

# CONSTITUTION (REQUESTS) BILL 1999

## EXPLANATORY NOTES

### **Title of the Bill**

*Constitution (Requests) Bill 1999*

### **Policy Objectives of the Bill**

To assist the Commonwealth Parliament to make amendments to the *Commonwealth of Australia Constitution Act 1900* that would otherwise be in conflict with a republicanised Constitution if the November referendum is carried.

### **Reasons for the Bill**

The February 1998 Constitutional Convention supported the adoption of a republican system of government based on a ‘bipartisan appointment of the President model’ and recommended that the model, and other related changes be put to the people at a constitutional referendum. At the close of the Convention the Prime Minister confirmed that the preferred model would be put to a referendum in 1999.

Exposure drafts of the Bills to give effect to certain of the Convention’s resolutions on a republic were released on 9 March 1999. Those Bills are the *Constitution Alteration (Establishment of Republic) Bill 1999* and the *Presidential Nominations Committee Bill 1999*. Generally these two Bills provide for the appointment of a President as head of State and the removal of monarchical references from the Constitution. The Convention also resolved that the Constitution proper should include its own preamble, noting that the existing preamble and covering clauses would remain intact and any provisions which have continuing force should be moved into the Constitution itself and those which do not should be repealed.

The Commonwealth's *Constitution Alteration (Establishment of Republic) Bill 999* moves the operative parts of covering clauses 5 and 6 to new sections 126 and 127 of the Constitution. However, the Bills do not implement the Convention's resolutions regarding the repeal of those parts of the preamble and covering clauses which are now spent or have no continuing force.

The Constitution of the Commonwealth of Australia is contained in s.9 of the *Commonwealth of Australia Constitution Act 1900* of the Parliament of the United Kingdom (the *Constitution Act*). With the passage of the *Australia Acts* in 1986 the power of the Parliament of the United Kingdom to make any amendments to the *Constitution Act* in so far as they can be applied to Australia was terminated.

Although the Commonwealth Parliament may repeal or amend any Act of the Parliament of the United Kingdom in so far as it is part of the law of the Commonwealth, it is specifically prevented from amending the *Constitution Act* by the operation of s.8 of the *Statute of Westminster 1931*. However, s.15(1) of the *Australia Acts* provides that the *Statute of Westminster 1931* may be amended by an Act of the Commonwealth Parliament passed at the request of the Parliaments of all six States.

This *Bill*, and similar Bills from each of the States, request the enactment by the Parliament of the Commonwealth of an Act that amends the *Constitution Act* by omitting the preamble and repealing ss.2 to 8 inclusive of that Act.

### **Estimated Costs for Government Implementation**

The Bill is a request to the Commonwealth Parliament and will have no implementation costs.

### **Consistency with Fundamental Legislative Principles**

The Bill is consistent with fundamental legislative principles as outlined in s.4 of the *Legislative Standards Act 1992*.

### **Consultation**

All State Governments have collaborated on the development of this Bill.

## NOTES ON CLAUSES

### Short Title

*Clause 1* sets out the short title of the Act—the *Constitution (Requests) Act 1999*.

*Clause 2* provides that the commencement of the requested amendments to the above Acts must be on the day after the day on which the Commonwealth's *Constitution Alteration (Establishment of Republic) Bill 1999* receives Royal Assent. This ensures that, if the republic referendum is not carried, the Act will have no operation and no power will be conferred on the Commonwealth Parliament.

*Clause 3* provides that the purpose of the Bill is to request the amendment of the *Statute of Westminster 1931* and the *Commonwealth of Australia Constitution Act 1900* in connection with proposed constitutional arrangements to establish the Commonwealth of Australia as a republic.

*Clause 4* requests the Commonwealth Parliament to enact legislation in, or substantially in, the terms set out in the Schedule.

**The Schedule** contains the text of an Act of the Commonwealth Parliament to amend the *Statute of Westminster 1931* and the *Constitution Act*. The Schedule has been drafted in accordance with Commonwealth drafting style.

**Section 2** of the Commonwealth Act provides that the Act cannot commence before the *Constitution Alteration (Establishment of Republic) Bill 1999* receives Royal Assent.

**Section 3** of the Commonwealth Act provides for the amendment of the Acts specified in the Schedule to it, namely—

- the *Statute of Westminster 1931*—by providing that s.8 of that Act does not prevent the omission of the preamble or the repeal of ss.2 to 8 of the *Constitution Act*; and
- the *Constitution Act*—by omitting the preamble and repealing ss.2 to 8.