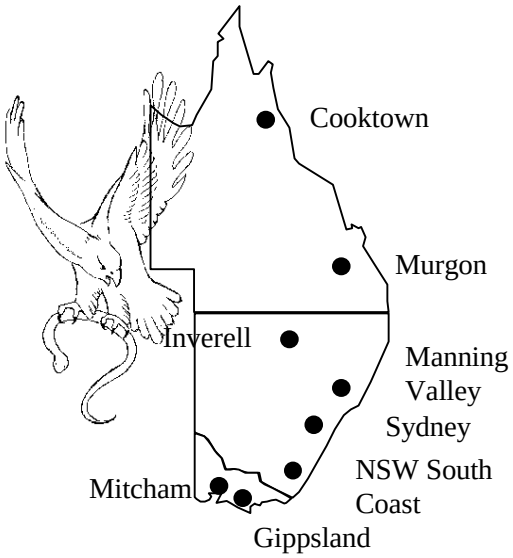

AUSTRALIAN COMMUNITY ORGANISATION

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SUBMISSION TO

THE JOINT SELECT COMMITTEE

ON THE REPUBLIC

AUSTRALIAN COMMUNITY ORGANISATION

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Thursday, 17 June 1999

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

Tel : (02) 6277 2146; Printed copies (132 447)
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SUBMISSION TO JOINT SELECT COMMITTEE

Dear *Sir*,

Enclosed is our submission to the *Joint Senate Select Committee* on the republic referendum. In this document we provide our views and understandings of the current bills that may modify the Australian Constitution in a future republic.

In summary we believe that there are major deficiencies in the manner in which the bills have been submitted for public review. These include

i. Limited time for review in consideration of their constitutional importance.

ii. Major changes in the bills have occurred since the first introduction of them to the public in May 1999. It is inappropriate, that with something as important as the

constitutional change proposed in the forthcoming referendum, the people should be voting on a 'moving target'.

iii. Relevant constitutional change effected by the bills has been placed outside the scope of the terms of the Joint Senate Select Committee.

In addition to these procedural elements of concern we believe the bills impinge fundamental elements of our current Constitutional structure. For instance there is the potential removal of all the existing powers, including Reserve Powers, credited to the position of President from the Governor General.

The effect of the above is that the Howard Ministry has hidden, in the proposed referendum, major changes to the Constitution. The legislation is fraudulent as it does not reflect accurately the consensus of the Constitutional Convention; it makes changes that are not related to the Republic.

Whatever the result of the referendum the presentation and substance of the current proposals, either though inadvertence of deception, substantially reduce the validity and legitimacy of the proposed referendum.

Yours faithfully

Kerry Spencer-Salt, B.E. LL.B. (Hons)
The National Watchman

Table of Contents

Introduction

Introduction

The following is a report to the *Senate Joint Select Committee* on the

a. Presidential Nominations Committee Bill 1999

b. Constitution Alteration (Establishment of Republic) 1999

Hereafter these two bills, as currently before Parliament, are referred to as *The Bills.* Hereafter the *Senate Joint Select Committee* is referred to as *The Committee*

The Constitution is undoubtedly the premier legal document for the Australian people. From it flows all rights, liberties and freedoms of the people; correspondingly enclosed in it are all the restrictions on government. For the government it is a document of power; for the people it is a document of preservation of their freedoms.

No change to the Constitution can ever be a small change. Even the change of a single word can have, over time, remarkable influences on Australian law. Hence all changes must be well and thoughtfully considered; approval should only sought from the people when a full and clear understanding of the proposals has been attained by them. Presently this has not occurred with *The Bills* and thus the 'perceived reality' of the people, which will be taken to the polling booth, is a deceptive reality.

It may be true that the planned advertisement campaign in September 1999 will increase the knowledge of the people. However the limited time frame between September and the referendum will mean that the required communal debate and discussion will not be able to take place.

The Constitutional Law for Validity of a Referendum

The Constitutional Convention (*The Convention*) met in February 1998. It made recommendations on which the government was to act in implementing a republic. From this can be established two simple pieces of law relating to the validity of the 'machinery' legislation necessary to create the Republic.

a. Legislation must fairly reflect the consensus of *The Convention* for it to have any real legitimacy. The outcome of *The Convention* is what the people believe they are voting upon.

b. Legislation is limited to ONLY those changes necessary to establish the Republic.

