

Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

You might like to use the following thinking routine to organise your own thoughts prior to participating in a more formal group discussion.

After listening to the keynote presentation, the following is what:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Checkbox Checked outline**  **I ALREADY knew** | **Idea outline**  **I NOW know** | **Questions outline**  **I’d like to KNOW more about** |
| **Keynote 3:**  Dr Angela Jackson, Commonwealth Grants Commissioner |  |  |  |

The following questions are provided as a guide only for group discussion:

1. Outline the role of the Grants Commission in determining the revenue available to individual States and territories.
2. Identify and explain advantages and disadvantages of horizontal fiscal equalisation. Justify whether fiscal equalisation should override the ability of States to pursue their own economic development.
3. Should there be incentives provided by government for less populous and poorer States to attract greater skills and investment?
4. Are there any red flags or areas of concern you have identified about the work of the Grants Commission linked to social justice and equity for all?

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

## Working Groups – Session 3 – Day 2 – Thursday 27 March 2025

**Keynote 4 – “What might be done, has been done, should be done, and could be done to improve Australian fiscal federalism”**

* Professor Alan Fenna, Curtin University, Western Australia

***Context***

Participants are asked to reflect on alternative arrangements for State governments to raise taxes and for alternative principles and criteria to guide the grants process in Commonwealth /State financial relations.

Would a different approach by government to raising and distributing revenue result not only in greater transparency about the different levels of government but also improve the efficiency of Government expenditure and result in a more efficient allocation of resources nationally?

***Group discussion***

Before you start, ensure that the Scribe is set up with the ability to record summary notes from the group discussion. The Spokesperson will then share these notes at the end of the discussion time (2 minutes sharing time).

You might like to use the following thinking routine to organise your own thoughts prior to participating in a more formal group discussion.

After listening to the keynote presentation, the following is what:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Checkbox Checked outline**  **I ALREADY knew** | **Idea outline**  **I NOW know** | **Questions outline**  **I’d like to KNOW more about** |
| **Keynote 4:**  Professor Alan Fenna, Curtin University, Western Australia |  |  |  |

The following questions are provided as a guide only for group discussion:

1. Outline how the concept of Vertical fiscal imbalance creates the opportunity for alternative methods of revenue raising.
2. Examine the way the Commonwealth supplies funds for state residual powers (e.g. health and education).
3. Develop alternatives to the current funding arrangements to assist States to meet service provision (e.g. health and education) and develop economic opportunities.
4. Consider arguments for and against making changes to section 90 and 51ii of the Constitution to allow States a greater ability to raise revenue in their own right.

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

## The Vote

At the conclusion of the convention delegates will be invited to cast a vote on TWO questions posed as a result of discussing the topic.

***Question 1***

*To alter s.51(ii) of the Constitution to omit the words, “but so as not to discriminate between States or parts of States”*

***Question 2***

*To alter the Constitution to allow States to impose a tax on goods after their production and manufacture but only in a way that does not discriminate against goods from other states.*

The voting will be conducted by representatives of the Australian Electoral Commission and will follow the referendum process.

Delegates will be required to complete a ballot paper that ask for a YES or NO response to a question provided.

For a question to be endorsed by the convention, consistent with the referendum process outlined in the Constitution, a double majority must be gained from the delegates, i.e. a majority or all delegates must vote YES, and a majority of States must vote YES.

NB: Prior to a referendum being put to voters, Parliament goes through a lengthy process to draft, debate and pass enabling legislation. In this process any specific changes to the wording of the Constitution must be considered carefully. [Read this article to learn more about the referendum process](https://civicsaustralia.org.au/wp-content/uploads/2023/06/How-does-a-referendum-work.pdf).

Use the following template to help you record your thoughts and possible arguments both FOR and AGAINST each question

|  |  |  |
| --- | --- | --- |
|  | **Thumbs up sign outline**  **FOR** | **Thumbs Down outline**  **AGAINST** |
| To alter s.51(ii) of the Constitution to omit the words, “but so as not to discriminate between States or parts of States” |  |  |
| To alter the Constitution to allow States to impose a tax on goods after their production and manufacture but only in a way that does not discriminate against goods from other states |  |  |

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |

**Notes:**

|  |
| --- |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |