

**THE PARLIAMENT OF  
THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**CONSTITUTION ALTERATION  
(PREAMBLE) 1999**

**EXPLANATORY MEMORANDUM**

**(Circulated with the authority of the Prime Minister)**

whether Australia should become a republic, which republican model should be put to voters to consider against the present system of government, and in what timeframe any change might take place. The Convention supported the adoption of a 'bipartisan appointment of the President model' and recommended that the model, and other related changes supported by the Convention, be put to the people at a constitutional referendum. The Convention resolved that, if a referendum was successful, the republic should be established by 1 January 2001.

1.2 The Prime Minister confirmed at the close of the Convention that the Government would put the Convention's preferred model to a constitutional referendum in 1999. Bills to give effect to the Convention's resolutions on a republic have been prepared. Those Bills are the *Constitution Alteration (Establishment of Republic) 1999* and the *Presidential Nominations Committee Bill 1999*.

1.3 The Constitution of the Commonwealth of Australia is contained in s.9 of the Act of the United Kingdom known as the *Commonwealth of Australia Constitution Act 1900* (in this explanatory statement that Act is called 'the Constitution Act (UK)'). While the Constitution Act (UK) contains a preamble, there is no preamble to the Constitution proper. The Convention resolved that the existing preamble to the Constitution Act (UK) should remain intact.

1.4 The Convention also resolved that the Constitution should include its own preamble. It made this recommendation in the context of recommending that Australia adopt a republican system of government. A preamble may be inserted in the Constitution proper without any amendments being made to the existing preamble to the Constitution

1.6 The Government proposes that the referendum therefore have two separate questions, one on the republic and one on the preamble. The *Constitutional Alteration (Preamble)* would amend the Constitution by inserting a preamble in it. The referendum on the preamble would enable the Australian people to vote on whether the Constitution should be altered so as to contain a preamble.

### **The main elements of the Constitution Alteration (Preamble) 1999**

1.7 The *Constitution Alteration (Preamble) 1999* would insert a preamble into the Constitution of the Commonwealth of Australia. The preamble would be located just after the title.

1.8 The preamble is not intended to have legal force.

### **The Constitutional Convention's recommendations relating to a preamble**

1.9 The Constitutional Convention resolved that there should be a new preamble to the Constitution proper. It also resolved that care should be taken to draft the preamble in such a way that it does not have implications for the interpretation of the Constitution and it said that Chapter III of the Constitution should state that the Preamble should not be used to interpret the other provisions of the Constitution.

‘Whereas the people of New South Wales, Victoria, South Australia, Queensland and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:’

Western Australia is not mentioned in the existing preamble because it did not vote to join the Commonwealth until after the Constitution Act (UK) had received the royal assent on 9 July 1900. By the time Queen Victoria issued a proclamation on 17 September 1900 proclaiming that the Commonwealth of Australia was to come into existence on 1 January 1901, Western Australia had decided to join.

1.12 If in the future it was considered desirable to alter or repeal the preamble or the covering clauses of the Constitution Act (UK), this could be done by the Commonwealth Parliament at the request of the States under the *Australia Act 1986*, or by a further constitutional referendum.

## **FINANCIAL IMPACT STATEMENT**

2.1 It is estimated that the Australian Electoral Commission's total costs for conducting a referendum with two questions will be \$63.4m. Of this amount, \$1.5m is associated with the additional cost of a second question on the preamble.

## **Clause 2 - Commencement**

3.2 Clause 2 brings the *Constitution Alteration (Preamble) 1999* into force on 1 January 2001.

## **Clause 3 - Schedule**

3.3 Clause 3 alters the Constitution by inserting after the title, ‘The Constitution’, the preamble set out in the Schedule.

## **Clause 4 - Effect of preamble**

3.4 Clause 4 alters the Constitution by inserting a new s.125A which sets out the effect of the preamble.

3.5 Proposed s.125A states that the preamble has no legal force and shall not be considered in interpreting the Constitution or any law in force in the Commonwealth or any part of the Commonwealth.

## **4 THE SCHEDULE**

4.1 The Schedule contains the new preamble.