SUBMISSION TO THE JOINT SELECT COMMITTEE ON A REPUBLIC REFERENDUM - PARLIAMENT OF AUSTRALIA

Review of Constitution Alteration (Establishment of Republic) 1999 and Presidential Nominations Committee 1999 Bills

from

Law Society of New South Wales

Australian Constitutional Issues Taskforce

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1. Introduction

The *Constitution Alteration (Establishment of Republic)* 1999 and the *Presidential Nominations Committee* 1999 bills are intended to implement the substantive recommendations of the Constitutional Convention held in Canberra during February, 1998.

The Law Society of New South Wales has had a taskforce with the responsibility of considering these issues for some years. The legal profession, by virtue of its training and expertise, has the ability to assist the Joint Select Committee in considering these bills.

This submission deals with issues which arise from both bills. The members of the Law Society's taskforce are available to meet with the Joint Select Committee, if required. The taskforce's comments on the legislation under review are set out below.

2. Choosing the President

2.1 Size of the Committee

We are concerned that a committee of 32 members is too large. Rather than designing the committee to have 16 politicians balanced by 16 non-politicians, a tri-partite classification would be preferable. This would mean 8 appointees from the Federal Parliament, 8 appointees from State and Territory Parliaments or legislatures, and 8 community members. A committee of 24 will be far more workable than one of 32, but the various interests are still accommodated. The reduction in the number of community members may be further supported by the fact that by definition they have no claim to being democratically elected representatives.

2.2 Selection Criteria for the President

The criteria for selecting a Presidential nominee is unclear. The criteria specified in the Presidential Nominations Committee Bill, s.22(3) requires that the Committee consider:

(a) the diversity of the Australian community; and

(b) the ability of the nominees to command the respect and support of the Australian Community.

In addition s.22(4) states that the Committee is able to consider any other matter that it considers relevant. As the Committee does not have clear guidelines there is a greater likelihood of disagreement within the Committee. In the case of a belligerent Committee member the short-listing process could be slowed down considerably.

The public wanting to nominate a person and a nominee having to decide if they should consent to being nominated may also find that they cannot make an informed decision about a nomination as they have no criteria to consider. This may in turn result in

desirable candidates not being nominated or a large number of unsuitable candidates being put forward.

The ability of the Committee to determine other relevant matters under s.22(4), may allow for the above concerns to be dealt with. However, the Committee may be loath to set out criteria on such an important issue without a democratic mandate to do so. This would mean criteria would have to be determined by regulation under s.28(1)(b) to carry out or give effect to the Act.

It may be desirable to deal specifically with who, if anyone, can determine further selection criteria expressly. In setting out the express stipulation it may also be advisable to require that the criteria be set well in advance of the invitation for any nominations so as to ensure impartiality. Criteria raised on an ad hoc basis during deliberations may result in different criteria being applied to different nominees so that the process may become, or may appear to become, partisan.

In most committees, members who have a strong dissenting view can put forward a report in addition to the one endorsed by the committee. Consideration should be given to whether this procedure should be dealt with in the Bill, either disallowing dissenting reports or being silent on the issue but acknowledging that the opportunity exists.

3. Qualifications of the President

The qualifications for being President are set out in the proposed s.60 of the Constitution which provides:

(a) the person must be qualified to be, and capable of being chosen as, a member of the House of Representatives;

(b) the person must not be a member of the Commonwealth Parliament or a State Parliament or Territory Legislature or a member of a political party.

These provisions give rise to the following issues:

3.1 Existing Constitutional Provisions

The proposed s.60 imports the contents of ss.34, 43, 44 and 45 of the Constitution, as modified by the Parliament, as qualifications and disqualifications for being the President. As a result of the modifications the Constitution is on its face an inaccurate reflection of the current state of the law. To ensure clarity and simplicity it may be preferable to specifically state the qualifications and disqualifications for the position of President rather than importing them by reference.

Some of the qualifications and disqualifications for the House of Representatives have been criticised or may be inappropriate to apply to the Presidency. For instance, the disqualification that "any person who holds any office of profit under the Crown[1]" is incapable of being chosen as a member of the House of Representatives in s.44(iv) has been interpreted as applying at the time the person is nominated[2]. This means that a potential President must resign any office before being nominated and without knowing if they will be appointed. This may unnecessarily restrict who can accept a nomination to

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[1] The *Constitution Alteration (Establishment of Republic)* 1999 Schedule 2, Item 18 amends s.44(iv) but without altering its effect in regard to this argument.

