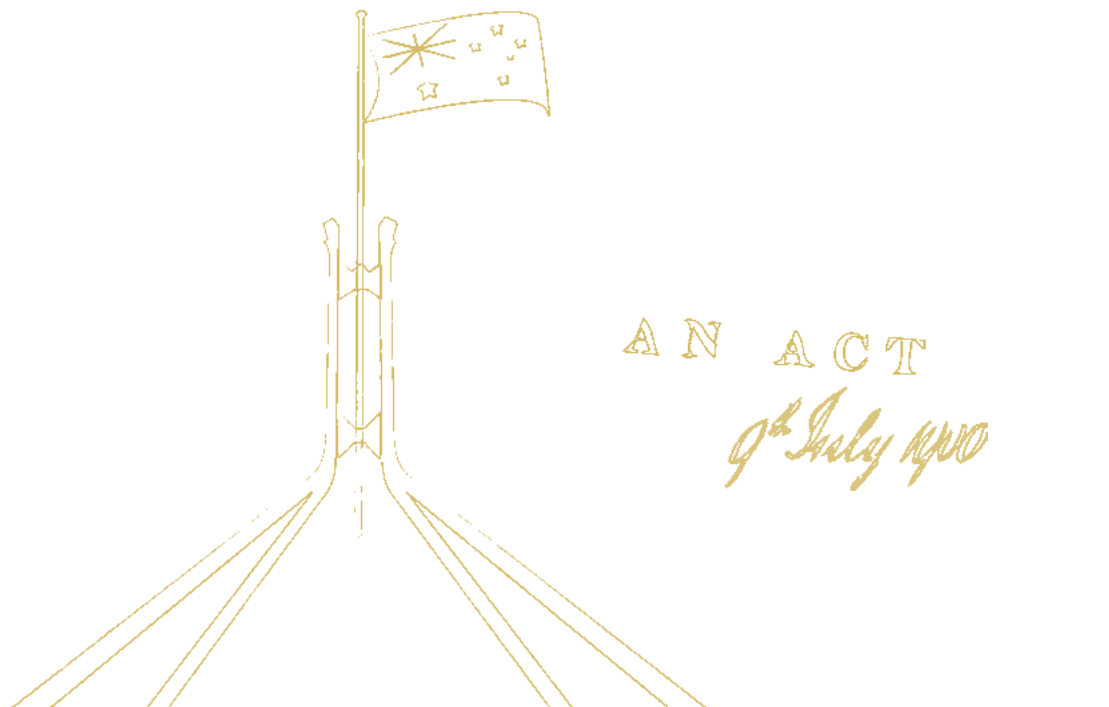




AUSTRALIA'S CONSTITUTION

**With Overview and Notes by the
Australian Government Solicitor**





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Overview

The Australian Constitution has properly been described as ‘the birth certificate of a nation’. It also provides the basic rules for the government of Australia. Indeed, the Constitution is the fundamental law of Australia binding everybody including the Commonwealth Parliament and the Parliament of each State. Accordingly, even an Act passed by a Parliament is invalid if it is contrary to the Constitution.

Background to the Constitution

The Constitution was drafted at a series of conventions held during the 1890s and attended by representatives of the colonies. Before the Constitution came into effect, its terms were approved, with one small exception, by the people of New South Wales, Victoria, Queensland, Western Australia, South Australia, and Tasmania.

The Australian Constitution was then passed as part of a British Act of Parliament in 1900, and took effect on 1 January 1901. A British Act was necessary because before 1901 Australia was a collection of six self-governing British colonies and ultimate power over those colonies rested with the British Parliament. In reality, however, the Constitution is a document which was conceived by Australians, drafted by Australians and approved by Australians.

Since that time, Australia has become an independent nation, and the character of the Constitution as the fundamental law of Australia is now seen as resting predominantly, not on its status as an Act of the British Parliament, which no longer has any power over Australia, but on the Australian people’s decision to approve and be bound by the terms of the Constitution.

What has been judicially described as ‘the sovereignty of the Australian people’ is also recognised by section 128 which provides that any change to the Constitution must be approved by the people of Australia.

The Constitution itself is contained in clause 9 of the British Act. The first eight clauses of the British Act are commonly referred to as the ‘covering clauses’. They contain mainly introductory, explanatory and consequential provisions. For example, covering clause 2 provides that references to ‘the Queen’ (meaning Queen Victoria, who was British sovereign at the time the British Act was enacted) shall include references to Queen Victoria’s heirs and successors.

Creation of the Commonwealth of Australia

On the commencement of the British Act on 1 January 1901, the Commonwealth came into being and the six colonies became the six States of Australia (covering clauses 4 and 6).

