

Dear Sir,

You may remember Mr. David Latimer who was called before your enquiry in Sydney in relation to his submission number 519. Mr Latimer had noted that among the published submissions on your web site there were two others that advocated a similar model to the one he was proposing viz. those of Mr. David O'Brien (126) and my own (105). Showing admirable enterprise Mr Latimer subsequently contacted the authors of these submissions with the result that the three of us have continued to work together to develop our model.

Briefly the model in question advocates an elected President shared among the States and the Commonwealth. Alternative expressive names for this model are "Quasi-Queen" or "Keeping the Governor General" or "President of all Australia"

I am writing to advise you of a significant development in the Drafting of a Constitutional Amendment appropriate for the model. This draft has benefited from discussion within our group and input from Professor Winterton the Professor of Constitutional Law at Sydney University. Professor Winterton's input has been invaluable but wishes it to be known that he has expressed no opinion on the merits of the proposal.

Attached below is the Draft Constitutional Amendment prefaced by some explanatory notes.

Yours sincerely,

Dr. Peter Carden.

NOTES ON DRAFT AMENDMENT

The essential theme of this model is that the President is the President of each State as well as President of the Commonwealth replicating as closely as possible the present position of the Queen. In a very real (and legal) sense the President is therefore the President of Australia.

In this model the State Governors and the Governor General are retained.

An important consequence arises from the fact that the Queen's position is and always has been apolitical and although power is vested in her she exercises this only on advice. It is intended that the same should apply to the President. Being therefore beyond politics and the direct exercise of power it is feasible for the President to be elected by the Australian electorate without upsetting the present executive and legislative arrangements.

The Constitution as drafted below is set out in two Volumes. Volume two is essentially the present Constitution with "Queen" replaced by "President". Volume one deals with the Presidency. This method of presentation is designed to make clear what is new. However our professional advice is that ultimately it

might be preferable to preserve the form of the present Constitution perhaps condensing our Volume one into a Chapter 2A of the present document and including all the conditions for amendment in the present sec 128.

The objective of Volume one is to provide the States with access to the Presidency in such a manner that their sovereignty is preserved as much as possible even though the Presidency has necessarily to be a legal entity within the Commonwealth because there does not seem to be any alternative.

F.A.Q

Will my State be obliged to adopt the President? No

Does my State have to make up its mind whether or not to adopt the President on any set date? No

As far as the relationship between my State and the President will anyone else beside the people or the government of my State have any influence? No

What CAN'T a State do about its President? These things. But it has a say.

Choose who the President is.

Choose salary, staff and home.

Can my State amend its relationship with the President without interference from other States or the Commonwealth? Yes as long as it doesn't interfere with the President's relationship with the others; like the Queen's present relationship with all parties.

Can my State withdraw from using the President as its head of state? Yes

Can the Commonwealth Constitution be changed regarding the President's relation with my State without my State agreeing? No

ESSENTIAL ANALOGIES

The Commonwealth Constitution provides a room (the Office of President) and controls the door to the room allowing conditional entry of furniture but unrestrained exit. But otherwise it does not control what furniture (the conferments) is put into or taken out of the room except that in the beginning it deposits its own piece of furniture. Otherwise each State has the right to supply some furniture if and when it wants to. Everyone who supplies furniture can change it or remove it at will. However it is up to the suppliers of the furniture to ensure that it is arranged properly in the room and that disputes about where in the room a chair or a table is to be placed are settled before each piece is allowed in. The Commonwealth does not have any say in the settlement of such disputes but insists that such disputes be settled outside the room before it opens the door to let the new furniture in.

The Commonwealth, although the provider of the room, cannot alter its size or shape or the placement of windows etc. without the consent of the owners of the furniture. The rule is that if such a change would affect the utility of a piece of furniture then the owner of that furniture must agree to the proposed change. In the case of changes to the room that might affect the utility of the Commonwealth's furniture the rule is that such a change needs the approval of a majority of States and a majority of the Australian electors.

THE CONSTITUTION (draft five)

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[This Volume is essentially the same as the present Constitution with the word
"Queen" replaced by "President" ("President of the Senate" needs another name.)]

Volume one. The Presidency

Commencement.

201. This Constitution is effective from the date of signing into law by the
Governor General this date hereinafter called "the enactment date".

Chapter I.

The Office of President

PART I. THE PRESIDENT

202. There shall be created an Office of President (the Office) and those powers and functions conferred upon the Office shall be vested in the incumbent thereof.

PART II. OATH OF OFFICE

203. The inauguration of the President shall include an Oath in which the President Elect shall swear to assume all the obligations conferred upon the Office whenever they befall and from whatever source be it State or Commonwealth.

PART III. REQUIREMENTS OF THE OFFICE

204. The incumbent of the Office shall be required to exercise those powers and functions conferred upon the Office whether they be conferred by law or by conventions applicable to the Queen's powers and functions when these are the ones conferred in accordance with this Constitution.