It is around this 'simplistic law' that this document, in the main, revolves. So it is important to note that the above is in accordance with the opinion of Darrel Williams, Attorney General for Australia, who in his Parliamentary speech of 10 th June stated,

> The government does not regard the bill as an opportunity to generally tidy up the Constitution. Spent provisions of the Constitution would be altered or removed only where they refer specifically to the monarchical system of government."

This should, it would be assumed, not be denied by *The Committee* as it is fundamental to its own position. In the advertisement of *Sydney Morning Herald* (12/06/99) *The Committee* stated that *The Bills* are to be considered in light of

> "whether they are effective and appropriate in the context of implementing the republic model developed by the Constitution Convention."

These simple propositions are hereafter referred to as *The Law.*

To the above is added a third stem. Changes to the Constitution must be without a possible argument before the High Court on fundamental application and operation. If the wording is such that resolution to the fundamental meaning can only be had by referring the issue to the High Court then there is no substance for the people to vote upon, i.e. what the people are voting on can only ascertained after the intervention of the High Court.

Without the issues being clear there cannot be the required knowledge for a 'meeting of the minds'; the formation of mutual intent, that is mandatory to the formation of any contract, is missing from the constitutional contract.

If there is then, only reasonable validity to the arguments put forward in this document then the referendum is without meaning on those Clauses of the Constitution on which legitimate issue is raised.

The Government and the Law

It is hence surprising that the Attorney General can make a statement that there is no 'tidying up'; there is only fundamental changes related to the placing of the title of "President" in the Constitution, when the Howard Ministry, in the proposed legislation, has broken the simple tenets of *The Law*. There are in *The Bills* many changes to the constitution that seemingly have no relationship to the change to a Republic. Nor is there any debate in the Parliament on these changes [1]; especially dangerous considering their major importance.

To the above fundamental breach of *The Law* it is emphasised that *The Bills* are not the bills as placed before the public. The *Australian Community Organisation's* first introduction, like all Australians, was in May 1999 on the government's web site. [2] This electronic format has been the only major presentation to the public; there has been no presentation in mainstream media for public reading. Hence only with active efforts has the public been able to secure the necessary information for an informed decision.

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1 The National Watchman received this Email from the Senate.

> From: "Surtees, Claressa (REPS)" <Claressa.Surtees.Reps@aph.gov.au>
> To: "'Kerry Spencer-Salt'" <funance@easy.com.au>
> Subject: RE: Provision of dates of debate on republic bills
> Date: Mon, 21 Jun 1999 16:33:32 +1000
> X-Mailer: Internet Mail Service (5.5.2448.0)
>
> The advice you received about debate on the bills is correct. The last sitting of the House was 10 June. The House did not sit from 14 to 18 June. The House is sitting today and will do so for the next two weeks. It is the usual conduct for the House not to debate bills that are the subject of an inquiry by a parliamentary committee.

2 The Government's Constitutional Website - http://www.pmc.gov.au/referendum

Exposure drafts of *The Bills* were released on March 9 th by Special Minister of State, Chris Ellision. However, comments had to be received by 16 April 1999 to be taken into account. Thus only a single month was allowed for comment.

The current situation before *The Committee* is no different; the same analysis can be applied to *The Committee* who have admitted that it is a "short time frame". [3]

Of major concern is that these preliminary proposals to the public have been modified in a short time-frame. Exasperating this is that clauses in *The Bills* have major departures from the bills presented to the public on the government web site in May this year.

For example, the latest changes of Section *62 Removal of President* provide extensions to those presented to the people in May of this year.

May 1999	*Section currently before Committee*
The Prime Minister may, by signed notice, remove the President with effect immediately. Within thirty days after the Prime Minister removes the President, the Prime Minister must seek the approval of the House of Representatives for the removal of the President.	The Prime Minister may, by instrument signed by the Prime Minister, remove the President with effect immediately. A Prime Minister who removes a President must seek the approval of the House of Representatives for the removal of the President within thirty days after the removal, unless: (i) within that period, the House expires or is dissolved; or (ii) before the removal, the House had expired or been dissolved, but a general election of members of the House had not taken place. The failure of the House of Representatives to approve the removal of the President does not operate to reinstate the President who was removed.

