



Constitution Alteration (Establishment of Republic) 1999

No. , 1999

A PROPOSED LAW

To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament

(incorporating Senate amendments agreed to by the House of Representatives)

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A PROPOSED LAW

To alter the Constitution to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament

The Parliament of Australia, with the approval of the electors, as required by the Constitution, enacts:

1 Short title

This Act may be cited as the *Constitution Alteration (Establishment of Republic) 1999*.

2 Commencement

- (1) Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.
- (2) Schedules 1 and 2 commence at 3.00 pm, by legal time in the Australian Capital Territory, on 1 January 2001.
- (3) Schedule 3 commences on the day on which this Act receives the Royal Assent.

3 Schedules

The Constitution is altered as set out in the Schedules.

Schedule 1—Amendments of the Constitution relating to the President

1 Section 59

Repeal the section.

2 Section 60

Repeal the section.

3 Sections 61, 62 and 63

Repeal the sections, substitute, in Chapter II:

59 Executive power

The executive power of the Commonwealth is vested in the President, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth. The President shall be the head of state of the Commonwealth.

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

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.

60 The President

After considering the report of a committee established and operating as the Parliament provides to invite and consider nominations for appointment as President, the Prime Minister may, in a joint sitting of the members of the Senate and the House of Representatives, move that a named Australian citizen be chosen as the President.

If the Prime Minister's motion is seconded by the leader of the Opposition in the House of Representatives, and affirmed by a two-thirds majority of the total number of the members of the Senate and the House of Representatives, the named Australian citizen is chosen as the President.

The person named in the Prime Minister's motion is qualified to be chosen as President if, when the motion is moved and affirmed:

- (i) the person is qualified to be, and capable of being chosen as, a member of the House of Representatives; and
- (ii) the person is not a member of the Commonwealth Parliament or a State Parliament or Territory legislature, or a member of a political party.

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

Each person chosen as President 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.

61 Term of office and remuneration of President

The term of office of a President begins at the end of the term of office of the previous President. But if the office of President falls vacant, or the term of office of the outgoing President ends, before the day on which the incoming President makes the oath or affirmation of office, the incoming President's term of office begins on the day after that day.

The President holds office for five years but if, at the end of the term, a new President does not take office, the office of President does not thereby fall vacant and the outgoing President continues as President until the term of office of the next President begins.

A person may serve more than one term as President.

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

The President shall receive such remuneration as the Parliament fixes. The remuneration of a President payable during a term of office shall not be altered during that term of office.

62 Removal of 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.

63 Acting President and deputies

Until the Parliament otherwise provides, the longest-serving State Governor available shall act as President if the office of President falls vacant. A State Governor is not available if the Governor has been removed (as acting President) by the current Prime Minister under section 62.

Until the Parliament otherwise provides, the Prime Minister may appoint the longest-serving State Governor available to act as President for any period, or part of a period, during which the President is incapacitated.

The provisions of this Constitution relating to the President, other than sections 60 and 61, extend and apply to any person acting as President.

Until the Parliament otherwise provides, the President may appoint any person, or any persons jointly or severally, to be the President's deputy or deputies, and in that capacity to exercise during the pleasure of the President (including while the President

is absent from Australia) such powers and functions of the President as the President thinks fit to assign to such deputy or deputies.

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

A person shall not exercise powers or functions as the acting President unless, in respect of that occasion of acting as President, the person has made and subscribed, before a Justice of the High Court, the President's oath or affirmation of office in the form set forth in Schedule 1 to this Constitution.

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

An acting President, or a person exercising powers or functions as the President's deputy, shall receive such allowances as the Parliament fixes.

4 At the end of Chapter II

Add, in Chapter II:

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 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.

5 Schedule

Repeal the Schedule, substitute:

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: President

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—Consequential amendments of the Constitution

1 Table of contents

Omit “The Schedule”, substitute:

Schedule 1—Oaths and affirmations

Schedule 2—Transitional provisions for the establishment of the republic

2 Section 1

Omit “Queen”, substitute “President”.

3 Sections 2, 3 and 4

Repeal the sections.

4 Sections 5, 7 and 15

Omit “Governor-General”, substitute “President”.

5 Section 17 (heading)

Add at the end “of the Senate”.

6 Section 17

After “President” (second, third and fourth occurring), insert “of the Senate”.

7 Section 17

Omit “Governor-General”, substitute “President of the Commonwealth”.

8 Section 18 (heading)

Add at the end “of the Senate”.

9 Section 18

After “President”, insert “of the Senate”.

10 Section 19

Omit “to the President, or to the Governor-General if there is no President or if the President”, substitute “to the President of the Senate, or to the President of the Commonwealth if there is no President of the Senate or if the President of the Senate”.

11 Section 21

Omit “the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General”, substitute “the President of the Senate, or if there is no President of the Senate or if the President of the Senate is absent from the Commonwealth, the President of the Commonwealth”.

12 Section 23

After “President”, insert “of the Senate”.

13 Section 28

Omit “Governor-General”, substitute “President”.

14 Sections 32 and 33

Omit “Governor-General in Council”, substitute “President in Council”.

15 Subsection 34(ii)

Repeal the subsection, substitute:

- (ii) the person must be an Australian citizen.

16 Sections 35, 37 and 42

Omit “Governor-General”, substitute “President”.

17 Section 42

Omit “the schedule”, substitute “Schedule 1”.