[2] *Sykes v Cleary* (No2) (1992) 176 CLR 77 at 99-100.

the position of President. If a person is appointed President then at that point they should not hold an office of profit under the Crown. The potential for conflict of interest or dereliction of duty only applies upon appointment.

If the "politician disqualification" discussed below was removed then it should be remembered that s.43 may create an anomaly by excluding members of the Senate from being appointed as President because they are not eligible to be a member of the House of Representatives.

The ability of Parliament to modify the requirements to be President could be incorporated through the words "until the Parliament otherwise provides". However, the use of the alteration of the constitution mechanism, s.128, to insert the requirements may also suggest that the same mechanism should be used to alter the requirements.

3.2 Member of a political party disqualification

The objection to politicians being President seems to stem from a disenchantment with politicians rather than the concern about bias or impartiality[3]. Whilst society may be disenchanted with politicians as a group this should not impact upon an individual's right to be nominated for the position of President. Citizens should be encouraged to participate in government and the political system. A requirement that excludes members of a political party from being President sends a message to the community that such involvement is somehow undesirable. The Republic provides an opportunity for citizens to take a larger role in the political sphere that should be fostered rather than denigrated.

Whilst it may be easy to identify a person who is currently a member of a Parliament or legislature it may be far more difficult to identify the meaning of "a member of a political party". When does an organisation or group of individuals in the community take on the status of a political party?

The *Electoral Act 1918* (Cth) at s.4 defines "Political party" as "an organisation the object or activity, or one of the objects or activities, of which is the promotion of the election to the Senate or to the House of Representatives of a candidate or candidates endorsed by it". In New South Wales the *Parliamentary Electorates and Elections Act 1912* (NSW) and the *Election Funding Act 1981* (NSW) provides that a party means "a body or organisation, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to [the Assembly or the Council/Parliament] of a candidate or candidates endorsed by it or by a body or organisation of which it forms a part". The key determinant is the object or activity of the entity being to get someone elected to a Parliament.

Is a group of concerned citizens who run together as independents on a specific issue that affects their community, such as an airport, a political party? Will it matter that the group contests a local council election as opposed to a Federal election?

Consideration should be given to the removal of this disqualification from the proposed s.60 as it is unnecessary and possibly harmful. If it is to remain then a definition may avoid confusion.

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[3] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.55.

3.3 Politician disqualification

The requirement that a President not be a member of the Commonwealth Parliament or a State Parliament or a Territory Legislature is necessary once a person has been appointed as President. In other words they could not hold two positions. However, their eligibility to be nominated and appointed should not be affected by them being a current member of an Australian Parliament or Legislature. The arguments in relation to the member of a political party exception above would seem to apply with equal force here.

A further argument against the use of such a requirement is that the Commonwealth Parliament operates by a person who is a Minister being both a member of the Executive and of the Legislature. It would seem to be inconsistent to then say that a person could not be a member of the Legislature and then take on the position of President and be part of the Executive. Equally members of the Legislature have been appointed to the Judiciary. The disqualifications seems aimed at excluding politicians without considering if it is warranted on the basis of the principles of our system of government, such as the separation of powers.

The availability of current and retired politicians may be an advantage to government as their involvement in the political process provides a familiarity with government, parliamentary procedures and constitutional law.[4]

The main concern about a President with party political links should be that they would not act impartially and may favour a particular side of politics. This concern is able to be addressed by the method for appointing the President. A person who is considered to be impartial may not be recommended by the Nominations Committee to the Prime Minister for appointment, but certainly would be unable to secure the two-thirds majority that is required for a valid appointment as the party which felt it may be unfairly treated by that person would not vote for them.[5]

3.4 Are other qualifications necessary?

Whilst previous Governors-General have generally had experience as politicians or judges so that they had a relevant background for the position there is no need to prescribe what a President's background should be in the Constitution. It may be an appropriate factor, amongst others, to be considered by the Nominations Committee.

