

[Act 1999 No 11]



New South Wales

Australia Acts (Request) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

If the proposed Commonwealth Bill called the *Constitution Alteration (Establishment of Republic) 1999* is passed by the Commonwealth Parliament and approved by the Australian people at a referendum in accordance with section 128 of the Commonwealth Constitution, each State will need to give consideration as to whether it should sever its links with the Crown.

A number of constitutional commentators think that section 7 of the *Australia Act 1986* of the Commonwealth and of the *Australia Act 1986* of the Parliament of the United Kingdom poses an impediment to a State adopting republican constitutional arrangements. Section 7 deals with the powers and functions of the Queen and the Governor in respect of a State. It is therefore desirable that section 7 be amended to ensure it will not preclude a State from severing its links with the Crown.

Under section 15 (1) of the Australia Acts, those Acts may be amended by the Commonwealth Parliament at the request or with the concurrence of each State Parliament, and, subject to section 15 (3) of the Australia Acts, only in that manner.

The object of this Bill is to request the Commonwealth Parliament under section 15 (1) of the Australia Acts to enact an Act to amend section 7 of those Acts so that section 7 will not prevent a State from severing its links with the Crown. The terms of the Act requested to be enacted are set out in the Schedule to this Bill.

Similar requesting legislation has been or is anticipated to be introduced in the Parliament of each other State.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act and its purpose.

Clause 2 provides for the commencement of the proposed Act on the day after the day on which the proposed *Constitution Alteration (Establishment of Republic) 1999* of the Commonwealth receives the Royal Assent. This will ensure that, if the Republic Bill is defeated at the referendum, the proposed Act will have no operation and no power will be conferred on the Commonwealth Parliament.

Clause 3 provides that the Parliament of the State requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the Schedule.

Schedule—Australia Acts Amendment Act 1999 of the Commonwealth

The proposed Commonwealth Bill is set out in this Schedule. It contains the following provisions:

Clause 1 of the proposed Commonwealth Bill sets out the citation of the proposed Commonwealth Act.

Clause 2 of the proposed Commonwealth Bill provides for the commencement of the proposed Commonwealth Act on a day to be fixed by Proclamation. That day cannot be before the proposed *Constitution Alteration (Establishment of Republic) 1999* of the Commonwealth receives the Royal Assent. Consequently, if the Republic Bill is defeated at the referendum, the proposed Commonwealth Act would never commence.

Clause 3 of the proposed Commonwealth Bill is a formal provision giving effect to the Schedules to the proposed Commonwealth Act.

Schedule 1 to the proposed Commonwealth Bill sets out the amendment to section 7 of the *Australia Act 1986* of the Commonwealth. Two new subsections are added at the end of the existing section 7. Section 7 (6) empowers a State Parliament to make a law providing that the preceding subsections do not apply to the State. Section 7 (7) provides that, when such a law comes into effect, section 7 ceases to apply to the State.

Schedule 2 to the proposed Commonwealth Bill sets out an identical amendment to section 7 of the *Australia Act 1986* of the Parliament of the United Kingdom.