

# Re Constitution Alteration (Establishment of Republic) 1999

My concerns are as follows:

## **1. Section 60 The President**

It seems insufficient that the PM only be required to "consider" the report of the nominations committee; and then the PM "may" move that a "named Australian citizen" be chosen. It should be explicitly stated that the PM must choose someone who has been nominated in the appropriate manner. (Otherwise one presumes that the report could be considered, and an outside individual could be chosen.)

It also seems sensible that it be explicitly stated that the PM must choose someone who is recommended by the Nominations Committee. (Otherwise it makes a mockery of the committee stage of the process if the shortlist or recommendations of the Committee are ignored.)

There should also be a reference to the PM having regard to the "diversity of the Australian community" when choosing the President. This provision is even more important if the Constitution does not explicitly provide that the PM must choose from those recommended by the Nominations Committee.

## **2. Section 62 Removal of President**

The removal of the President should be on the "ground of proved misbehaviour or incapacity" (as with High Court judges). This is even more relevant since the draft does not incorporate the recommendations of the Constitutional Convention that the disapproval of the House of Representatives be equated to a vote of no confidence in the PM. I would go even further than that, and suggest that the draft provide that the PM should have to resign if the vote is lost.

I note that the explanatory memorandum says that: "A President who has been removed is eligible for re-appointment, through the mechanism for choosing a President set out in the Constitution". I find myself questioning the sincerity of such a suggestion in the light of the fact that section 62 is to prohibit the reinstatement of a President dismissed without the approval of the House. Furthermore, it is unthinkable that a Prime Minister who has

dismissed a President in such a manner, will select the same person to be President under the normal appointment process.

### **3. Enacting Words**

It is not clear from the draft what the relevant enacting words will be for the revised Constitution. Are the current enacting words (re Queen's most excellent majesty etc.) to be retained along with the original preamble? If there is a republic, where is the source of authority for the amended Constitution? Clearly it is no longer the Queen. Despite Jeff Kennett's proposal, it is also inconsistent with "representative democracy" for the source of authority to be the Parliament. Clearly the *Sovereignty of the People* is the source (consistent with Howard's preamble and s128) but this is not reflected in the draft. Also, as enacting words always follow the preamble - and are not the same as the preamble - The Prime Minister's proposed wording is not sufficient (and anyway, it is to be non-justiciable).

Thus, there should be the repeal of the old enacting words, the addition of new enacting words referring to the People as the source of authority enacting the changes to the Constitution, and affirming the rest. For example, the following words could be used:

"We the people of Australia affirm and declare that this Constitution continues to have force as the supreme law of Australia".

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## **Re Presidential Nominations Committee Bill 1999**

My concerns are:

### **1. Section 11 Appointment of Community Members**

The draft should provide that the PM must take into account "so far as is practicable considerations of federalism, gender, age and cultural diversity" when appointing Community Members to the Committee. I would add that the Community members ought not be members of political parties.

### **2. Gender Balance**

I believe the draft should provide that the Nominations Committee have equal numbers of men and women. This is in line with the recommendations of the Women's Constitutional Convention.

### **3. Section 22 Committee's report**

It should be explicit that in preparing the report, the Committee should consider the diversity of the Australian community "including diversity of gender, age and culture". (Amend s 22(3)(a).)

Yours sincerely,

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