[3] Advertisement Sydney Morning Herald 12/06/99 "Given the short reporting timeframe, written submission should be sent by Friday 2 July 1999".

Unconsidered Bills

To the above might be added that *The Committee* does not have before it for consideration all bills that are going to effect changes to our Constitution. The terms of reference of *The Committee* is limited to *The Bills*; no mention is made of the following bills.

a. the Constitution Alteration (*Preamble*) 1999 or
b. the Constitution Alteration (*Right to Stand for Parliament—Qualification of Members and Candidates)* Bill 1998.

The Committee cannot claim in answer to this concern that these bills are not in its terms of reference. The changes made in the *Right to Stand for Parliament—Qualification of Members and Candidates* relate to Section 44. It is noted that the *Constitution Alteration (Establishment of Republic) Bill* also includes changes to Section 44. Thus Section 44 changes are implicitly acknowledged to be under the terms of reference of *The Committee.*

The *Right to Stand for Parliament—Qualification of Members and Candidates* is a private member's bill that has been introduced by independent Robert Brown.

If *The Committee* stands for the proposition that, as a private member's Bill, it does not fall within the terms of reference then *The Committee* implicitly acknowledges that the Bill stands independently and may be voted upon separately to the referendum. In this case *The Committee* would be standing for the proposition that Section 44 changes can be made to the Constitution at any time in the future without the consultation of the people.

For this reason it is suggested that *The Committee* consider the Bill or make clear that it is not constitutionally possible for the Parliament to consider the *Right to Stand for Parliament—Qualification of Members and Candidates* bill. Alternatively if is constitutionally possible to pass this bill without review then *The Committee* implicitly acknowledges that there is no need for *The Committee's* existence.

The *Preamble Bill* is of more importance than the *Presidential Nominations Committee Bill* as the latter does not form part of the referendum. It should be remembered that it is

by the governments admission [4] that the *Preamble Bill* forms part of the referendum. Surely the *Preamble Bill* should be under consideration by *The Committee*.

For these reasons, with respect to terms of reference of *The Committee*, and in the hope of its consideration a section on these bills is included in this document.

Problems with the Bills

It is submitted that *The Bills* have a number of constitutional deficiencies and problems that require clarification. The relevant place for a resolution of the issues raised in this document can only be in Parliament. Unfortunately there seems to be only the most limited debate on *The Bills* which are to put in place the most fundamental change to the Australian Constitution since Federation. None of the issues raised in this document have been brought before Parliament.

a. Illegitimacy in the 'moving target' nature of *The Bills* created by rapid changes in wording. These changes are noted not simply because they are changes. Development and clarification is a natural process in moving towards the will of the people. These changes are noted as they remove or detract from the liberty of the subject or the expectation and understanding of the citizenry.

b. The documents before *The Committee* do not reflect, at the most fundamental levels, the terms of reference placed on the Constitutional Convention.

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[4] This is as detailed from the Government's Constitutional Website - http://www.pmc.gov.au/referendum. In may it stated,

> If passed by Parliament, the final versions of the Constitution Alteration Establishment of Republic 1999 and Constitution Alteration (Preamble) 1999 will be put to the Australian people at a constitutional referendum, likely to be in November 1999. The Presidential Nominations Committee Bill 1999 would not form part of a referendum, but was also released to ensure all the main elements of the proposal are available for comment.

c. Darrel Williams, Attorney General for Australia, in his Parliamentary speech of 10 th June stated,

> "The government does not regard the bill as an opportunity to generally tidy up the Constitution. Spent provisions of the Constitution would be altered or removed only where they refer specifically to the monarchical system of government."

However an analysis shows that there are many such changes.

Potential Removal of Reserve Powers

Introduction

The Constitutional Convention's role was only to organise the methodology for the selection of an Australian Head of State. Changes to the Constitution are inherently bound to this; it forms a fundamental limitation on the terms of reference of constitutional change.