The Federal Structure

The Constitution establishes a federal system of government. It is for this reason that the establishment of the Commonwealth in 1901 is often referred to as ‘federation’. Under a federal system, powers are distributed between a central government and regional governments. In Australia, that distribution is between the Commonwealth and the six States. (The relationship between the Commonwealth and the Territories is discussed below.)

Separation of Powers

Chapters I, II, and III of the Constitution confer the legislative, executive, and judicial powers of the Commonwealth on three different bodies which are established by the Constitution – the Parliament (Chapter I), the Executive Government (Chapter II), and the Judicature (Chapter III). Legislative power is the power to make laws. Executive power is the power to administer laws and carry out the business of government, through such bodies as government departments, statutory authorities and the defence forces. Judicial power is the power to conclusively determine legal disputes, traditionally exercised by courts in criminal trials and litigation about such things as contracts and motor accidents.

Despite the structure of the Constitution there is no strict demarcation between the legislative and executive powers of the Commonwealth. Only the Parliament can pass Acts, but these Acts often confer on the Executive Government the power to make regulations, rules and by-laws in relation to matters relevant to the particular Acts.

For example, the Parliament may enact in the Customs Act that no person may bring a ‘prohibited import’ into Australia and then leave it to the Executive to specify in the Customs Regulations what is a ‘prohibited import’. This delegation of legislative power is not as extreme as it may appear, however, as both Houses of Parliament usually retain the power to ‘disallow’ (that is, reject), within a specified time, any regulation which has been made by the Executive.

The distinction between the Parliament and the Executive Government is further blurred by the fact that the Prime Minister and the other Government Ministers (who form part of the Executive) must be members of Parliament. This reflects the principle of responsible government (discussed below) under which Government Ministers must be members of, and accountable to, the Parliament.

By contrast, the separation between the Judicature on the one hand and the Parliament and the Executive Government on the other is strict. Only a court may exercise the judicial power of the Commonwealth, so that, for example, the question whether a person has contravened a law of the Parliament (for example, by bringing a 'prohibited import' into the country) can only be conclusively determined by a court.

The Crown and Responsible Government

As well as being a federation, Australia is a constitutional monarchy. Under this system of government, as the term suggests, the head of State of a country is a monarch whose functions are regulated by a constitution. The concept of 'the Crown' pervades the Constitution. For example, the Queen is part of the Parliament (section 1), and is empowered to appoint the Governor-General as her representative (section 2). The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as her representative (section 61).

Despite the terms of the Constitution, the Queen does not play a day-to-day role in the Commonwealth Government. Those few functions which the Queen does perform (for example, appointing the Governor-General) are done in accordance with advice from the Prime Minister.

The Governor-General performs a large number of functions. However, apart from exceptional circumstances (discussed below), the Governor-General acts in accordance with the advice of Commonwealth Ministers. The reason for this is the principle of 'responsible government' which is basic to our system of government and which underlies our Constitution. Under this principle, the Crown (represented by the Governor-General) acts on the advice of its Ministers who are in turn members of, and responsible to, the Parliament. It is for this reason that section 64 of the Constitution requires Ministers to be, or become, members of Parliament.

There is a small number of matters (probably only four) in relation to which the Governor-General is not required to act in accordance with Ministerial advice. The powers which the Governor-General has in this respect are known as 'reserve powers'. The two most important reserve powers are the powers to appoint and to dismiss a Prime Minister. In exercising a reserve power, the Governor-General ordinarily acts in accordance with established and generally accepted rules of practice known as 'conventions'. For example, when appointing a Prime Minister under section 64 of the Constitution, the Governor-General must, by convention, appoint the parliamentary leader of the party or coalition of parties which has a majority of seats in the House of Representatives.

There can be circumstances, however, where there is no generally agreed convention to control the exercise of the Governor-General's reserve powers. Such a situation arose in 1975 when the Governor-General, Sir John Kerr, dismissed the Prime Minister, Mr E.G. Whitlam, after the Senate – controlled by Opposition parties – blocked the passage of the Supply Bill in an attempt to deprive the Whitlam Government of the funds needed to govern.

Some people argue that Sir John acted properly in dismissing Mr Whitlam as it was consistent with a 'convention' that a Prime Minister who cannot obtain supply should either seek a general election or be dismissed. Others contend that the dismissal of Mr Whitlam breached the convention that a person who retains majority support of the House of Representatives, as Mr Whitlam did, is entitled to remain Prime Minister.

Representative Government

Another fundamental principle which underlies the Constitution is that of 'representative government' – that is, government by representatives of the people who are chosen by the people. Consistently with this principle, sections 7 and 28 of the Constitution require regular elections for the House of Representatives and the Senate, and sections 7 and 24 require members of the Commonwealth Parliament to be directly chosen by the people.

