

5 Brampton Court
Robina Qld 4226

25 June 1999

The Secretary
Joint Select Committee
on the Republic Referendum
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

Thank you for sending me particulars of the proposed legislation to amend the Constitution and other relative information.

re: **CONSTITUTION ALTERATION (ESTABLISHMENT OF REPUBLIC) 1999**

PREAMBLE

I notice, in his second reading speech, the Attorney-General states that the Government does not regard the Bill to amend the Constitution as an opportunity to generally tidy up that document.

I think this is unfortunate as the Constitution is a document that was drafted at the end of the 19th Century using the language and drafting style of the times. It was also written with the aim of setting out the modus operandus for a **future** federation of States if this should eventuate.

If as a result of the forthcoming referendum Australia becomes a republic I believe that when and if this happens (on 1 January 2001) the Constitution as amended should recognise that much of what has been happening in the last 100 years will be continuing to happen without change into the foreseeable future.

I can see the virtues of minimising change but I also believe that where change is needed the opportunity should be taken to get away from the antiquated drafting style of bygone years (e.g. use of expressions like 'shall be') and to make the document one which sets out the way in which Australia will be governed from day to day in the future. Thus, in the changes made the present tense should be used as much as possible (see the proposed change to section 73) and existing arms of government which continue as such should be so recognised.

A simple illustration of this is in section 1 where the word 'Queen' is replaced by the word 'President'. I believe that in conjunction with this alteration it is also appropriate to recognise the continuing existence of the Senate and the House of Representatives. Hence, this alteration should also remove the indefinite article 'a' from this section and replace it with the definite article 'the'. Thus, as amended in the light of the above comments, section 1 would read -

“1. The legislative power of the Commonwealth is vested in the Federal Parliament which consists of the President, the Senate and the House of Representatives hereinafter called ‘The Parliament’ or ‘The Parliament of the Commonwealth’.”.

HEAD OF STATE

For the first time in its life, if Australia becomes a republic, it will have a head of state uniquely Australian. This person, the proposed ‘President’ will, in effect be the face of Australia where our country is represented by its head of state. I think that it would be very unfortunate indeed if the changes made to the Constitution do not recognise this in an ‘up front’ way. Hence, I earnestly urge the Joint Select Committee to put the Presidential provisions in the Constitution at its beginning by inserting a new chapter (1A) entitled ‘Head of State’. The first section of the new chapter could bear the heading ‘**President**’ and might read, for example -

“**President**

“1. The head of state of the Commonwealth is the President.”.

Subsequent sections in the proposed new chapter 1A could be -

“**Appointment of President**

“1A. (the currently proposed section 60 with ‘the’ inserted before ‘President, the Prime Minister...’)

“**Term of office and remuneration of President**

“1B. (the currently proposed section 61)

“**Removal of President**

“2. (the currently proposed section 62)

“**Acting President and deputies**

“3. (the currently proposed section 63)

The words ‘the Commonwealth’ are used throughout the Constitution and these are defined in the Act. It would be nice to see the Constitution as a stand-alone document. To this end, it might well be retitled as -

“**The Constitution of the Commonwealth of Australia** (in this document referred to as ‘The Commonwealth’)

“This Constitution is divided as follows:

“Chapter 1A - **Head of State**

“Chapter 1 - **The Parliament**

“Part I - **General**

“Part II - **The Senate**

and so on.

SECTIONS 1 TO 60

I have commented already on the proposed changes to section 1 which, under my proposals, would be renumbered to be section 4.

I reaffirm my previously expressed view that the Government of Australia should have only one ‘President’ and the President of the Senate should be given another name (e.g. ‘Chancellor’). If this were done the word ‘President’ would simply change to ‘Chancellor’ (see sections 17, 18, 19, 21 and 23) and words ‘Governor -General’ would simply change to ‘President’ (sections 17, 19 and 21).

SECTIONS 61 TO 63 - Executive Power, Federal Executive Council and Provisions referring to President in Council.

In the Bill these sections are repealed and replaced by a proposed new section 59 which among other things is intended to retain to the President the reserve powers of the Governor-General.

SECTIONS 64 TO 70

The Bill, if implemented still leaves the expression ‘President in Council’ undefined and messes up the straightforwardness of the present Constitution by adding savings provisions at the new sections 59, 70 and 70A; yet it attaches a new Schedule 2 of transitional provisions. The new Schedule 2 seems to me to be an ideal spot to locate any savings provisions desired in the revised Constitution and at the same time the scope for complex legal argument in the future would be minimised.

I would prefer to see -

SECTIONS 61 TO 63

- the proposed section 59 deconstructed into sections 61 to 63 under the headings ‘Executive Power’, ‘Federal Executive Council’ and ‘President in Council, etc.

Reserve powers of Governor-General and SECTIONS 70 and 70A

- in Schedule 2 the President stated to be the legal successor to the Governor-General with all the powers enjoyed by the person in the office of Governor-General at the time Australia becomes a republic and some words to the effect of the proposed new section 70A.

re: **PRESIDENTIAL NOMINATIONS COMMITTEE BILL 1999**

As in the Republic Bill the drafting is ambivalent as to whether the head of state is 'the President of the Commonwealth of Australia' or without the definite article. Judging by the numerous introductions we witness on the TV the people of the United States of America, for example, always talk of 'the President'. Their case is different from what is proposed for us but, nevertheless, our President will be our head of state. Accordingly, it seems to me best to include the definite article as part of the title throughout any definitive drafting (but not in headings). Thus, in the Bill under reference, in my view, the word 'the' should be added to the Bill description and the definition of 'President' in section 3.

CONCLUSION

I trust that you will find the above comments as constructive and of assistance in your considerations of the legislation proposed to be enacted should the electorate decide that Australia is to become a republic.

Yours sincerely,

(Sgd) ROBERT E. BALCHIN

R.E. Balchin.