The Constitutional Convention proceeded on the basis that the powers of the Governor General would be preserved in the new President. It is as was said by Mr. Lloyd Waddy on the final day of the convention,

> The question is : do we or do we not keep the present mechanism for appointing the Governor General or do we change it? That is the only question to be discussed all the time. No-one, no model, has ever suggested changing the powers of the Governor General. The whole argument has been how to appoint the Governor General. The whole argument for nine days have been how to appoint the Governor General. Our present system, as pointed out at the beginning, separates the organs of government from politics. It does not introduce a political element. The republicans have struggled all week to try to find some mechanism that will deliver a non-political head of state. They will not discus mandate. That is what we have been discussing, and that is where the trick is.
>
> Before Australia was founded, Great Britain was called a Crown Republic. Bagehot describe d it as a crowned republic. There is no question that the Queen's power are going to be given to the new head of state. The new head of state is going to have the Governor General's power and the politician are going to take the Queen's powers of appointment.

So it is particularly dangerous to see that in *The Bills* modify the fundamental powers of the Head of State with it being either removed or a structure put in place that will allow its eventual removal. This is an illegitimate structure; its operation is explained in the following.

Section 59

Section 59 is changed from the draft bills in one major important facet.

Section as of May 1999	*Section currently before Committee*
The President shall act on the advice of the Federal Executive Council, the Prime Minister or another Minister of State; but the President may exercise a power that was a reserve power of the Governor-General in accordance with the constitutional conventions **"THAT"** related to the exercise of that power by the Governor-General.	The President shall act on the advice of the Federal Executive Council, the Prime Minister or another Minister of State; but the President may exercise a power that was a reserve power of the Governor-General in accordance with the constitutional conventions **"RELATING"** to the exercise of that power.

The new wording does not preserve the Reserve Powers as they were. Rather it allows the exercise of the Reserve Powers in regard to conventions. The critical word in the original statement that preserved these powers was

> "in ordnance with the constitutional conventions **THAT** related to the exercise of that power by the Governor-General."

The single word, "THAT", relating to the past, preserved the attachment to the EXISTING operation of the Reserve Powers. The new statement simply says that constitutional conventions, which may change with time and are not preserved in written law, can be exercised by the President.

The interpretation of the *Australian Community Organisation* is given added force in *Schedule 2—Transitional provisions for the establishment of the republic.* In part 8 of this Section regarding *Constitutional conventions* it states,

> The enactment of the *Constitution Alteration (Establishment of Republic) 1999* does not prevent the evolution of the constitutional conventions relating to the exercise of the reserve powers referred to in section 59 of this Constitution.

So it would seem that the President will be bound to the 'evolving conventions' of the Republic as to what the Reserve Powers shall be; those governing our existing Constitutional Monarchy are not to be enshrined.

Clause 70 A

Even if the interpretation of this report is not correct, and existing conventions were maintained, the belief that the proposed changes to the Constitution enshrine the *status quo* can be totally dispelled with an analysis of the completely new constitutional provision Clause 70A - *Continuation of Prerogative*.

This clause exists neither in the current Constitution, nor the proposed Bill of May 1999. In the period of a single month it has appeared from nowhere. This clause states,

> Until the Parliament otherwise provides, but subject to this Constitution, any prerogative enjoyed by the Crown in right of the Commonwealth immediately before the office of Governor-General ceased to exist shall be enjoyed in like manner by the Commonwealth and, in particular, any such prerogative enjoyed by the Governor-General shall be enjoyed by the President.

The words "Until the Parliament otherwise provides" allows the Parliament to vary the Prerogative at its discretion, at any time it wishes. The only exception is if the preservation of a particular aspect of the Prerogative is made explicit in the Constitution. However Section 59 has denied even limited 'enshrining' of the existing prerogatives.

Prerogatives Removed - Peoples Protections Lost

The Prerogative, like conventions, is an ill defined term and there is overlap, of defining characteristics, between the two. Under the current proposed provisions Parliament may remove a Prerogative of the Head of State. Yet the preservation of this power in the Head of State may be thought of as the ultimate protection of the people.

The potential for change in these words is inconsistent with the fundamental proposition of the Constitutional Convention, i.e. that the people are the ultimate sovereign. Dicey in his famed book *The Law of the Constitution* explained that the people are the true sovereign. The head of state (Monarch) is representative of the people. Thus to limit the power of the Monarch is to limit the power of the people for

> "no human being knows how far and to what extent the nation wishes that the voice of the reigning Monarch should command attention." [5]

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[5] E. V. Dicey The Law of the Constitution (10 th ed) 18 The P65 MacMillian & Co London P 463

This effectively removes fundamental protections and powers of the people. The real sovereign under the proposed changes is the Parliament. By the nature of the Australian electoral system this means that the real sovereign is the political party system.

