

Who is the Australian Head of State?

An important issue in the current republic debate has been whether Australia should have as a Head of State a person who is an Australian.

This issue is predicated on an assumption that the Australian Head of State is the Queen. The Constitution can be used to argue either proposition. This *Research Note* rehearses both sets of arguments.

The Expression 'Head of State'

The expression 'Head of State' is not found in the Constitution. It is a term generally used as a convenient description of the person who is accorded the highest rank among the officers of government.

The Argument that the Governor-General is the Head of State

There is a view that the Australian Head of State is the Governor-General. Arguments supporting this view include:

- For practical purposes the Head of State of Australia is the Governor-General. Section 2 of the Constitution describes the Governor-General as the Queen's representative in Australia
- Section 2 of the Constitution also provides that the Governor-General is appointed by

the Queen, retains office during her pleasure and exercises 'such powers and functions of the Queen as Her Majesty may be pleased to assign to him'.

- In the context of the Constitution and by convention, the only power the Queen may exercise is the power of appointment of the Governor-General. In 1975 the Speaker of the House of Representatives wrote to the Queen requesting that she overrule the Governor-General's dissolution of parliament. In his reply on the Queen's behalf, the Queen's Secretary observed:

[t]he Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen in Australia.

The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution

It would not be proper for [The Queen] to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act. (C. Howard, Australian Federal Constitutional Law,

Law Book Company Ltd, Sydney, 1985: 111.)

- In relation to the prerogative powers [ie. powers over foreign affairs (such as making treaties), appointing diplomats, declaring war, immunity from the ordinary process of the courts and ownership of the sea bed], while the Governor-General may act in the name of the Queen, the powers and functions are exercised by him/her as part of his/her duties as Governor-General. While the Governor-General may report to the Queen, the Queen is not involved, and has not interfered, in decisions that the Governor-General makes.
- Under section 61 of the Constitution, the executive power of the Commonwealth is exercisable by the Governor-General not the Queen.
- Neither the Constitution nor the Commonwealth of Australia Constitution Act actually refer to the Queen as the Head of State.
- The Governor-General is usually regarded when travelling overseas as Australia's Head of State.

The Argument that the Queen is the Head of State

There is a view that the Australian Head of State is the Queen. Arguments supporting this view include:

- The Preamble to the Constitution states that the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania 'have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland'.
- Section 1 of the Constitution provides that the legislative power of the Commonwealth is vested in a Federal Parliament comprising the Queen, a Senate and a House of Representatives.
- Section 2 of the Constitution provides that the Governor-General is appointed by the Queen. The power to appoint the Governor-General has never been questioned.
- Under section 2 of the Constitution, the Governor-General is appointed by the Queen as 'Her Majesty's representative

in the Commonwealth', and is authorised to '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.'

- Under section 3 of the Constitution, the Governor-General's salary is payable to the Queen on his behalf, not directly to him.
- Under section 64 of the Constitution, Ministers of State are the Queen's Ministers of State and not the Governor-General's Ministers of State.
- Neither the Constitution nor the Commonwealth of Australia Constitution Act actually refers to the Governor-General as the Head of State.
- There are accounts of difficulties experienced by the Governor-General when travelling overseas because he is not regarded by some countries as Australia's Head of State. For example, it has been reported that a planned visit to Indonesia by the then Governor-General, Ninian Stephen, was cancelled when Indonesia's

President Suharto declined to welcome him in person on the grounds that the Queen - not the Governor-General, was Australia's Head of State. Similarly, when the current Governor-General visited France to mark the 75th anniversary of World War I battles, the highest French official with whom he came into contact was the veterans' affairs minister, and when he left he was farewelled only by a ministerial staffer.

Ian Ireland
Law and Public Administration
Group
Parliamentary Research
Service

Phone: 06 277 2438
Fax: 06 277 2407

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