Commonwealth Parliament

The Constitution established the Commonwealth Parliament comprising the Queen, a House of Representatives and a Senate (sections 1–60). The people of each of the six States elect the same number of senators (currently 12), regardless of their State's population, and the people of the Northern Territory and the Australian Capital Territory are each currently represented by two senators. This gives a total of 76 senators. In the House of Representatives the number of seats from each State (and Territory) depends on the population (although each State is guaranteed at least five seats). The current number of members of the House of Representatives is 150.

Before a proposed law (commonly referred to as a Bill) becomes an Act of Parliament it must be passed by both the House of Representatives and the Senate. The Bill is then presented to the Governor-General who assents to it in the Queen's name (section 58). A Bill becomes an Act of Parliament when it receives this assent. Nearly all Bills which subsequently become Acts of Parliament are proposed by the Government – that is, the parliamentary party or coalition of parties which holds a majority of seats in the House of Representatives.

Subject to the few exceptions referred to in section 53 in relation to the initiation and amendment of Bills which appropriate revenue or impose taxation, the Senate has equal power with the House of Representatives in respect of all Bills. Often the Government does not have a majority of seats in the Senate. Accordingly, disputes may arise between the two Houses as to whether a Bill should be passed in its proposed form. These disputes are nearly always resolved by the two Houses.

Section 57 prescribes the procedure for resolving any irreconcilable disagreement between the two Houses. That procedure essentially involves the dissolution of both Houses of Parliament by the Governor-General (that is, a 'double dissolution'), the holding of an election for both the House of Representatives and the Senate, and then, if necessary, the convening of a joint sitting of the two Houses following the election to determine whether the proposed law or laws which led to the dissolution should be passed.

Commonwealth Legislative Powers

The Constitution confers the power to make laws on the Commonwealth Parliament. However, the power of the Commonwealth Parliament to make laws is limited to particular subjects. Most of these subjects are listed in sections 51 and 52. They include defence; external affairs; interstate and international trade; taxation; foreign, trading and financial corporations; marriage and divorce; immigration; bankruptcy; and interstate industrial conciliation and arbitration.

This list of powers given to the Commonwealth Parliament does not expressly refer to a number of important subjects including education, the environment, criminal law, and roads – but this does not mean that those subjects are wholly outside the Parliament's powers. For example, even though the Commonwealth Parliament has no specific power in relation to the environment, it can, under its external affairs power, prohibit the construction of a dam by a State if that is necessary to give effect to an international agreement on the environment. The legislative powers of the Commonwealth Parliament can also be expanded by the Parliaments of the States referring matters to the Commonwealth Parliament under section 51(xxxvii).

The States and their Legislative Powers

Under the federal system created by the Australian Constitution, the six former colonies became the six States of Australia. Before federation, each of the six colonies had its own constitution. These constitutions regulated, among other things, the Legislature, the Executive Government, and the Judiciary of the States. The Australian Constitution expressly guarantees the continuing existence of the States and preserves each of their constitutions. However, the States are bound by the Australian Constitution, and the constitutions of the States must be read subject to the Australian Constitution (sections 106 and 107).

Under the constitutions of each of the States, a State Parliament can make laws on any subject of relevance to that particular State. Subject to a few exceptions, the Australian Constitution does not confine the matters about which the States may make laws. (The most important exceptions are that the States cannot impose duties of customs and excise (section 90) and cannot raise defence forces without the consent of the Commonwealth Parliament (section 114).) Accordingly, the State Parliaments can pass laws on a wider range of subjects than the Commonwealth Parliament, and for this reason important areas such as education, criminal law, and roads are regulated primarily by laws of the States rather than by laws of the Commonwealth Parliament.

The Relationship between Commonwealth and State Powers

Although the State Parliaments can pass laws on a wider range of subjects than the Commonwealth Parliament, the Commonwealth is generally regarded as the more powerful partner in the federation. One of the principal reasons for this is section 109 of the Constitution which provides that if a valid Commonwealth law is inconsistent with a law of a State Parliament, the Commonwealth law operates and the State law is invalid to the extent of the inconsistency.

Accordingly, the Commonwealth can, within the subject matters conferred on it by the Constitution, override State laws. As a result, many subjects of Commonwealth power are regulated almost entirely by Commonwealth law, for example, bankruptcy, marriage and divorce, and immigration.

Further, the States have traditionally not raised sufficient revenue to perform all their functions. During the Second World War, Commonwealth legislation effectively excluded the States from imposing income tax, and since then,

various political and economic considerations have resulted in income tax being imposed solely by the Commonwealth. Also, the States are unable to impose taxes of customs and excise (section 90). Consequently, the States have received grants of financial assistance from the Commonwealth. Many of these grants are made without conditions.