Clause 70

Finally in light of the above a comment is made on Section 70.

Section as of May 1999	*Section currently before Committee*
In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.	All powers and functions that were vested **under this section** in the Governor-General, or in the Governor-General in Council, immediately before the office of Governor-General ceased to exist shall vest in the President, or in the President in Council, as the case requires.

The words “under this section” in the latest ‘incarnation’ need to be clarified as it is unclear whether “section” refers to the Constitution, the Chapter in which the clause rests, i.e. The Executive Government, or the Clause itself. If it means under the Section, *Chapter II - The Executive Government*, it is a further curtailing of the powers of the new Head of State.

Conclusion

In the above we can see the total inversion of the principals of our existing Constitution taking place with the proposed changes. Rather than power flowing from the Head of State power flows from the House of Representatives; rather then the people being sovereign the political parties, though control of the House of Representatives, become the ‘effective’ Sovereign of Australia.

This is outside anything contemplated by the Constitutional Convention and is thus a fraudulent change and it makes *The Bills* illegitimate. The Constitutional Convention, at no time, gave a mandate for such change.

Changes in Commonwealth State Relations

Introduction

Whether intentionally or unintentionally the proposed Section 126 opens a constitutional minefield in relation to the operation of State and Federal powers in the constitution. There are two critical issues. The first is that at the extreme the Section revolutionises the operation of the power of the Commonwealth over the states in operation of the law.

State Law Overridden ?

Section 126 has been removed in its entirety. This Section relates to the power of Her Majesty to authorise the Governor General to appoint deputies. It has been replaced by a completely unrelated clause. The new Section 126 details the "Operation of the Constitution and laws" and it states,

> "This Constitution, and all laws made under it by the Parliament of the Commonwealth, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, **notwithstanding anything in the laws of any State**.[emphasis added]"

These words are similar to Clause 5 of the current Preamble but this begins differently. It states that

> "This [English Parliamentary] Act, and all laws made by the Parliament of the Commonwealth under the Constitution"

and thereafter the words are essentially the same.

As part of the Preamble the purpose of these words was only to assist in the interpretation of the Constitution. However, now, they are to rest in the body of the

Constitution. The effect of this is to increase and entrench further Commonwealth power.

It may be argued that Section 126 is the same as Section 109. However the legal reality is that they are not the same; nor are they consistent. Rather Section 126 will increase Commonwealth power and, more importantly, preserves it so that is can only be removed in another referendum.

Presently the generous treatment in favour of the Commonwealth, extending from Section 109, exists only at the discretion of the High Court.

The Issue with Section 126

The current Section 109 states that

> "when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall , to the extent of any inconsistency, be invalid.".

This has been accepted by the High Court to mean that, essentially, a Commonwealth act will override a State act. Nevertheless there is significant legal work that says that this is not appropriate law. It is not impossible for a future High Court to over-ride this interpretation and place restrictions on the Commonwealth.
Currently this section does not provide a power to the Commonwealth but, rather, works by giving the Court the ability to temporarily remove the effects of State acts. P.H. Lane in *The Australian Federal System* states, "the state law becomes inoperative by force of the express words of the Constitution"; not from a power of the Federal Parliament. The proposed Section 126 however can be argued to extend Section 109 and makes state law inoperative by force of the words of the Commonwealth act.

Under the current Constitution, States laws are preserved in spite of conflicting Federal legislation. Thus should the Commonwealth 'artificially' attempt to manufacture an inconsistency it will not be sufficient for the engagement of Section 109. An 'illegitimate' act may be invalidated by the High Court. The incorporation of the new Section 126 however will mean that such High Court limitations will no longer be operative.
Other issues arise with the way Section 126 is framed and planted within the Constitution. Could a Federal Act to authorise the building of a defence complex override state planning and environment laws? Could a Commonwealth Government law that demands the burning of secret documents override a state fire-ban legislation?

In summary Section 109 is not a grant of power to the Commonwealth parliament. The existence of this clause cannot justify the inclusion of the powers in the new Section 126.