3.5 Unqualified President

It is not clear what happens if it is later found by a Court that the President was not qualified to be chosen (e.g. if it is found that the President had dual citizenship or held a contract with the public service at the time of appointment). While the fourth paragraph of the proposed s.60 ensures that the President's actions are not invalid, it is not clear whether the President's position becomes vacant if it is found that he or she was not qualified at the time he or she was chosen. The Explanatory Memorandum implies that the position does not become vacant because of the absence of qualification, but rather that the Prime Minister may choose to remove the President upon this basis. Again, this is not clear on the face of the Constitution. This should be dealt with expressly, rather than leaving it to be resolved in a political crisis.

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[4] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.56.
[5] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.56.

4. Powers of the President

The powers of the President under proposed s.59, entitled "Executive Power", is vested in the President. It includes the execution and maintenance of the Constitution and Commonwealth laws. The President is to be the head of state of the Commonwealth.

According to the Explanatory Memorandum, the powers of the President are the same as those of the Governor-General including all conventions. Is this sufficient? Should the President as head of state of the Commonwealth have those powers attributable to the Queen?

The President is to act on the advice of the Federal Executive Council, the Prime Minister or another Minister of State. While "Federal Executive Council" and "Minister of State" are defined in the Constitution, "Prime Minister" is not defined.

The issue of reserve powers has been dealt with in the proposed s.59 by providing for their continued existence and specifying that the applicable constitutional conventions continue. This approach appears to aim to preserve the current position in relation to the Governor-General. Whilst there has been considerable debate about the reserve powers and it remains a controversial issue the Bills have attempted to deal with the issue through a method which requires the least amount of change[6]. The main problem with this approach is that the reserve powers are unwritten and their exercise, although it must be in accordance with the unwritten conventions, is not justiciable. There have been advantages suggested to this state of affairs such as the ability of the conventions to adapt to new circumstances. However, the only time that conventions are tested is in times of controversy and crisis. It is submitted that it would be better to avoid the crisis by having clear rules rather than amorphous conventions that no-one fully understands. Further debate on this issue is required as the other half of the equation, the Prime Minister's ability to remove a President, has changed.

As time is short and the decision on reserve powers is complex, it may be preferable to review the procedure for exercising the reserve powers to try and build in safeguards. For instance, the President could be required to warn a Prime Minister before he/she exercises a reserve power. By putting the Prime Minister on notice a solution may be capable of negotiation, or at least the perceived unfairness of summary dismissal is dealt with. Such a procedure requires counter-balancing procedures to govern the removal of a President. Otherwise the proposed s.62 would allow a Prime Minister to remove an unco-operative President. A reliable safeguard here would be to specify the grounds upon which a President could be removed. Other procedures are discussed below. However, there is a link between the process to remove a President and the reserve power to dismiss a Prime Minister that needs to be examined to give rise to a system that does not depend on "who shoots first"[7].

5. Removal of the President

The proposed s.62 of the Constitution specifies that the Prime Minister may remove the President by giving signed notice and then, within 30 days, seeking the approval of the

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[6] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.88 - 116 and Republic Advisory Committee, *An Australian Republic - The Appendices - Volume 2* (1993) p.241 - 273 review the material in detail.

[7] Mason, The Convention Model for the Republic (1999) 10 (2) *Public Law Review* 147 at 147 and Kohler, Don't trivialise the Constitution, *Australian Financial Review*, 16 March 1999 at 19.

House of Representatives, unless an election is called. This process has the following ramifications:

(a) the Constitution does not specify any criteria for removal;

(b) the Prime Minister is not required to give any reasons for the removal;

(c) a President is appointed by a two-thirds majority of both Houses of Parliament but may be removed by the Prime Minister, who needs his/her action to be supported by only a simple majority in the House of Representatives.

This submission acknowledges that the Bills do not seek to go beyond what is necessary to establish a Republic and the current position is that the Prime Minister may request that the Governor General be removed by advising the Queen that such action should be taken[8]. However, as the method of appointment has altered, it would seem appropriate to consider if a different form of removal was also warranted. In addition a President holding office at the Prime Minister's whim would not appear to attract public support.[9]

Removal of the President gives rise to two issues, what procedure should be followed and what grounds should allow removal. This has been given consideration in the Republic Advisory Committee Report , *An Australian Republic - The Options - Volume 1* (1993) at p.74 -82 and *An Australian Republic - The Appendices - Volume 2* (1993) at p.2-5.

