

Appendix A

PROPOSED LAW: To alter the Constitution to establish the Commonwealth of Australia as a republic where the Governor-General replaces the Queen as head of State.

Constitution Alteration (Establishment of Republic) 200a

The provisions of the Constitution, as they would be affected by the proposed law, are set out below. Words proposed to be inserted in the Constitution are underlined, and words proposed to be deleted from the Constitution are ~~ruled through~~.

The Constitution

This Constitution is divided as follows:

Chapter I	- The Parliament
Part I	- General
Part II	- The Senate
Part III	- The House of Representatives
Part IV	- Both Houses of the Parliament
Part V	- Powers of the Parliament
Chapter II	- The Executive Government
Chapter III	- The Judicature
Chapter IV	- Finance and Trade
Chapter V	- The States
Chapter VI	- New States
Chapter VII	- Miscellaneous
Chapter VIII	- Alteration of the Constitution
The Schedule	
<u>Schedule 1</u>	- <u>Oaths and affirmations</u>
<u>Schedule 2</u>	- <u>Transitional provisions for the establishment of the republic</u>

Chapter I - The Parliament

Part I – General

1 Legislative Power

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of ~~the Queen~~, a Senate, and a House of Representatives, and which is hereinafter called “The Parliament”, or “The Parliament of the Commonwealth”.

~~2 Governor-General~~

~~A Governor-General appointed by the Queen shall be Her Majesty’s representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen’s pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.~~

~~3 Salary of the Governor-General~~

~~There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.~~

~~The salary of a Governor-General shall not be altered during his continuance in office.~~

4 Provisions relating to Governor-General

~~The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.~~

5 Sessions of Parliament, prorogation and dissolution

~~The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.~~

Summoning Parliament

~~After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of writs.~~

First session

~~The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.~~

Part III - The House of Representatives**28 Duration of House of Representatives**

~~Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may sooner be dissolved by the Governor-General.~~

34 Qualification of members

~~Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:~~

- ~~(i) he must be the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been three years at the least a resident within the limits of the Commonwealth as existing at the time when he was chosen;~~
- ~~(ii) he must be a subject of the Queen, either natural born or for at least five years naturalised under a law of the United Kingdom, or of a Colony which has become a State, or of the Commonwealth, or of a State.~~

~~The Parliament may make laws relating to the qualifications of members of the House of Representatives, but each member of the House must be an Australian citizen.~~

Part IV - Both Houses of Parliament**42 Oath or Affirmation of Allegiance**

~~Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule Schedule 1 to this Constitution.~~

43 Members of one House ineligible for other

~~A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.~~

44 Disqualification

Any person who:

- (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; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under law of the Commonwealth or of a State by imprisonment for one year or longer; or
- (iii) is an undischarged bankrupt or insolvent; or
- (iv) ~~holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or~~
holds any office of profit under the Executive Government of the Commonwealth or a State or a Territory, or receives any pension during the pleasure thereof; or
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;

shall be incapable of being chosen or of sitting as a senator or member of the House of Representatives.

~~But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, 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, or to the receipt of pay as an officer or member of the naval and military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.~~

But subsection (iv) does not apply to the office of any of the Ministers of State for the Commonwealth.

45 Vacancy on happening of disqualification

If a senator or member of the House of Representatives:

- (i) becomes subject to any of the disabilities mentioned in the last preceding section; or
 - (ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
 - (iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State;
- his place shall thereupon become vacant.

Part V - Powers of the Parliament**56 Recommendation of money votes**

A vote, or resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General in Council to the House in which the proposal originated.

57 Disagreement between the Houses

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General in Council may convene a joint sitting of the members of the Senate and the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

~~58 Royal Assent to bills~~

~~When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.~~

~~*Recommendations by Governor-General*~~

~~The Governor-General may return to the House in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.~~

58 Assent to bills

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for assent, the Governor-General in Council shall assent to the law or withhold assent.

The Governor-General in Council may return to the House in which it originated any proposed law so presented with any amendments which the Federal Executive Council may recommend, and the Houses may deal with the recommendation.

~~59 Disallowance by the Queen~~

~~The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.~~

~~60 Signification of Queen's pleasure on bills reserved~~

~~A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.~~

Chapter II - The Executive Government

59 Head of State

The head of state of the Commonwealth is herein called "The Governor-General" or "the head of State". But after seven years from the establishment of the Republic, the Parliament may alter the title of that office.

The qualifications for the head of State shall be:

- (a) the person must be an Australian citizen who is qualified to be an elector of members of the House of Representatives; and
- (b) the person must not be subject to any of the disqualifications mentioned in sections 44 and 45 of this Constitution; and
- (c) the person must not be a Minister of State for the Commonwealth or a Minister for a State or Territory.