There is no need for the inclusion of the proposed section. Section 126 should be left blank and the existing provision simply removed from operation.

State Rights of Citizens Removed

Of further concern in the operation of Section 126 is that it might remove ‘rights and liberties’ that stem from the laws of the States. Such ‘rights and liberties’ come from the citizen’s attachment to the Crown; thereafter through the ‘laws of the States’. For instance the Commonwealth might in the future remove the State’s Habeas Corpus Act. Will this override the existing State guarantees attaching to a subject of the State Crown?

Party Dominated President

Introduction

Of perhaps greatest concern is that the "limited" powers of the President mean that the proposed changes are not a simple substitution of the title of "President" for the "Governor General". Of greatest concern is that under our existing system the Governor General can only be removed by an independent constitutional body, i.e. the Monarchy.

In the republic the President may be removed at the behest of an politically controlled body, the Parliament of Australia. This process totally inverts our constitutional understanding and guarantees of the current Constitutional Monarchy.

Senate Power Removed

Additionally the latest changes, introduced after May 1999, and before *The Committee*, mean that there is nothing that can be done to reinstate the President even if the Opposition and the Senate are in agreement with retaining the *status quo.*

The new Section 62 removes substantial power from the Senate. The present constitutional provisions means that in the event of a Constitutional dispute involving the Governor General the solution is the calling of a double dissolution in which the Senate will figure predominantly. The current provision means there will be a simple dismissal of the President by the Prime Minister.

Section 62 means that the President exists only at the whim of the Prime Minister and there is nothing that the full Parliament may do in the event of a 'rouge' Prime Minister acting hastily or in inadvertence.

Constitutional Crisis Embodied in Constitution

The present state of Section 62 sets in place the structure for a constitutional crisis in which there is no provision of the constitution to resolve the dilemma. If a 'rogue' Prime Minister schedules a dismissal just after the sitting of Parliament then no representation

can be made by any body as the Prime Minister does not have to seek approval of the House of Representatives if within

> within thirty days after the removal....the House expires or is dissolved or before the removal, the House had expired or been dissolved, but a general election of members of the House had not taken place.

After this

> the failure of the House of Representatives to approve the removal of the President does not operate to reinstate the President who was removed.

President - the Political Parties' 'Hack'

The President is meant to be independent of party politics. However the proposed republican constitution means that, in a substantial manner, he will be subservient to the political parties. They may dismiss him at will and even appoint a person who in "unqualified" under the Constitution for the position. And in this event the acts of the 'illegal' President are not disputable as the Constitution authorises them.

The theory presented is that the President is first selected by a nomination committee of the States, the major parties and a citizen's body. On this basis there is some independence. However Section 60 states that,

> "After considering the report of a committee...the Prime Minister MAY... move that a named Australian citizen be chosen as the President."

There is no obligation on the Prime Minister of the day to do as the Nomination Committee recommends. It is "the Prime Minister's motion" that the Parliament votes upon for the Presidency; not the selection of the Nomination Committee.

It is interesting conjecture to see what would happen if the Prime Minister put another person into the Presidency. This person could, for instance, be a party politician even though the Constitution is meant to exclude this.

Should the Prime Minister move a party man to be President and force it through it makes no difference.

> "The actions of a ... President under this section are not invalidated only because the person was not qualified to be chosen as President."

Roughly stated this says that as long as the major parties agree they may remove the President at will. The major parties become the new political sovereign for Australia.

A Question of Discretion

Subservience of the President to the political system is confirmed in Section 59.

> " The President shall act on the advice of the Federal Executive Council, the Prime Minister or another Minister of State".

Presently, under Section 62, while it is the Federal Executive Council that gives advice to the Governor General, today, the Governor General is free to act as he wishes.
In the republic the President SHALL ACT on the advice of the Prime Minister.
Exacerbating this are the words " OR another Minister of State". This means that he is also subservient to all the Ministers of the State.

This has the effect of binding the Executive to the Legislature and removes, in part, the *Separation of Powers* that is built into the existing Constitution.

This removal of independence from the position of President seems to cause conflict in the proposed constitution. If the President "SHALL ACT" on the advice of...the Prime Minister what does the new Section 58 (Assent to Bills) mean. This section states that

> "When a proposed law passed by both Houses of the Parliament is presented to the President for assent, the President shall, according to the President's discretion but subject to this Constitution, assent to the law or withhold assent."