5.1 Possible Procedures

The procedures for removal that have previously been considered where the President is appointed by an electoral college or parliament include:

(a) no investigation of need for removal; or

(b) investigation by Nominations Committee, Parliamentary committee, judicial or medical panel, or other investigatory body;

followed by

(c) simple majority of House of Representatives;

(d) simple majority of both Houses of Parliament;

(e) two-thirds majority of House of Representatives; or

(f) two-thirds majority of both Houses of Parliament.

5.2 Possible Grounds for Removal

The grounds for removal that have previously been considered where the President is appointed by an electoral college or parliament include:

(a) no grounds needed;

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[8] The Advisory Committee to the Constitutional Commission, *Executive Government* (1987) p.33
[9] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.77

(b) misbehaviour or incapacity as for federal judges in s.72 of the Constitution;

(c) as for (b) but including treason or acting contrary to the Constitution; or

(d) some other formula for misconduct of which other countries with Presidents provide examples, for instance "high treason" in France, "treason, bribery, or other high crimes and misdemeanours" in the USA.[10]

The first possibility to consider in terms of procedure is to adopt the same method of removal as for appointment.[11] That would involve the dismissal being considered by the Nominations Committee and requiring a two-thirds majority of both Houses of Parliament. Such a procedure may be difficult to implement when the Nominations Committee meets on an ad hoc basis, may not have the expertise to determine if removal is warranted, and has no pre-set grounds for removal. In addition, a two-thirds requirement whilst necessitating the co-operation of political parties for a successful removal still results in the decision being politicised.

The issue to be resolved is whether additional protections against an unwarranted removal of a President are needed. If time permitted, consideration should be given to designing an appropriate process with safeguards.

As time is short a protection of moderate means is suggested. The Prime Minister could be required to provide specific reasons to the House of Representatives and the President could be allowed to address the House of Representatives prior to any vote. This may be a better replication of how a removal of a Governor-General would occur as it requires reasons and the giving of notice[12]. As a result the reasons for and against removal are placed on the public record so as to not only influence the vote of the House of Representatives but for the public to give whatever weight they consider appropriate to it when the next Federal election is held. It may not be a perfect solution but a Prime Minister will need to give plenty of consideration to whether removal is warranted.

The provision of additional protections against the arbitrary removal of a President may result in a President using reserve powers in a more candid, open manner rather than by stealth because the President can rely on a transparent process.[13] However, whilst the process to remove a President is in train a President may choose to use their reserve powers to dismiss the Prime Minister or call an election. As already mentioned, there is a link between the process to remove a President and the reserve power to dismiss a Prime Minister that needs to be examined[14].

6. Acting President and Deputies

The longest serving available governor of a State is to act as the President in the event

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[10] Winterton, *Monarchy to Republic* (1986) p.116
[11] Republic Advisory Committee, *An Australian Republic - The Options - Volume 1* (1993) p.75. and Turnbull, *The Reluctant Republic* (1993) p.135.
[12] Mason, The Convention Model for the Republic (1999) 10 (2) *Public Law Review* 147 at 147.
[13] Winterton, *Monarchy to Republic* (1986) p.115
[14] Mason, The Convention Model for the Republic (1999) 10 (2) *Public Law Review* 147 at 147 and Kohler, Don't trivialise the Constitution, *Australian Financial Review*, 16 March 1999 at 19.

that the office of President is vacant.

The appointment of a State governor in this manner would transport that governor's official capacities as the Queen's representative in Australia. This includes the powers and conventions vested in the Queen as well as those of the Governor. Despite being the Acting President, the State Governor would remain a governor and representative of the Queen. The links to the Queen are retained for the States under Schedule 3.

There are potential difficulties in this proposal. The Australian people may see that a representative of the Queen as an inappropriate person to be their Acting President, apart from the legal implications. Also, the Queen may have some difficulty in one of Her governors performing in an office of a republican head of state. This could provide difficulties under the constitution of the United Kingdom.

Proposed section 63 refers to "Prime Minister" which is not defined in the Constitution.

The State Governor is to act as President during the period the President is incapacitated. The term, "incapacitated", is not defined.

