

30 Lodge Road
Cremorne
NSW 2090

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Mr John Wilson
19 Elm Place
North Rocks
NSW 2151

Dear Mr Wilson,

Thank you for your letter of 29 October. Although you state that you are not a lawyer you are on the right track in expressing the view that the Constitution cannot be altered under Section 128 to remove the Crown from the Commonwealth.

The Commonwealth was established not by the Constitution but by the Constitution Act which sets out the Constitution in Section 9 of that Act. Section 128 gives power to amend the Constitution but not the Constitution Act. As you have recognised the Constitution Act establishes Australia as an "indissoluble Federal Commonwealth under the Crown".

The Constitution Act was an Act of the British Parliament and for that reason cannot be amended by the Australian Parliament. The British Parliament has by the Australia Act 1986 terminated its power to legislate for Australia. Theoretically no one can repeal the Constitution Act. In practice, if all the Parliaments concerned (British, Australian and the States) did legislate to amend the Australia Act that would be effective although it would amount legally to a revolution.

Like many other legal questions this one is not altogether free from doubt but my opinion which I have expressed above is shared by a number of other lawyers. The opinion has been expressed in public but it has received little media attention.

Yours sincerely,



(Sir Harry Gibbs)