This leaves us with the fundamental constitutional question.

"WHAT IS THE "PRESIDENT'S DISCRETION" IF HE MUST ACT ON THE ADVISE OF THE PRIME MINISTER ?"

Bits and Pieces

Introduction

The following section contains small comments on several sections where extensive elaboration was not possible through time restraint or not required as the presented treatment is sufficient to the task.

Repeal of Section 2,3,4

The existing Section 4 holds and important qualifier on the Governor General that will be lost in the new Constitution. This is that he shall not be "entitled to receive any salary from the Commonwealth in respect of any other office".

This should be retained as it is a fundamental change from the existing Constitution.

Modification of Section 34

The existing Section 34 (ii) holds and important qualifier on the nature of a member of the House of Representative that will be lost in the new Constitutions. This is that he shall be "at least five years naturalised under a law...of the Commonwealth".

This should be retained as it is a fundamental change from the existing Constitution.

Modification of Section 44

The existing Section 44 (v) holds and important qualifier on the nature of a member of the House of Representative. Presently his pecuniary interests with the Commonwealth is limited to an "incorporated company consisting of more than twenty five persons". This should be retained as it is a fundamental change from the existing Constitution.

The Undisclosed Bills

Introduction

While it is recognised that *The Committee* will not, in its own words, "be inquiring into constitution change in general" it must be noted that the Committee is inquiring into Constitutional change as created in bills of Parliament. In light of this it is regretful two other important bills are not part of the terms of under which *The Committee* is working. These are

a. *Constitution Alteration (Preamble) 1999* .

Interestingly this is not presently noted on the website of bills before Parliament as directed by *The Committee* in its advertisements. [6] It can only be found at the prime minister and cabinet website. [7]

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6 http://www.aph.gov.au/parlinfo/billsnet/bills.htm

7 The Government's Constitutional Website http://www.pmc.gov.au/referendum provided the following in May 1999:

> 18 Paragraph 44(iv)
>
> Repeal the paragraph, substitute:
>
> iv) holds any office of profit under the Executive Government of the Commonwealth, a State or a Territory, or any pension payable, during the pleasure of the Executive Government of the Commonwealth, out of any of the revenues of the Commonwealth; or
>
> 19 Section 44
>
> Omit "Queen's" (first and second occurring).
>
> 20 Section 44
>
> Omit "or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army,".

b. *Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill* 1998

It is suggested that both these are important constitutional changes and should be considered by *The Committee.* For this reason the following discussion is offered. In any event Section 44 changes are in the Constitution Alteration (*Establishment of Republic*) 1999 Bill. [8] It hard to see why there is a separate treatment from the provisions contained within *Right to Stand for Parliament Bill*.

Qualification of Members and Candidates Bill

This Bill makes major changes to Section 44 of the Constitution.

Section 44 i.

Existing Constitution	*Section currently before Committee*
(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power	(i) Is not an Australian citizen:

Any reading, even of the 'simplistic' nature, of the new provision shows that it violates completely the intent of the original Section 44 i. The changes can only be read as being designed to allow those with "allegiance, obedience, or adherence to a foreign power" to be a member of the Australian Parliament.

This new 'interpretation' is particularly worrisome in light of the new proposed Section 127 which provides the definition for a citizen. Here is provided that an

> " ***Australian citizen*** means a person who is an Australian citizen according to the laws made by the Parliament."

8 The Government's Constitutional Website http://www.pmc.gov.au/referendum provided the following in May 1999:

An Alien President

Hence, under the above, it is possible for the Parliament to legislate that USA President Bill Clinton, Rupert Murdoc or Lee Kwan Yu are to be the President of Australia.

As with so many provisions, there is no relationship to the republic to justify the change. The existing Section 44 i is designed to ensure that there are no foreign allegiances by any member of parliament.

Section 44 iv.

This is another Clause that loses the intent of the original provisions.

Section as of May 1999	*Section currently before Committee*
Holds any office of profit under the Executive Government of the Commonwealth, a State or a Territory, or any pension payable, during the pleasure of the Executive Government of the Commonwealth, out of any of the revenues of the Commonwealth;	Holds any judicial office or any other office that the Parliament from time to time declares to be an office for the purpose of this paragraph:

The draft clause, of May 1999, closely followed the existing Constitution; in the original Constitution the section was unmodifiable by Parliament. This is not the case in the new provision which may be modified from "time to time".