Section 96 of the Constitution, however, allows the Commonwealth to make conditional grants of money to the States for any purpose. This power to impose conditions on how the money is spent by the States allows the Commonwealth to influence the way things are done in areas over which it has no direct power to pass laws. For example, the Commonwealth has exerted significant control over universities in this way even though it has no specific power in relation to education.

The Executive Government of the Commonwealth

A literal reading of the Constitution does not give much information about how the Executive Government of the Commonwealth functions. For example, the terms of Chapter II (sections 61–70) give the impression that the Governor-General has sweeping powers in relation to the Commonwealth Government. Section 61 says that the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General, while section 68 provides that the command of the defence forces is vested in the Governor-General.

The Governor-General, however, exercises his or her powers in accordance with the principle of responsible government (discussed earlier). Consequently, in all but exceptional circumstances, the Governor-General acts in accordance with advice from the Ministers of the Government. The appointment of Ministers and the creation of Departments of State to administer the Government of the Commonwealth are referred to in section 64. Section 64 also provides that Ministers must be, or become, members of Parliament.

In practice Ministers are also members of the parliamentary party or coalition of parties which holds a majority of seats in the House of Representatives. Ministers may either be senators or members of the House of Representatives, although established constitutional practice dictates that the Prime Minister must be a member of the House of Representatives rather than a senator. Despite their importance to the operations of the Executive Government, neither the head of the Government (the Prime Minister) nor the principal decision-making body in the Government (the Cabinet, which is made up of senior Government Ministers) is mentioned in the Constitution.

The Federal Executive Council, which is referred to in various provisions of the Constitution, and in the expression ‘Governor-General in Council’, comprises all past and current Ministers. However, only current Ministers take part in Executive Council business, and usually only two or three Ministers attend meetings of the Council with the Governor-General. Unlike the Cabinet, the Executive Council is not a deliberative body. Its principal functions are to receive advice and approve the signing of formal documents such as regulations and statutory appointments.

Federal Judicature

Chapter III of the Constitution (sections 71–80) provides for the establishment of the High Court of Australia. One of the High Court’s principal functions is to decide disputes about the meaning of the Constitution. For example, it is the High Court which ultimately determines whether an Act passed by the Commonwealth Parliament is within the legislative powers of the Commonwealth. The power which the High Court has to interpret the Constitution means that it is a very important body. The High Court is also the final court of appeal within Australia in all other types of cases, even those dealing with purely State matters such as convictions under State criminal laws.

Chapter III also gives the Commonwealth Parliament power to create other federal courts (for example, the Federal Court of Australia and the Family Court of Australia), and to vest federal judicial power in such courts and in courts of the States. ‘Federal judicial power’ is judicial power relating to one or more of the classes of dispute set out in sections 75 and 76.

An Australian ‘Common Market’

Chapter IV of the Constitution (sections 81–105A) contains provisions regulating, among other things, trade and commerce throughout Australia. The desire to have a single trade area throughout Australia was one of the main reasons for the movement by the Australian people towards federation. To achieve this, Australia needed both uniform customs duties and the abolition of protectionist burdens on interstate trade.

The Constitution achieves the first of these objectives by requiring the Commonwealth Parliament to impose uniform customs duties (section 88) and by prohibiting the State Parliaments from imposing customs duties (section 90). It achieves the second objective primarily by providing in section 92 that trade and commerce between the States shall be ‘absolutely free’.

Section 92, in effect, prohibits action by either the Commonwealth or a State which discriminates against interstate trade or commerce and which has the purpose or effect of protecting intrastate trade or commerce of a State against competition from other States. For example, section 92 would be contravened if the New South Wales Parliament, in an attempt to make NSW milk more price-competitive, imposed a special tax on all milk sold in NSW which had been produced in Victoria.

Chapter IV also regulates other aspects of finance and trade. Two of the more important provisions are section 81, which provides that all money raised or received by the Executive Government of the Commonwealth is to form one Consolidated Revenue Fund, and section 83, which provides that no money may be expended by the Executive Government of the Commonwealth without the authority of Parliament.

New States

The Constitution makes provision for the establishment and admission of new States (sections 121 and 124). No new States have been established or admitted since federation. Under section 121, a new State can be created by an Act of the Commonwealth Parliament.