PART IV. TERM OF APPOINTMENT

205. The President shall be appointed for five years.

PART V. DISMISSAL

206. Should the President be perceived to act contrary to the requirements of the Office or the Oath of Office the matter may be brought before the High Court by the Commonwealth or a State acting alone or severally with a view to dismissing the President.

PART VI. CONFERMENTS OF OFFICE

Saving of the powers and functions of the Queen in respect of the Commonwealth.

207. The powers and functions of the Queen in respect of the Constitution of the Commonwealth immediately prior to the enactment date shall be conferred upon the Office and take immediate effect on the enactment date.

Commonwealth independent

208. From the enactment date, the Queen, her heirs and successors shall have no power or function in respect of the Commonwealth.

Saving of the powers and functions of the Queen in respect of States.

209. Provided the Constitution of a State is amended to allow it, the date of such allowance called herein 'the amendment date ', and subject to sec. 213 below, the powers and functions of the Queen in respect of the Constitution of that State immediately prior to the amendment date shall be conferred upon the Office and take immediate effect on the amendment date.

Independence of the States.

210. Further to section 209 above a condition for conferment is that the said amendment shall include a provision that, from the amendment date, the Queen, her heirs and successors shall have no power or function in respect of the State.

Ministers advising the President

211. When the President exercises a conferred power pursuant to the advice of Ministers, those Ministers shall be Commonwealth Ministers when the power is conferred by Commonwealth law, and State Ministers when the power is conferred by State law.

Amendment of Conferments.

212. At any time subsequent to the amendment date of a State, and subject to sec. 213 below, that State may amend in accordance with its Constitution the powers and functions that it has previously conferred upon the Office.

Conferments from various sources to be compatible.

213. (i) In respect of secs. 209 and 212, if the amendment date for a State occurs after the enactment date, prior to the State conferring powers and functions or amending the conferments previously made, that State shall consult with the Commonwealth and such other States whose head of state is the President.

(ii) a conferment shall not be made unless all polities mentioned in subsection (i) agree that the proposed amendment is compatible with existing conferments.

Chapter II.

The Commission of the Presidency

PART VII. COMPOSITION

214. To take effect from the enactment date there shall be a body known as The Commission of the Presidency (the Commission) which at any time on or after the enactment date shall consist of an equal number of representatives from the Commonwealth and from each State served by the Presidency at that time. The total number of representatives shall not be less than five nor more than twenty.

PART VII. DUTIES OF THE COMMISSION

Selection of candidates

215.

Number of Candidates.

216. For an election of President the number of candidates shall be not less than three and not more than ten.

Swearing in of Candidates.

217. Each candidate for President shall be required to swear that if appointed to the Office he will do all things described in the Oath of Office which things the candidate will name.

Election of President

218. The Commission is responsible for the election of the President. The method of election shall be such as to rank all the candidates in the order preferred by all Australians eligible to vote.

Office of President to be always occupied.

219. In all circumstances and particularly in relation to sections 218, 220 and 221 it shall be a duty of the Commission to ensure that the Office is occupied at all time by the most preferred of the available sworn candidates. This duty shall commence after the election of the first President.

Temporary incapacity of the President.

220. If, upon the advice of the President and subsequent concurrence of the Commission, the President is or anticipates to be temporarily unavailable to perform his duties, then the Commission shall appoint a Deputy President to occupy the Office for a prescribed time. But nothing in this section prevents the President from resuming the duties of the Office in whole or in part at his pleasure before the end of the prescribed time.

Permanent incapacity of the President.

221. If for any reason such as death, debilitating illness or dismissal, the President is unable to perform his duties for the remainder of his term the Commission shall declare the Office vacant and without delay appoint a new President.

Maintenance of the Office of President

222. The Commission is charged with the duty of maintaining the Office of Presidency in a dignified manner and to this end shall cause money to be appropriated from the Commonwealth and participating States.

Chapter III.

The President of Australia

223. When the Queen, her heirs and successors are without power or function in respect of every State, by virtue of the provisions of this Constitution, then the President shall be called 'The President of Australia'.

Chapter IV.

Amendment of Volume I

224. This volume may be altered by referendum as follows. Where the alteration is to affect the President's position solely with respect to the Commonwealth then the referendum must be passed by a majority of electors in Australia and by a majority of States in which the majority of electors in those States agree. Where the alteration is to affect the President's position solely with respect

to a State then a referendum shall be held within that State requiring a majority of electors in that State to agree. Where the alteration is to affect the President's position with respect to the Commonwealth and one or more States the referendum must be passed by a majority of all Australians and a majority of States in which the majority of electors in those States agree and which must include those States whose Presidential position is affected by the alteration.

Volume two. The Commonwealth

Essentially the present Constitution with 'President' replacing 'Queen'.
Section 128 (amending the Constitution) to apply only to Volume two.