Any person who is chosen as the head of State must be qualified for that office; but a member of the Parliament of the Commonwealth or the Parliament of a State or a Territory Legislature, or a Justice of the High Court or any court created by the Commonwealth or a State or Territory may be chosen as the head of State but upon taking that office shall cease to be such a member or Justice.

During a period of seven years after the establishment of the Republic and thereafter until the Parliament otherwise provides, the Governor-General shall be chosen by the Prime Minister.

Each person chosen as the head of State shall, before the term of office begins, make and subscribe before a Justice of the High Court an oath or affirmation of office in the form set forth in Schedule I to this Constitution.

The Parliament may prescribe the duration of the term of office of the head of State. But each term of office shall expire on a predetermined and fixed date, and the maximum duration of each term shall be six years. A person may serve more than one term.

The Governor-General shall receive such remuneration as the Parliament may fix, but the remuneration thereof payable during a term of office shall not be altered during that term.

Subject to this Constitution, the Parliament may make laws relating to the head of State.

60 Vacancy and acting head of State

The office of head of State shall become vacant whenever:

- (a) the Governor-General's term of office expires; or
- (b) the Governor-General resigns, or is removed from office under this section, or ceases to be qualified to hold that office, or ceases to be available to exercise the powers or functions thereof including being absent without the permission of the Federal Executive Council.

The Governor-General may resign by signed notice delivered to the Prime Minister.

The Governor-General may not be removed from office, except by:

- (i) an order of the High Court on the grounds of contravention of this Constitution or incapacity; or
- (ii) the President of the Senate and the Speaker of the House, if at least sixty percent of the total number of members of the Senate and the House of Representatives vote for such removal at a joint sitting thereof.

The actions of a person otherwise duly chosen and appointed as the head of State under this Constitution are not invalidated only because the person was not qualified to hold that office.

Whenever the office of head of State becomes vacant a person shall act as head of State and, until the Parliament otherwise provides, such person shall be the longest serving State Governor.

The provisions of this Constitution relating to the Governor-General or the head of State extend and apply to any person acting as head of State.

A person chosen to act as head of State shall not exercise powers or functions thereof unless, since that office became vacant, the person has made and subscribed, before a Justice of the High Court, the oath or affirmation of office in the form set forth in Schedule I to this Constitution.

61 Executive Power

~~The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.~~

The executive power of the Commonwealth is vested in the Governor-General, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

62 Federal Executive Council

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

63 Provisions referring to the Governor-General

The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Subject to section 61 of this Constitution, the exercise of the Governor-General's powers under sections 5, 28, 57, 62 or 64 shall be in accordance with the advice of the Prime Minister.

Otherwise, subject to this Constitution, the Governor-General shall act in accordance with the advice of the Federal Executive Council.

64 Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

66 Salaries of Ministers

~~There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.~~

The Ministers of State shall receive such remuneration as the Parliament may fix.

66A Deputies

The Governor-General may appoint any person, or any persons jointly or severally, to be the Governor-General's deputy or deputies, and in that capacity to exercise during the pleasure thereof (including while the Governor-General is absent from Australia) such powers and functions thereof as the Governor-General in Council may assign to such deputy or deputies.

The appointment of such a deputy shall not affect the exercise by the Governor-General personally (including while the Governor-General is absent from Australia) of any power or function.

A person shall not exercise powers or functions as such a deputy unless, since being so appointed, the person has made and subscribed, before a Justice of the High Court, the oath or affirmation of office in the form set forth in Schedule 1 to this Constitution.

68 Command of Naval and Military Forces

The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative. Executive Government of the Commonwealth.

70A Continuation of prerogative

Until the Parliament otherwise provides, but subject to this Constitution, any prerogative enjoyed by the Crown in right of the Commonwealth immediately before the establishment of the Republic shall be enjoyed in like manner by the Commonwealth or the Governor-General as the case requires.

Chapter III – The Judicature

73 Appellate jurisdiction of High Court

The High Court shall have jurisdiction, with such exceptions and subject to such regulation as the Parliament prescribes, to hear and determine appeals from all judgements, decrees, orders, and sentences:

- (i) of any Justice or Justices exercising the original jurisdiction of the High Court;
 - (ii) of any other federal court, or court exercising federal jurisdiction; ~~or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council;~~
 - (iii) of the Inter-State Commission, but as to questions of law only;
- and the judgement of the High Court in all such cases shall be final and conclusive.

~~But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.~~

~~Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.~~

The conditions of and restrictions on appeals from the Supreme Court of the several States to the High Court are as provided by the Parliament from time to time.