Territories

Section 122 empowers the Commonwealth Parliament to make laws in relation to Territories which have been 'surrendered' by the States or which have otherwise been acquired by the Commonwealth. In relation to these Territories (of which there are currently 10), the Commonwealth Parliament can make laws on any subject – that is, it does not share its law-making power with the State Parliaments as it does in relation to the States. The Commonwealth Parliament has conferred a large measure of self-government on the people of three of the Territories, namely the Australian Capital Territory, Norfolk Island, and the Northern Territory.

Rights

The Constitution has no Bill of Rights, such as that found in the United States Constitution, which prevents a legislature from passing laws that infringe basic human rights, such as freedom of speech. Some express protections, however, are given by the Constitution against legislative or executive action by the Commonwealth, but not by the States. Examples are section 51(xxxi) (acquisition of property must be 'on just terms'), section 80 (trial by jury is required in relation to some criminal offences), and section 116 (a right exists to exercise any religion).

Section 117 prohibits the Parliament of a State from discriminating against non-residents of that State. It provides, in effect, that a resident in, say, Victoria shall not be subject to any discrimination or disability in, say, Queensland unless the person would also be subject to that disability or discrimination as a resident of Queensland. (The question whether section 117 limits the lawmaking power of the Commonwealth Parliament has not yet been conclusively resolved by the High Court.)

The High Court has also recognised some implied restrictions on legislative power derived from the fundamental system of government established by the Constitution. For example, because of the separation of powers effected by the Constitution, only a court may exercise the judicial power of the Commonwealth. Accordingly, a law of the Commonwealth Parliament cannot provide for criminal conviction by any body other than a court.

Another example of how implications from the terms or structure of the Constitution can restrict legislative power was provided in 1992 when the High Court declared invalid a Commonwealth law which attempted to restrict the broadcasting of political advertising. The Court decided that the restrictions imposed by that law were inconsistent with a necessary aspect of representative government entrenched by the Constitution – specifically, the right to freedom of communication on political matters.

Amending the Constitution

The Constitution provides a mechanism by which it can be altered, called a referendum. Before there can be any change to the Constitution, a majority of electors must vote in favour of the change. In addition, there must be a majority vote in a majority of States, that is, in four out of the six States. (Further, a proposed amendment which would diminish the representation of a State in the Commonwealth Parliament or which would alter the territorial limits of a State must be approved by a majority of electors in that State.) Ordinarily, before a matter can be the subject of a referendum, both Houses of the Commonwealth Parliament must pass the proposed law containing the suggested amendment of the Constitution (section 128).

*Australian Government Solicitor
October 2010*



THE CONSTITUTION

Commonwealth of Australia Constitution Act

with alterations of the Constitution made by

- *Constitution Alteration (Senate Elections) 1906*
(No. 1 of 1907)
- *Constitution Alteration (State Debts) 1909*
(No. 3 of 1910)
- *Constitution Alteration (State Debts) 1928*
(No. 1 of 1929)
- *Constitution Alteration (Social Services) 1946*
(No. 81 of 1946)
- *Constitution Alteration (Aboriginals) 1967*
(No. 55 of 1967)
- *Constitution Alteration (Senate Casual Vacancies) 1977*
(No. 82 of 1977)
- *Constitution Alteration (Retirement of Judges) 1977*
(No. 83 of 1977)
- *Constitution Alteration (Referendums) 1977*
(No. 84 of 1977)

Note: The Constitution is printed here as fully amended by the Constitution Alterations specified above. Sections and paragraphs affected by these amendments are shown in their unamended form, in full, in the Notes commencing on page 32.

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Commonwealth of Australia Constitution Act

An Act to constitute the Commonwealth of Australia

[9th July 1900]

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:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Short title

This Act may be cited as the Commonwealth of Australia Constitution Act.¹

2. Act to extend to the Queen's successors

The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

3. Proclamation of Commonwealth

It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation² that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

4. Commencement of Act

The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

5. Operation of the Constitution and laws

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.³

6. Definitions

The Commonwealth shall mean the Commonwealth of Australia as established under this Act.

The States shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called *a State*.

Original States shall mean such States as are parts of the Commonwealth at its establishment.

7. Repeal of Federal Council Act

The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed⁴ as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

8. Application of Colonial Boundaries Act

After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

9. Constitution

The Constitution of the Commonwealth shall be as follows:

The Constitution¹

This Constitution is divided as follows:

Chapter I—The Parliament

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Chapter I—The Parliament

Part I—General

1. Legislative power

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called *The Parliament*, or *The Parliament of the Commonwealth*.

2. Governor-General

A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may 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.

3. Salary of Governor-General

There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.

4. Provisions relating to Governor-General

The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

5. Sessions of Parliament, prorogation and dissolution

The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.

Summoning Parliament

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs.

First session

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth.