18 Subsection 44(iv)

Repeal the subsection, 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,”.

21 Sections 56 and 57

Omit “Governor-General” (wherever occurring), substitute “President”.

22 Section 57

Omit “for the Queen’s assent”, substitute “for assent”.

23 Section 58

Repeal the section, substitute:

58 Assent to Bills

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.

Recommendations by President

The President may return to the House in which it originated any proposed law so presented, and may transmit therewith any amendments which the President may recommend, and the Houses may deal with the recommendation.

24 Section 64

Repeal the section, substitute:

64 Ministers of State

The President may appoint officers to administer such departments of State of the Commonwealth as the President in Council may establish. Such officers shall hold office during the pleasure of the President. They shall be members of the Federal Executive Council and shall be the Ministers of State for the Commonwealth.

Ministers to sit in Parliament

No Minister of State shall hold office for a longer period than three months unless the person is or becomes a senator or a member of the House of Representatives.

25 Section 65

Omit “Governor-General”, substitute “President”.

26 Section 66

Repeal the section, substitute:

66 Salaries of Ministers

There shall be payable out of the Consolidated Revenue Fund, for the salaries of the Ministers of State, such annual sum as is fixed by the Parliament.

27 Section 67

Omit “Governor-General in Council” (wherever occurring), substitute “President in Council”.

28 Section 68

Omit “the Governor-General as the Queen’s representative”, substitute “the President”.

29 Section 69

Omit “by the Governor-General”.

30 Section 70 (heading)

Repeal the heading, substitute:

70 Vesting of certain powers

31 At the end of section 70

Add:

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.

32 Section 72

Omit “Governor-General” (wherever occurring), substitute “President”.

33 Section 73

Repeal the last sentence, substitute:

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

34 Section 74

Repeal the section.

35 Section 83

Repeal the second sentence.

36 Subsection 85(i)

Repeal the subsection, substitute:

- (i) all property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth;

37 Section 103

Omit “Governor-General in Council” (wherever occurring), substitute “President in Council”.

38 Section 117

Omit “A subject of the Queen”, substitute “An Australian citizen”.

39 Section 117

Omit “a subject of the Queen”, substitute “an Australian citizen”.

40 Section 122

Omit “by the Queen”.

41 Section 126

Repeal the section, substitute:

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

The President means the President for the time being.

The President in Council means the President acting with the advice of the Federal Executive Council.

The States means the original States, and such territories as may be admitted into or established by the Commonwealth as States.

42 Section 128

Omit “Governor-General” (wherever occurring), substitute “President”.

43 Section 128

Omit “the Queen’s”.

Schedule 3—Transitional provisions

1 At the end of the Constitution

Add:

Schedule 2—Transitional provisions for the establishment of the republic

1 The Governor-General

The office of Governor-General ceases to exist at the commencement of Schedules 1 and 2 to the *Constitution Alteration (Establishment of Republic) 1999*.

2 The first President

The first President may be chosen before the office of Governor-General ceases to exist, as if the provisions of this Constitution relating to the choice of the President had commenced when the *Constitution Alteration (Establishment of Republic) 1999* was enacted.

The first President's term of office begins on 1 January 2001. The person chosen shall make and subscribe the President's oath or affirmation of office under section 60 on or before that day.

But if no person is chosen as the first President before that day, the first President's term of office begins on the day after the person chosen makes the oath or affirmation. Until that term begins, a person shall act as President in accordance with section 63.

3 Parliament may make laws during transitional period

Before the office of Governor-General ceases to exist, 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) 1999, and such laws may take effect before that time.

4 Savings

The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 1999* do not affect:

- (i) the validity or continued effect, after the office of Governor-General ceases to exist, of anything done before that time under this Constitution or under the law in force in the Commonwealth; or
- (ii) the continuity of the Parliament and its proceedings after the office of Governor-General ceases to exist; or
- (iii) the qualifications of a senator or a member of the House of Representatives for the remainder of the term of a person who is a senator or member when the office of Governor-General ceases to exist; or
- (iv) the continuity of the Executive Government of the Commonwealth, including in particular the membership and proceedings of the Federal Executive Council, after the office of Governor-General ceases to exist; or
- (v) the continuity of courts and their jurisdiction and proceedings after the office of Governor-General ceases to exist.

After the office of Governor-General ceases to exist, anything done before that time for the purposes of a provision of this Constitution by the Governor-General, or by the Governor-General in Council, has effect as if it had been done by the President, or by the President in Council, as the case requires.

Despite the alteration of section 117 of this Constitution made by the *Constitution Alteration (Establishment of Republic) 1999*, that section continues to apply for the benefit of subjects of the Queen who were resident in a State immediately before the alteration took effect.

5 The States

A State that has not altered its laws to sever its links with the Crown by the time the office of Governor-General ceases to exist retains its links with the Crown until it has so altered its laws.

6 Unified federal system

The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 1999* do not affect the continuity of the federal system, including the unified system of law, under this Constitution.

7 Constitutional conventions

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

8 Justiciability

The enactment of the *Constitution Alteration (Establishment of Republic) 1999* does not make justiciable the exercise by the President of a reserve power referred to in section 59 of this Constitution if the exercise by the Governor-General of that power was not justiciable.

9 Interpretation

The reference to the Crown in clause 5 of this Schedule shall extend to the Queen's heirs and successors in the sovereignty of the United Kingdom.

(107/99)