The provisions of proposed sections 60 and 61 will not apply to the Acting President. The qualifications of President under section 60 requires the person to be an Australian citizen who is capable of being chosen as a member of the House of Representatives. This latter requirement imports the restrictions under section 44 of the Constitution dealing with such matters as allegiance, convictions, bankruptcy, office of profit and contracts with the public service, the qualifications for voting including age and residence requirements, and the disqualifications of certain persons such as those with mental incapacity and some prisoners. In addition, the President must not be a member of Parliament or a member of a political party. These qualifications must apply to any Acting President.

The reference to "political party" also needs definition.

The issue of qualifications as applying to the person in the office of President under section 60 must apply to persons who are deputies if the intention of the amendment to the Constitution is not to import additional changes other than those sufficient to deal with the head of state issue. If the same qualifications do not apply, persons in the office of Deputy President:

- do not have to be Australian citizens
- can be members of political parties
- can be a Member of Parliament where the office of Deputy President is not an office of profit under the Crown which can be arranged by Parliament deciding not to remunerate deputies
- can be the Prime Minister where the office of Deputy President is not an office of profit under the Crown which can be arranged by Parliament deciding not to remunerate deputies.

The powers of deputies should not be as extensive as those of the President even when the President is out of Australia. Modern communications can overcome previous difficulties in the performance of duties. The exercise of powers could be limited to circumstances where the President is sick or on recreation leave and in some instances, particularly

ceremonial duties, when the President is out of Australia.

The person exercising the powers of the President is prevented from doing so until the oath is made before a Justice of the High Court. The same applies to the person to be President under section 60. As the Constitution refers to the Chief Justice of the High Court, should this duty be conducted by the Chief Justice?

The third paragraph of proposed section 63 applies provisions other than sections 60 and 61 to any person acting as President. It is not clear if these provisions apply to a deputy who has been assigned the powers and functions of President. The requirements under proposed section 59 particularly in relation to the President acting on advice, should apply to all deputies.

The existing section 126 of the Constitution appears to deal with circumstances in the late 1800s relating to the difficulty of a single Governor-General performing functions across Australia. In view of the transport and communications infrastructure of the late 1900s, the need for this provision has less potency. Consequently, all references to deputies should be removed and the role intended for State Governors should be expanded with the removal of the difficulties referred to earlier.

There are inherent difficulties with proposed section 63:

- Which State Governor is "the longest-serving State Governor available"? What would happen if there is disagreement about which State Governor available is the longest serving one?

- What would happen if the High Court later finds that the Acting President was in fact not the longest serving State Governor available?

- What would be the consequences on decisions made by the Acting President during the term up to the findings of the High Court?

The same issues would arise where the President is incapacitated. An appropriate provision to deal with decisions made during the relevant periods should be included. How is incapacity of the President determined?

- If the Prime Minister determines the President is incapacitated, what happens if this is successfully challenged in the High Court?

- What would be the effect of decisions made by the Acting President?

The issue of remuneration in the last paragraph of proposed section 63 is questionable in view of the existing remuneration arrangements for Parliamentarians. Should the same arrangements via the remuneration tribunal apply?

An alternative model that the Joint Select Committee may wish to consider is the model adopted in New South Wales where the Chief Justice of the Supreme Court is the Lieutenant Governor and presides over meetings of the Executive Council in the absence of the Governor.

7. Other Issues

7.1 General Comments on Schedule 2 to the Constitution Alteration Bill

The main problem with the proposed amendments to the Constitution is that the Commonwealth Government has taken such a narrowly minimalistic approach that it replicates words from existing provisions which are no longer appropriate or have been changed in meaning by convention. By doing so, and re-enacting these provisions in the late 20th century, questions must arise as to what is really intended. If what is meant by the amended provisions is different from the words drafted in the 1890s, then this should be expressed on the face of the Constitution, not hidden in the Explanatory Memorandum. Using the words drafted in the 1890s because of a fear of making too many changes to the Constitution, merely distorts the Constitution and makes it incomprehensible to the ordinary person who reads it to understand the system of Government in Australia.

Another consequence of this narrowly minimalistic approach is the haphazard removal of redundant provisions. A redundant provision is removed if it happens to mention the Governor-General, but if it does not, it is not removed. This is an idiosyncratic approach to constitutional amendment, as similar clauses will stay or be removed on the irrelevant issue of whether the Governor-General happens to be mentioned. A more consistent approach is needed.