6. Yearly session of Parliament

There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

Part II – The Senate

7. The Senate

The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State,⁵ but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

8. Qualification of electors

The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once.

9. Method of election of senators

The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws⁶ prescribing the method of choosing the senators for that State.

Times and places

The Parliament of a State may make laws⁶ for determining the times and places of elections of senators for the State.

10. Application of State laws

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

11. Failure to choose senators

The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

12. Issue of writs

The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

13. Rotation of senators⁷

As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of three years, and the places of those of the second class at the expiration of six years, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made within one year before the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of July following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of July preceding the day of his election.

14. Further provision for rotation

Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.⁸

15. Casual vacancies⁹

If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term. But if the Parliament of the State is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens.

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was so chosen, he was publicly recognized by a particular political party as being an endorsed candidate of

that party and publicly represented himself to be such a candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where:

- (a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant; and
- (b) before taking his seat he ceases to be a member of that party (otherwise than by reason of the party having ceased to exist);

he shall be deemed not to have been so chosen or appointed and the vacancy shall be again notified in accordance with section twenty-one of this Constitution.

The name of any senator chosen or appointed under this section shall be certified by the Governor of the State to the Governor-General.

If the place of a senator chosen by the people of a State at the election of senators last held before the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977* became vacant before that commencement and, at that commencement, no person chosen by the House or Houses of Parliament of the State, or appointed by the Governor of the State, in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, held office, this section applies as if the place of the senator chosen by the people of the State had become vacant after that commencement.

A senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977*, being a senator appointed by the Governor of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State, shall be deemed to have been appointed to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State that commenced or commences after he was appointed and further action under this section shall be taken as if the vacancy in the place of the senator chosen by the people of the State had occurred after that commencement.

Subject to the next succeeding paragraph, a senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977* who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977*, a law to alter the Constitution entitled “*Constitution Alteration (Simultaneous Elections) 1977*” came into operation,¹⁰ a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office:

- (a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight – until the expiration or dissolution of the first House of Representatives to expire or be dissolved after that law came into operation; or
- (b) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and eighty-one – until the expiration or dissolution of the second House of Representatives to expire or be dissolved after that law came into operation; or, if there is an earlier dissolution of the Senate, until that dissolution.

16. Qualifications of senator

The qualifications of a senator shall be the same as those of a member of the House of Representatives.

17. Election of President

The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

18. Absence of President

Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

19. Resignation of senator

A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

20. Vacancy by absence

The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

21. Vacancy to be notified

Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

22. Quorum

Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

23. Voting in Senate

Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III – The House of Representatives

24. Constitution of House of Representatives

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:

- (i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;
- (ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

25. Provisions as to races disqualified from voting

For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

26. Representatives in first Parliament

Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:

New South Wales twenty-three;
Victoria twenty;
Queensland eight;
South Australia six;
Tasmania five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:

New South Wales twenty-six;
Victoria twenty-three;
Queensland nine;
South Australia seven;
Western Australia five;
Tasmania five.

27. Alteration of number of members

Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

28. Duration of House of Representatives

Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

29. Electoral divisions

Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws¹¹ for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

30. Qualification of electors

Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

31. Application of State laws

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

32. Writs for general election

The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

33. Writs for vacancies

Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

34. Qualifications of members

Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:

- (i) he must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;
- (ii) he must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

35. Election of Speaker

The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

36. Absence of Speaker

Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

37. Resignation of member

A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

38. Vacancy by absence

The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

39. Quorum

Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

40. Voting in House of Representatives

Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV – Both Houses of the Parliament

41. Right of electors of States

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

42. Oath or affirmation of allegiance

Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

43. Member of one House ineligible for other

A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House

44. Disqualification

Any person who:

- (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or
- (iii) is an undischarged bankrupt or insolvent; or
- (iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

45. Vacancy on happening of disqualification

If a senator or member of the House of Representatives:

- (i) becomes subject to any of the disabilities mentioned in the last preceding section; or
- (ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
- (iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State;

his place shall thereupon become vacant.

46. Penalty for sitting when disqualified

Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

47. Disputed elections

Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

48. Allowance to members

Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

49. Privileges etc. of Houses

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

50. Rules and orders

Each House of the Parliament may make rules and orders with respect to:

- (i) the mode in which its powers, privileges, and immunities may be exercised and upheld;
- (ii) the order and conduct of its business and proceedings either separately or jointly with the other House.