74 Appeal to Queen in Council

~~No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.~~

~~The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.~~

~~Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.~~

Chapter V – The States

117 Rights of residents in States

~~A subject of the Queen, Any Australian citizen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen an Australian citizen resident in such other State.~~

Chapter VI – New States

122 Government of territories

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Chapter VII – Miscellaneous

~~126 Power to Her Majesty to authorise Governor-General to appoint deputies~~

~~The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.~~

126 Operation of Constitution and laws

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

127 Definitions

In this Constitution:

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

The Commonwealth means the Commonwealth of Australia under this Constitution.

The Crown means Queen Elizabeth the Second and her heirs and successors in the sovereignty of the United Kingdom of Great Britain and Northern Ireland.

The Governor-General means the head of State for the time being.

The original States means New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.

The Prime Minister means the Prime Minister for the time being.

The States means the Original States and such territories that are established as States under this Constitution.

Chapter VIII - Alteration of the Constitution

128 Mode of altering the Constitution

This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects it or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General in Council may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such a manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of electors voting in that State approve the proposed law.

In this section, *Territory* means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

Schedule

Oath

~~I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!~~

Affirmation

~~I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.~~

~~Note:.....The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.~~

Schedule 1 – Oaths and Affirmations

Part 1 – Oath or affirmation of allegiance: Members of Parliament

Under God I swear that I will be loyal to the Commonwealth of Australia and the Australian people, whose laws I will uphold.

I solemnly and sincerely affirm that I will be loyal to the Commonwealth of Australia and the Australian people, whose laws I will uphold.

Part 2 – Oath or affirmation of office: Head of State

Under God I swear that I will be loyal to the Commonwealth of Australia and the Australian people, whose rights and liberties I respect and whose laws I will uphold, and that I will serve the Australian people according to law without fear or favour.

I solemnly and sincerely affirm that I will be loyal to the Commonwealth of Australia and the Australian people, whose rights and liberties I respect and whose laws I will uphold, and that I will serve the Australian people according to law without fear or favour.

Schedule 2 – Transitional provisions for the establishment of the republic

1 Commencement of the Republic

The alterations to this Constitution made by *Constitution Alteration (Establishment of Republic) 200x*, other than Schedule 2, do not take effect until the establishment of the Republic. The Republic of the Commonwealth of Australia shall be established and the office of Governor-General shall cease to represent the Crown when so proclaimed by the Governor-General in Council.

2 Parliament may make laws during transitional period

Before the establishment of the Republic, the Parliament may make laws that the Parliament could have made after that time because of the enactment of the *Constitution Alteration (Establishment of Republic) 200x*, and such laws may take effect before that time.

3 Savings

The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x* do not affect:

- (a) the validity or continued effect, after the establishment of the Republic, of anything done before that time under this Constitution or under the law in force in the Commonwealth; or
- (b) the continuity of the Parliament and its proceedings after the establishment of the Republic; or
- (c) the qualification of a senator or member of the House of Representatives for the remainder of the term of a person who is a senator or member of the House when the Republic is established; or
- (d) the continuity of the Executive Government of the Commonwealth, including in particular the membership and proceedings of the Federal Executive Council, after the establishment of the Republic; or
- (e) the continuity of courts and their jurisdictions and proceedings after the establishment of the Republic.

Despite the alteration of section 117 of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x*, that section continues to apply for the benefit of subjects of the Crown who were resident in a State immediately before the alteration took effect.

4 The States

A State that has not altered its laws to sever its links with the Crown by the time that the Republic is established retains its links to the Crown until the Parliament of that State has so altered its laws.

5 Unified Federal System

The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x* do not affect the continuity of the federal system, including the unified system of law, under this Constitution.

Discussion of Proposal to Establish a Republic

This model for an Australian Republic focuses on the removal of the Queen from our system of government. It makes provision for the Parliament to make future changes in several areas, so that the Republic can evolve. For example, under proposed section 59, the Governor-General will continue to be chosen by the Prime Minister. But the Parliament may choose another selection process, which leaves open the possibility of various election models – by Parliament or the people – if/ when the body politic becomes ready for such a change. Similarly, provision is made for the Parliament to change the title of the head of State from “Governor-General” to, say, “President” after an interval of seven years.

The balance of power between the head of State and the government (the Prime Minister) is clarified and updated. The existing system relies too heavily on conventions that in some cases contradict the written Constitution, e.g. section 5 (Refer to proposed section 63). Finally, the Prime Minister should not have a dominant role in the dismissal of the head of state. Removal of the head of state is a far more important matter than how the head of state is chosen, because it affects the security of tenure and the independence and efficient execution of that office. Therefore, it needs Constitutional (not merely legislative) backing. Refer to proposed section 60.