The new clause also limits the restriction, which was broad, to simply the holder of "judicial office". Hence it does not include say, pubic servants as the original clause or the clause as it stood in May 1999.[9]

The Preamble

Our first constitution in 1901 was authorised by the voters of Australia after 10 years of discussions. When these voters went to the polls they did not vote on whether Australia was to become a Federation. They voted on the actual words of the Constitution that would effect the change to a Federation. Today very few know what is in the new republic legislation.

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9 *Skyes v Cleary* 176 CLR 77

The 1998 Constitutional Convention that has taken place debated only one critical question. This was the nature of the Head of State. ALL other important questions, if the republic is successful, have been decided by the politicians without discussion with the Australian people.

The media concentration, in reviewing the Constitution Alteration *(Preamble*) 1999 has made no note of Section 125 A,

> "the preamble has no legal force and shall not be considered in interpreting the Constitution or any law in force in the Commonwealth or any part of the Commonwealth."

In voting for the Preamble, the voter has been given the power to vote on ABSOLUTELY NOTHING as the preamble has NO LEGAL SIGNIFICANCE WHATSOEVER.

The important words of the new constitution, the words that have legal significance, have been written by the parliament. As there has been insufficient media coverage to this issue the current referendum process has provided the Parliament a blank cheque to write the new constitution as they would like! The politicians of all major parties in selecting this process have indicated their total contempt for the Australian people.

A valid change to a republic must be two fold. First the voters must have a referendum to decide if they wish to have a republic. After this the new constitution must be debated, written and then put to the people again in a SECOND referendum. Then we will have in place the same democratic process that made the first constitution such a success.

Appendix

Australian Community Organisation

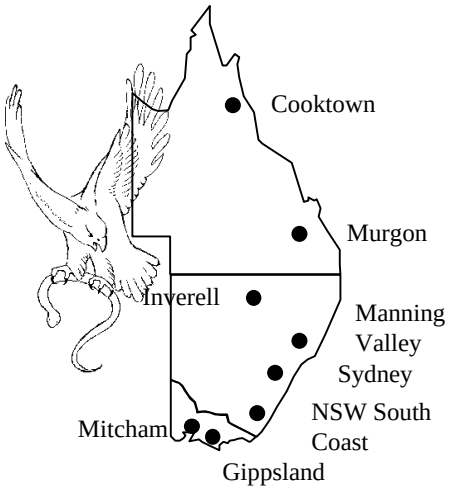
The Australian Community Organisation is a coordinating body for local community groups. These groups are independent to the Australian Community Organisation and from each other. They are united however in a dedication to provide the critical information necessary for the citizens of their respective regions to understand the real workings of political Australia. They advocate only that their members partake in the provision of this critical knowledge to their community. This is done by

i. Letters to the editors
ii. Letters to representatives
iii. Video, discussion nights
iv. Political information libraries
v. Letterbox drops
vi. Market Stalls

The Community Organisations

A community organisation is nothing more that a group of individuals who are willing to act in a concerted effort to a specific goal. The concerted effort that we ask of our associated members to undertake is defined in *The Community Charter*.

to distribute independent third party local, regional and national political information to the Australian community : the wisdom of which is sustained on the understanding of the people.



Each community organisation is a separate organisation. We note that

The Australian Community Organisation is a representative of local community groups. These groups are independent to the Australian Community Organisation and from each other.

The Existing Member Associations

QUEENSLAND

Cooktown Community Association	P.O. Box 96, Cooktown QLD 4671
Murgon Community Association	M.S. 1552, Murgon QLD 4605

NEW SOUTH WALES

Australian Community Organisation	P.O. Box 136 Surry Hills NSW 2010
Inverell Community Organisation	P.O. Box 739 Inverell NSW 2360
Manning Valley Community Organisation	14 Fotheringham Street, Taree
South Coast Community Organisation	P.O. Box 1038, Bega NSW 2550

VICTORIA

Gippsland Concerned Citizens Association	RMB 8773, Bairnsdale VIC 3875
Mitcham Community Association	P.O. Box 324 Mitcham VIC 3132