Part V – Powers of the Parliament

51. Legislative powers of the Parliament

The Parliament shall, subject to this Constitution, have power¹² to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation; but so as not to discriminate between States or parts of States;

- (iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
- (iv) borrowing money on the public credit of the Commonwealth;
- (v) postal, telegraphic, telephonic, and other like services;
- (vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
- (vii) lighthouses, lightships, beacons and buoys;
- (viii) astronomical and meteorological observations;
- (ix) quarantine;
- (x) fisheries in Australian waters beyond territorial limits;
- (xi) census and statistics;
- (xii) currency, coinage, and legal tender;
- (xiii) banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
- (xiv) insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
- (xv) weights and measures;
- (xvi) bills of exchange and promissory notes;
- (xvii) bankruptcy and insolvency;
- (xviii) copyrights, patents of inventions and designs, and trade marks;
- (xix) naturalization and aliens;
- (xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (xxi) marriage;
- (xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
- (xxiii) invalid and old-age pensions;
- (xxiiiA)¹³ the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;
- (xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
- (xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
- (xxvi)¹⁴ the people of any race for whom it is deemed necessary to make special laws;
- (xxvii) immigration and emigration;
- (xxviii) the influx of criminals;
- (xxix) external affairs;
- (xxx) the relations of the Commonwealth with the islands of the Pacific;
- (xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
- (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;

- (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
- (xxxiv) railway construction and extension in any State with the consent of that State;
- (xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
- (xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides;
- (xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States,¹⁵ but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
- (xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
- (xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. Exclusive powers of the Parliament

The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to:

- (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- (ii) matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;
- (iii) other matters declared by this Constitution to be within the exclusive power of the Parliament.

53. Powers of the Houses in respect of legislation

Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. Appropriation Bills

The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

55. Tax Bill

Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

56. Recommendation of money votes

A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

57. Disagreement between the Houses

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

58. Royal assent to Bills

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59. Disallowance by the Queen

The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

60. Signification of Queen's pleasure on Bills reserved

A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

Chapter II—The Executive Government

61. Executive power

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

62. Federal Executive Council

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

63. Provisions referring to Governor-General

The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

64. Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

65. Number of Ministers

Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

66. Salaries of Ministers

There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

67. Appointment of civil servants

Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

68. Command of naval and military forces

The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

69. Transfer of certain departments

On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:

- posts, telegraphs, and telephones;
- naval and military defence;
- lighthouses, lightships, beacons, and buoys;
- quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

70. Certain powers of Governors to vest in Governor-General

In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

Chapter III—The Judicature

71. Judicial power and Courts

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

72. Judges' appointment, tenure and remuneration¹⁶

The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age.

The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court.

Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years.

The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by the Parliament and may at any time repeal or amend such a law, but any such repeal or amendment does not affect the term of office of a Justice under an appointment made before the repeal or amendment.

A Justice of the High Court or of a court created by the Parliament may resign his office by writing under his hand delivered to the Governor-General.

Nothing in the provisions added to this section by the *Constitution Alteration (Retirement of Judges) 1977* affects the continuance of a person in office as a Justice of a court under an appointment made before the commencement of those provisions.

A reference in this section to the appointment of a Justice of the High Court or of a court created by the Parliament shall be read as including a reference to the appointment of a person who holds office as a Justice of the High Court or of a court created by the Parliament to another office of Justice of the same court having a different status or designation.

73. Appellate jurisdiction of High Court

The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences:

- (i) of any Justice or Justices exercising the original jurisdiction of the High Court;
- (ii) of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council;
- (iii) of the Inter-State Commission, but as to questions of law only;

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

74. Appeal to Queen in Council

No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked,¹⁷ but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

75. Original jurisdiction of High Court

In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) between States, or between residents of different States, or between a State and a resident of another State;
- (v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;

the High Court shall have original jurisdiction.

76. Additional original jurisdiction

The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (i) arising under this Constitution, or involving its interpretation;
- (ii) arising under any laws made by the Parliament;
- (iii) of Admiralty and maritime jurisdiction;
- (iv) relating to the same subject-matter claimed under the laws of different States.

77. Power to define jurisdiction

With respect to any of the matters mentioned in the last two sections the Parliament may make laws:

- (i) defining the jurisdiction of any federal court other than the High Court;
- (ii) defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States;
- (iii) investing any court of a State with federal jurisdiction.