Throughout this discussion, the term “head of State” is used rather than “President” or “Governor-General”. But where “Governor-General” is used, it is historically relevant. Several sections that are not amended by this proposal (s28, 43, 45 and 62) are included for reference purposes.

1 Legislative Power

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of a Senate, and a House of Representatives, and which is hereinafter called “The Parliament”, or “The Parliament of the Commonwealth”.

The existing section is slightly modified by deleting reference to the Queen. The option of substituting “Governor-General in Council” for “the Queen” was not chosen, because the discretionary powers of the Monarch/ Governor-General in respect of the Parliament and legislation have diminished since federation. (Refer to sections 5, 58 and the deletion of existing sections 59 and 60).

5 Sessions of Parliament, prorogation and dissolution

Rewrite of existing section 5. The head of state can only exercise powers under this section in accordance with the advice of the Prime Minister (refer to proposed section 63). The power to dissolve the House of Representatives is also mentioned under section 28.

34 Update of transitional provision from the establishment of the Commonwealth. The reference to Australian citizenship is not legally needed, but it continues the theme of existing sections 34(ii) and 44(i). Refer to definitions at proposed section 127.

44 The exemption of State Ministers should be removed from subsection (iv), because it is a historical leftover from the first elections for the Commonwealth by which State politicians could transition to the Federal sphere. Similarly, the exemption for the defence forces is anachronistic (CCF, p46). Refer to the qualifications for the head of State at proposed section 59.

58 Assent to bills

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for assent, the Governor-General in Council shall assent to the law or withhold assent. The Governor-General in Council may return to the House in which it originated any proposed law so presented with any amendments which the Federal Executive Council may recommend, and the Houses may deal with the recommendation.

The Governor-General does not have personal discretion on whether to assent to bills or not. If a bill were unconstitutional, it may be dealt with by the High Court. Therefore, the Constitution should vest these powers (and under section 56, 57 etc) in the Federal Executive Council – “The Governor-General in Council”. Refer to discussion under section 63.

59 Head of State

The head of state of the Commonwealth is herein called "The Governor-General" or "the head of State". But after seven years from the establishment of the Republic, the Parliament may alter the title of that office.

Refer to comments under question 13 of the submission. The term "head of State" is used in new sections 59 and 60 when referring to the office. Otherwise the old term "Governor-General" is used when referring to the person holding the office. In that way, use of the old term is minimised.

The qualifications for the head of State shall be:

- (a) the person must be an Australian citizen who is qualified to be an elector of members of the House of Representatives; and*
- (b) the person must not be subject to any of the disqualifications mentioned in sections 44 and 45 of this Constitution; and*
- (c) the person must not be a Minister of State for the Commonwealth or a Minister for a State or Territory.*

The qualifications must be appropriate no matter how the head of state will be, or may eventually be, chosen. The fundamental eligibility requirement should be Australian citizenship, or more particularly, citizens who are eligible to vote. Note that not all persons who are eligible to vote in Australian elections are Australian citizens. Subsection (b) applies the disqualifications that apply to MPs to the head of State. This proposal explicitly refers to the disqualifications listed at sections 44 and 45, rather than the indirect reference "must capable of being chosen as a member . . ." used in the 1999 proposal. But the disqualification that applies to sitting MPs under section 43 is excluded because it contradicts the next clause. Subsection (c) targets Ministers of State because it is an unacceptable concentration of power for the head of State to also be a Minister, and in particular, Prime Minister. Ministerial office also provides advantages of media exposure and resources, which are particularly important under a direct-election process.

Any person who is chosen as the head of State must be qualified for that office; but a member of the Parliament of the Commonwealth or the Parliament of a State or a Territory Legislature, or a Justice of the High Court or any court created by the Commonwealth or a State or Territory may be chosen as the head of State but upon taking that office shall cease to be such a member or Justice.

Traditionally, many of our Governors-General have been ex-Parliamentarians (eg. William McKell, Paul Hasluck, Bill Hayden) or ex-judges (eg. William Deane). While it is not appropriate for judges or MPs to simultaneously be head of State, it is reasonable to allow them to be considered for the office without having to resign first. Requiring such resignation would be a major disincentive to stand for the office (particularly if the head of State were directly elected). The above qualifications include section 44(iv), which would prohibit anyone who holds an "office of profit under the [Crown/ Executive Government]". However, MPs and judges are not officers under the Executive government – their offices are under the Legislative and Judicial arms of government, respectively. But the proposed clause does clarify the issue.

During a period of seven years after the establishment of the Republic and thereafter until the Parliament otherwise provides, the Governor-General shall be chosen by the Prime Minister.