7.2 Schedule 2, Item 23, Section 58 - Assent

This provision is based on existing s. 58, which was drafted on the basis that the Governor-General did not act on the advice of his Australian Ministers on this matter but had the discretion to choose to withhold or reserve assent. The Governor-General was expected to exercise this discretion pursuant to any instructions in letters patent and to refuse or reserve assent if in his view the Bill conflicted with Imperial interests, laws or treaties – (see, for example, the reservation of assent to the *Customs Tariff (British Preference) Bill 1906* on the basis that it conflicted with British treaty obligations, and other comments in: W. Harrison Moore, *The Constitution of the Commonwealth of Australia*, 1910, 2nd ed., p. 110).

In its proposed new form, s. 58(1) still refers to the discretion of the President to grant or withhold assent. Surely, it is intended today that the President should act on the advice of his or her Australian Ministers in making this decision. However, by maintaining the original words concerning his or her discretion, there may be seen to be an implication of individual discretion. This means at the very least that the provision will be confusing to those who read the Constitution without understanding the underlying conventions. At its highest, there could be an argument by a President who seeks to exercise political power that he or she can exercise discretion, contrary to advice, to refuse to assent to bills that are unpopular or that the President considers to be beyond power or otherwise invalid. If it is intended that the President not exercise individual discretion, but rather act on the advice of Ministers (as the new s. 59 would otherwise suggest), then this should be made clear so that confusion or uncertainty does not arise in the future.

Sub-section 58(2) would also appear to be inappropriate unless it is confined to making minor corrections to laws, upon the advice of the Government. If so, it should clearly say this.

7.3 Schedule 2, Item 41, Section 126 – Covering clause 5

This provision brings covering clause 5 into the body of the Constitution. Covering clause 5 has been used by Justices of the High Court to pursue various constitutional

interpretations (e.g. equality in *Leeth*[15] and protection of the courts in *Kable*[16]*).* Further consideration needs to be given to the intended meaning of the clause and the consequence of importing it into the Constitution proper, as this may have significant ramifications.

7.4 Schedule 3, Clause 6 – Unified federal system

We have some difficulty in understanding precisely what is meant by this provision, in particular what is meant by the 'unified system of law'. Of its very nature a federal system is made up of several parts, and is not a 'unified' system. The recent cross-vesting decision is evidence of this. The section should be clarified so that it is clear what it is trying to achieve. Is it intended to address the position of the common law? Is it intended to address the court structure set out in Chapter III of the Constitution?

It might also be appropriate to include in this referendum a provision which would allow the cross-vesting of State jurisdiction in Federal courts, which was recently struck down by the High Court in *Re Wakim; Ex parte McNally*[17].

7.5 Schedule 3, Clause 9 – Interpretation

In the light of the High Court's judgment in *Sue v Hill*[18], it may no longer be appropriate to use the phrase 'the Queen's heirs and successors in the sovereignty of the United Kingdom'. This should be given further consideration.

This raises the issue of the existing preamble and covering clauses. These provisions no longer appear to be appropriate, however they are not addressed in the referendum. They could be removed by joint action of the States and the Commonwealth in amending s.8 of the *Statute of Westminster* (pursuant to the method set out in s.15(1) of the *Australia Acts*) to allow them to be repealed.

8. Concluding Remarks

The concerns we have identified in this submission give rise, in our view, to a more fundamental issue, namely, whether the Commonwealth Constitution should be retained as a section of an Act of the United Kingdom Parliament, or whether the whole Constitution should be re-enacted by way of referendum as part of the fundamental law of Australia. This would appear to be an appropriate method of establishing a republic.

There are other issues of constitutional reform of a more general nature which are not considered in this submission. One of these issues is the establishment of a regular program of constitutional revision so that matters are considered on a timely basis allowing for an incremental and structured approach to reform.

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[15] *Leeth v Commonwealth* (1992) 174 CLR 455.
[16] *Kable v Director of Public Prosecution (NSW)* (1996) 189 CLR 51
[17] *Re Wakim; Ex parte McNally* [1999] HCA 27 (17 June 1999).
[18] *Sue v Hill* [1999] HCA 30 (23 June 1999).