

**SENATE LEGAL AND CONSTITUTIONAL REFERENCES
COMMITTEE**

COMMENT ON SIR DAVID SMITH'S SUBMISSION 20A

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I have been asked by the Senate Legal and Constitutional References Committee to comment briefly on submission 20A by Sir David Smith.

The essential argument contained in submission 20A is that there is no need to alter the Constitution to create an Australian Head of State because we already have one in the person of the Governor-General

The term "Head of State" is not used in the Constitution. It is a political term which means whatever the user wants it to mean. If by "Head of State" one means the person who is the source of executive power under the Constitution, then the Queen is Head of State. If by "Head of State" one means the person who exercises that power on the monarch's behalf, then the Governor-General is Head of State. If by "Head of State" one means the person who in fact determines how executive policy will be wielded, then the Prime Minister is Head of State. The fact that numerous constitutional scholars, judges, journalists and politicians have used the term in any of these ways does not vest the term with any constitutional significance.

The key question is not what descriptive term one attaches to the office of Governor-General, but rather what is the source of the Governor-General's powers. It is indeed true that at a formal

level (that is, leaving aside for the moment the conventions which dictate that most of the powers are exercised on the advice of the government of the day) the Constitution vests the Crown's executive powers in the Governor-General. However that cannot disguise the fact that those powers are indeed the powers of the Crown. That it is the Crown that is the source of executive power is provided by both s 2 and s 61 of the Constitution (and s 2 no less than s 61, despite the puzzling argument the former should be ignored).

The underlying argument used by those seeking constitutional change to a republic is *not* as is stated on page 20 of submission 20A, that "the Governor-General is not the Head of State". Rather, proponents of a republic object to the fact that the monarch of the United Kingdom is our sovereign and is the source of executive power. Abolition of the office of Governor-General, which exists only because it was necessary to the executive powers of the Crown in someone in Australia, would be merely incidental to severing the link with the Crown. To answer the question posed in submission 20A, the reason why a President would be Head of State whereas the Governor-General is not, is simply because the office of President would incorporate the role of both monarch and Governor-General.

The essential feature of a republic is that its offices are open to all its citizens. The essence of a monarchy is that the office of monarch is hereditary. The term "crowned republic" is therefore an oxymoron. Under a republic, all offices, including that which is the source of executive power, would be open to the people. It is to serve that principle that Australia should become a republic.