The Prime Minister currently enjoys the privilege of choosing the Governor-General, and no recent holder or aspirant for the Prime Ministership seems disposed to give up that power. However, the Parliament should be permitted to change the selection process to suit future circumstances. The seven year transition, which also applies to the title of the head of state, makes change to a republic more evolutionary.

Each person chosen as the head of State shall, before the term of office begins, make and subscribe before a Justice of the High Court an oath or affirmation of office in the form set forth in Schedule 1 to this Constitution.

Compare to proposed section 60 (paragraph 7) and 66 (clause 3).

The Parliament may prescribe the duration of the term of office of the head of State. But each term of office shall expire on a predetermined and fixed date, and the maximum duration of each term shall be six years. A person may serve more than one term.

The current convention is that the Governor-General has a five year term, and these proposed clauses allow that practice to continue. But eventually, the Parliament may decide to adjust the term to suit the evolution of the office of head of State. The length of a term of office should be fixed, because the head of State must have security of tenure. There needs to be a maximum term of office to prevent a head of State being installed for life (compare with section 28, which prevents an indefinite term for Parliament). These clauses are relevant no matter how the head of State is chosen.

The Governor-General shall receive such remuneration as the Parliament may fix, but the remuneration thereof payable during a term of office shall not be altered during that term of office.

Compare the provisions for remuneration with existing sections 3 and 72(iii).

Subject to this Constitution, the Parliament may make laws relating to the head of State.

A variety of legislative and administrative machinery is needed so that the office of head of State can function. Other provisions confer specific powers upon the Parliament to legislate on particular matters, but this provision confers a general power. Compare to existing section 51(xxxix).

60 Vacancy and acting head of State

The office of head of State shall become vacant whenever:

- (a) the Governor-General's term of office expires; or*
- (b) the Governor-General resigns, or is removed from office under this section, or ceases to be qualified to hold that office, or ceases to be available to exercise the powers or functions thereof including being absent without the permission of the Federal Executive Council.*

The office of head of State may become vacant in several ways, which are listed here to clarify when an acting head of State is appointed. Subsection (b) prescribes "ceases to be available" which includes circumstances where the head of State goes missing, such as happened to Harold Holt. It is not appropriate for the Parliament to judge the physical capacity of the head of State (although section 72 allows that in respect of High Court Justices). The High Court is the appropriate, impartial body to judge such matters if necessary (Refer subclause (i) of the removal process, below). Compare this subsection with the provisions of sections 20 & 38.

The Governor-General may resign by signed notice delivered to the Prime Minister.

Compare to existing sections 19, 37 and 72 (paragraph 6).

The Governor-General may not be removed from office, except by:

- (i) order of the High Court on the grounds of contravention of this Constitution or incapacity; or*
- (ii) the President of the Senate and the Speaker of the House, if at least sixty percent of the total number of members of the Senate and the House of Representatives vote for such removal at a joint sitting thereof.*

A major criticism of the 1999 model was that the Prime Minister was to have power of immediate dismissal over the President, which was more power than he enjoys over the Governor-General. This model vests these powers in the Parliament. The Prime Minister should not be able to unilaterally dismiss the head of state. But since the Prime Minister has the numbers in the lower House and the lower House has two-thirds of all MPs, any attempt to remove the head of state will need his agreement, or at least his acquiescence. The voting threshold should be higher than a simple or an absolute majority, e.g. sixty percent. It is rare that a political party wins over 60% of the seats in Parliament, but on such a contentious issue a few MPs might cross the floor. However, if the voting threshold is too high (say, two-thirds or more) the untenable situation could occur where the head of state survives in office although a very large majority of the Parliament disapprove (refer to Table 2, below).

The President of the Senate and the Speaker (as the chief officers of the Parliament) should execute the removal - not the Prime Minister, which would be far too contentious as it was in the 1999 model. Compare to existing sections 17, 35 and 72.

Type of majority	Number for majority	No. of residual minority
absolute	114	112
60%	136	90
2/3	151	75
Total membership	226	-

Table 2. Alternative majorities at a joint sitting for removal of the head of State

A joint sitting of the Parliament is convened by the Governor-General (refer sections 5 and 57 of the Constitution). In this instance, the head of state may be reluctant to co-operate for obvious reasons. His options are to take the hint and resign, comply and allow Parliament to decide his fate, or refuse the advice of the Prime Minister (to convene Parliament) and then be removed by the High Court.

The actions of a person otherwise duly chosen and appointed as the head of State under this Constitution are not invalidated only because the person was not qualified to hold that office.

This provision was acquired from the 1999 model. It seems pertinent.

Whenever the office of head of State becomes vacant a person shall act as head of State and, until the Parliament otherwise provides, such person shall be the longest serving State Governor.

The current convention that the senior State Governor acts as head of State is codified. Eventually, the Parliament may decide on another appropriate official to act as head of State, if the State Governors ceased to be appropriate.

The provisions of this Constitution relating to the Governor-General or the head of State extend and apply to any person acting as head of State.

A person chosen to act as head of State shall not exercise powers or functions thereof unless, since that office became vacant, the person has made and subscribed, before a Justice of the High Court, the oath or affirmation of office in the form set forth in Schedule 1 to this Constitution.

Compare to proposed section 59 (clause 5) and 66 (clause 3).

61 Executive Power

The executive power of the Commonwealth is vested in the Governor-General, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Existing section 61 is updated by removing reference to the Queen. The term "Governor-General" is used rather than "head of State" to be consistent with sections 62 and 63.

62 Federal Executive Council

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Existing section 62 is unchanged.

63 Provisions referring to the Governor-General

The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

The existing Constitution distinguishes between powers that are exercisable by the Governor-General and those exercisable by the Governor-General in Council. The distinction is historical. The former are powers that were part of the Monarch's prerogative at common law, while the latter had come under the control of statute law. In practice, the former are exercised by the Governor-General with the advice (and countersignature) of the Prime Minister, while the latter powers are exercised through the formal process of the Federal Executive Council (FEC) (Lumb & Moens, p343).

It is modern practice that legislative powers which the Constitution originally vested in Crown and the Governor-General (s1, 56, 58 and 128) are now exercised by the Governor-General in Council.

But powers relating to dissolution of the Parliament (s5, 28 and 57) and the appointment and dismissal of Ministers (s64) or of Executive Councillors (s59) are often more urgent from the Prime Minister's political viewpoint, and are exercised under the less formal process.

The first paragraph of this proposed section is existing section 63. But two new clauses are added.

*Subject to section 61 of this Constitution, the exercise of the Governor-General's powers under sections 5, 28, 57, 62 or 64 shall be in accordance with the advice of the Prime Minister.
Otherwise, subject to this Constitution, the Governor-General shall act in accordance with the advice of the Federal Executive Council.*

These clauses clarify when the Governor-General may act at his own discretion (i.e. only where the Constitution permits, such as pursuant to section 61 or under proposed section 66A under Appendix B), when the Governor-General must act as the Prime Minister advises (detailed in this section), and when the Governor-General must act as advised by the Federal Executive Council (i.e. as the Governor-General in Council, and any other occasions not specifically addressed by the Constitution).

The new paragraphs added to this section continue to use the term "Governor-General" rather than "head of State" because "Governor-General" to be consistent with the existing sections (5, 28 57 etc) to which the new paragraph refers.

64 Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Ministers of State for the Commonwealth.

Ministers to sit in Parliament

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

The deletion of "Queen's" (as in the Queen's Ministers) is the only change to this section.

66 Salaries of Ministers

The Ministers of State shall receive such remuneration as the Parliament may fix.

The wording of this amendment is similar to that for the head of State under proposed section 59.

66A Deputies

The Governor-General may appoint any person, or any persons jointly or severally, to be the Governor-General's deputy or deputies, and in that capacity to exercise during the pleasure thereof (including while the Governor-General is absent from Australia) such powers and functions thereof as the Governor-General in Council may assign to such deputy or deputies.

The appointment of such a deputy shall not affect the exercise by the Governor-General personally (including while the Governor-General is absent from Australia) of any power or function.

The powers to appoint deputies and to delegate power to such deputies should not be both vested in the Federal Executive Council. If that were so, the Prime Minister could at any time effectively replace the head of State. The threat of such action undermines the independence of the head of State. Therefore, it is proposed that the power to appoint (and dismiss) deputies be at the discretion of the head of State, but the power to delegate power to such deputies be vested in the Federal Executive Council. Compare to existing s126.

A person shall not exercise powers or functions as such a deputy unless, since being so appointed, the person has made and subscribed, before a Justice of the High Court, the oath or affirmation of office in the form set forth in Schedule 1 to this Constitution.

Compare to proposed section 59 (clause 5) and 60 (clause 7).

68 Refer Lumb & Moens p349.

70A Continuation of prerogative

Until the Parliament otherwise provides, but subject to this Constitution, any prerogative enjoyed by the Crown in right of the Commonwealth immediately before the establishment of the Republic shall be enjoyed in like manner by the Commonwealth or the Governor-General as the case requires.

This provision is an amended version of that from the 1999 referendum proposal. The Crown's prerogative powers are also called Reserve powers. These Reserve Powers are ill-defined through lack of use and are sometimes disputed. Therefore, it is appropriate for the Parliament to decide upon their future use and put them into legislation, "subject to this Constitution".

117 Refer to the last paragraph of section 3, Schedule 2.

127 The definitions are similar to those proposed at the 1999 referendum. Additions include "The Prime Minister", which is mentioned at proposed sections 59, 60 and 62; and "The Crown", which was proposed to be defined under Schedule 2 of the 1999 referendum proposal.

128 The second paragraph deals with referenda on bills to amend the Constitution when one House is opposed. This provision has been invoked once (1914) where the Senate had twice passed several Constitutional amendment bills and had requested the Governor-General to submit the bills to the electorate. But, the Governor-General acted on the advice of the Ministry and refused (Lumb & Moens p568). Therefore, it is proposed to replace "Governor-General" with "Governor-General in Council". If the Governor-General does not have discretion on such matters, then the Constitution should reflect that.

Schedule 1

The oaths and affirmations are as proposed at the 1999 referendum.

Schedule 2 – Transitional provisions for the establishment of the republic

1 Commencement of the Republic

The alterations to this Constitution made by Constitution Alteration (Establishment of Republic) 200x, other than Schedule 2, do not take effect until the establishment of the Republic. The Republic of the Commonwealth of Australia shall be established and the office of Governor-General shall cease to represent the Crown when so proclaimed by the Governor-General in Council.

A similar "start-up" provision was proposed at the 1999 referendum. This proposal makes use of the phrase "establishment of the Republic" whereas the 1999 proposal used "office of Governor-General ceases to exist". Therefore, this section explicitly defines when the Republic becomes established. The balance of Schedule 2 is an amended version from the 1999 referendum proposal.

Supply

This proposal is neutral about the Senate's power on Supply. Proposed section 70A does not empower the Parliament to remove or bypass the Senate's supply powers, because any laws made under that section are to be "subject to this Constitution". But a government cannot function if it has no money. The Governor-General's power to dismiss the Prime Minister in such circumstance is under section 61 (i.e. the Governor-General must maintain the Constitution). And the Constitution provides that all moneys raised by the Commonwealth (i.e. taxes) must go into a fund administered by the Treasury and the Government cannot access these moneys "except under appropriation made by law" (sections 81 and 83), and the Senate's powers with respect to such laws are spelt out by section 53. If the Senate's powers on Supply were to be reconsidered, a separate referendum to amend section 53 would be necessary.

References:

The Australian Constitution (Annotated), Constitutional Centenary Foundation (CCF) 1997.
The Constitution of the Commonwealth of Australia, Lumb & Moens, Butterworths 1995.

Appendix B

PROPOSED LAW: To alter the Constitution to specify the powers of the Governor-General to appoint and dismiss the Prime Minister.

Constitution Alteration (Powers of Governor-General) 200a

The provisions of the Constitution, as they would be affected by the proposed law, are set out below. Words proposed to be inserted in the Constitution are underlined, and words proposed to be deleted from the Constitution are ~~ruled through~~.

64 Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Subject to this Constitution, Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

A Minister of State may resign by signed notice delivered to the Governor-General.

65 Number of Ministers

Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of such provision, as the Governor-General directs.

66 Salaries of Ministers

There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

65 The Prime Minister

The Prime Minister shall be the head of government of the Commonwealth.

Whenever the office of Prime Minister becomes vacant, the Governor-General shall appoint as Prime Minister the first available of:

- (a) the person who an absolute majority of the members of the House of Representatives support for the office of Prime Minister by resolution of the House or otherwise;
- (b) the Deputy Prime Minister, and the other Ministers of State in order of seniority;
- (c) the person who, in the Governor-General's judgement, an absolute majority of the members of the House of Representatives are most likely to support for the office of Prime Minister at the first or next meeting of the House; or
- (d) any person who the Governor-General thinks fit, but subject to condition that the House of Representatives be dissolved within seven days.

The provisions of this Constitution relating to the Ministers of State extend and apply to the Prime Minister.

66 Vacancy of the office of Prime Minister

The office of Prime Minister shall become vacant whenever:

- (a) the Prime Minister resigns; or
- (b) the Prime Minister's appointment is terminated; or
- (c) the Prime Minister ceases to be available to exercise the powers or functions thereof including being absent without the permission of the Federal Executive Council.

Whenever the office of Prime Minister becomes vacant under section 66(a) or (b), each Minister of State shall cease to hold office.

The Governor-General shall, by proclamation or otherwise, terminate the Prime Minister's appointment (unless the Prime Minister sooner resigns or the House of Representatives is sooner dissolved) if an absolute majority of the members of the House, by resolution of the House or otherwise, support another named person for the office of Prime Minister or express no confidence in the Prime Minister.

Discussion of Proposal on Powers of Governor-General

64 Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Subject to this Constitution, such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

A Minister of State may resign by signed notice delivered to the Governor-General.

The first three clauses of this section are a minor revision of existing section 64. The provision that Ministers of State hold office "subject to this Constitution" is necessary because the Prime Minister is also a Minister of State (refer final clause of proposed section 65) and because proposed section 66 includes a provision where the resignation (or dismissal) of the Prime Minister also terminates the appointment of all Ministers (clause 2). The last clause provides a procedure by which any Minister of State, but particularly the Prime Minister, may resign.

Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of such provision, as the Governor-General directs.

Existing section 65 continues as a sub-clause of section 64.

There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Existing section 66 continues as a sub-clause of section 64. But it will also be rewritten if the "Republic" proposal is approved. The consolidation of existing sections 64 - 66 allows two new sections 65 and 66 to be added ahead of another new section s66A, which is part of the republic proposal (refer Appendix A).

65 The Prime Minister

The office of Prime Minister, and its relationship with the head of State, should be defined. This and the next section codify most of the conventions relating to the appointment and dismissal of a Prime Minister.

The Prime Minister shall be the head of government of the Commonwealth.

This clause complements the opening clause of proposed section 59 of the "Republic" proposal.

Whenever the office of Prime Minister becomes vacant, the Governor-General shall appoint as Prime Minister the first available of:

- (a) the person who an absolute majority of the members of the House of Representatives support for the office of Prime Minister by resolution of the House or otherwise;*
- (b) the Deputy Prime Minister, and the other Ministers of State in order of seniority;*
- (c) the person who, in the Governor-General's judgement, an absolute majority of the members of the House of Representatives are most likely to support for the office of Prime Minister at the first or next meeting of the House; or*
- (d) any person who the Governor-General thinks fit, but subject to condition that the House of Representatives be dissolved within seven days.*

The person to be Prime Minister must usually have the confidence of the House of Representatives (refer section 65(a) and 66, paragraph 3) but there are exceptions. Section 65(b) defines the succession if the Prime Minister is suddenly incapacitated. That office must be filled while the House

of Representatives chooses the new Prime Minister. Section 65(c) covers two cases where the House cannot decide who should be Prime Minister.

The first such case is after general elections (or a by-election) which causes a change of Government. The incumbent Prime Minister (upon recognising defeat) is expected to resign, but the House cannot muster a majority for a new Prime Minister until counting of votes is complete and newly-elected members are sworn in. The second case is where the House is deadlocked because no party or coalition has a majority, but dissolution of the House would be excessively premature. In that case, the Opposition leader or others may be given an opportunity to form a minority government. If the House disagrees with the Governor-General's choice, they can remove the Prime Minister under section 66 by a resolution of "no confidence".

Subsection (d) allows the appointment of a caretaker Ministry when all other options are exhausted and elections are inevitable.

The provisions of this Constitution relating to the Ministers of State extend and apply to the Prime Minister.

The existing Constitution does not identify the office of Prime Minister, who is just another Minister of State, although he/ she is the "primary" Minister – the first among equals.

66 Vacancy of the office of Prime Minister

The Prime Minister may resign by signed notice delivered to the President.

Compare to existing section 72 (paragraph 6), and to proposed section 61 (paragraph 2).

The office of Prime Minister shall become vacant whenever:

- (a) the Prime Minister resigns; or*
- (b) the Prime Minister's appointment is terminated; or*
- (c) the Prime Minister ceases to be available to exercise the powers or functions thereof, including being absent without the permission of the Federal Executive Council.*

The phrase "resolution or otherwise" in sections 65(a) and 66 (clause 4) allows members to communicate with the President by letter (for example) if the House is not sitting.

Whenever the office of Prime Minister becomes vacant under section 66(a) or (b), each Minister of State shall cease to hold office.

The convention is that the dismissal or resignation of the Prime Minister affects all Ministers of that particular administration.

The Governor-General shall, by proclamation or otherwise, terminate the Prime Minister's appointment (unless the Prime Minister sooner resigns or the House of Representatives is sooner dissolved) if an absolute majority of the members of the House, by resolution of the House or otherwise, support another named person for the office of Prime Minister or express no confidence in the Prime Minister.

This paragraph complements proposed section 65 (a) and (c). The role of the House in dismissing a Government should be Constitutionally guaranteed and beyond the reach of the Parliament to change. The Prime Minister, faced with a loss of confidence of the House, must resign or advise a dissolution. But if the House of Representatives has much of its term remaining and/or if another person can muster support in the House, then a dissolution may not be appropriate. The head of State should have the power to refuse the Prime Minister's advice to dissolve Parliament, in such circumstances. Refer to proposed section 63 (Appendix A).