78. Proceedings against Commonwealth or State

The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

79. Number of judges

The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

80. Trial by jury

The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

Chapter IV—Finance and Trade

81. Consolidated Revenue Fund

All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

82. Expenditure charged thereon

The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

83. Money to be appropriated by law

No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

84. Transfer of officers

When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

85. Transfer of property of State

When any department of the public service of a State is transferred to the Commonwealth:

- (i) all property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary;
- (ii) the Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth;
- (iii) the Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament;
- (iv) the Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. [Customs, excise, and bounties]

On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. [Revenue from customs and excise duties]

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

88. Uniform duties of customs

Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

89. Payment to States before uniform duties

Until the imposition of uniform duties of customs:

- (i) the Commonwealth shall credit to each State the revenues collected therein by the Commonwealth;
- (ii) the Commonwealth shall debit to each State:
 - (a) the expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;
 - (b) the proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth;
- (iii) the Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

90. Exclusive power over customs, excise, and bounties

On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

91. Exceptions as to bounties

Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

92. Trade within the Commonwealth to be free

On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

93. Payment to States for five years after uniform tariffs

During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides:

- (i) the duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards

passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State;

- (ii) subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. Distribution of surplus

After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

95. Customs duties of Western Australia

Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

96. Financial assistance to States

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

97. Audit

Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

98. Trade and commerce includes navigation and State railways

The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

99. Commonwealth not to give preference

The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

100. Nor abridge right to use water

The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

101. Inter-State Commission

There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

102. Parliament may forbid preferences by State

The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

103. Commissioners' appointment, tenure, and remuneration

The members of the Inter-State Commission:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

104. Saving of certain rates

Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

105. Taking over public debts of States

The Parliament may take over from the States their public debts, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.¹⁸

105A. Agreements with respect to State debts¹⁹

- (1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including:
 - (a) the taking over of such debts by the Commonwealth;
 - (b) the management of such debts;
 - (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
 - (d) the consolidation, renewal, conversion, and redemption of such debts;
 - (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
 - (f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.
- (2) The Parliament may make laws for validating any such agreement made before the commencement of this section.
- (3) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.
- (4) Any such agreement may be varied or rescinded by the parties thereto.
- (5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.
- (6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.

Chapter V—The States

106. Saving of Constitutions

The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

107. Saving of power of State Parliaments

Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

108. Saving of State laws

Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

109. Inconsistency of laws

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

110. Provisions referring to Governor

The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

111. States may surrender territory

The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

112. States may levy charges for inspection laws

After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

113. Intoxicating liquids

All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

114. States may not raise forces. Taxation of property of

Commonwealth or State

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

115. States not to coin money

A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

116. Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

117. Rights of residents in States

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

118. Recognition of laws etc. of States

Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

119. Protection of States from invasion and violence

The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

120. Custody of offenders against laws of the Commonwealth

Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

Chapter VI—New States

121. New States may be admitted or established

The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

122. Government of territories

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

123. Alteration of limits of States

The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

124. Formation of new States

A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Chapter VII—Miscellaneous

125. Seat of Government

The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

126. Power to Her Majesty to authorise Governor-General to appoint deputies

The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies²⁰ within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

127.²¹

Chapter VIII—Alteration of the Constitution

128. Mode of altering the Constitution²²

This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State and Territory to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

In this section, ***Territory*** means any territory referred to in section one hundred and twenty-two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

Schedule

OATH

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE – *The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

Notes

1. The Constitution as printed above contains all the alterations of the Constitution made up to 1 October 2010. These notes generally deal with matters up to that date. Particulars of the Acts by which the Constitution was altered are as follows:

Act	Number and year	Date of Assent
<i>Constitution Alteration (Senate Elections) 1906</i>	1, 1907	3 Apr 1907
<i>Constitution Alteration (State Debts) 1909</i>	3, 1910	6 Aug 1910
<i>Constitution Alteration (State Debts) 1928</i>	1, 1929	13 Feb 1929
<i>Constitution Alteration (Social Services) 1946</i>	81, 1946	19 Dec 1946
<i>Constitution Alteration (Aboriginals) 1967</i>	55, 1967	10 Aug 1967
<i>Constitution Alteration (Senate Casual Vacancies) 1977</i>	82, 1977	29 July 1977
<i>Constitution Alteration (Retirement of Judges) 1977</i>	83, 1977	29 July 1977
<i>Constitution Alteration (Referendums) 1977</i>	84, 1977	29 July 1977

Table of Amendments

ad. = added or inserted; *am.* = amended; *rep.* = repealed; *rs.* = repealed and substituted

Provision affected	How affected
s. 13	am. No. 1, 1907
s. 15	rs. No. 82, 1977
s. 51	am. No. 81, 1946; No. 55, 1967
s. 72	am. No. 83, 1977
s. 105	am. No. 3, 1910
s. 105A	ad. No. 1, 1929
s. 127	rep. No. 55, 1967
s. 128	am. No. 84, 1977

2. Covering clause 3 – The Proclamation under covering clause 3 was made on 17 September 1900 and is published in *Gazette* 1901, p. 1.
3. Covering clause 5 – Cf. the *Statute of Westminster Adoption Act 1942*.
4. Covering clause 7 – The following Acts have repealed Acts passed by the Federal Council of Australasia:
Defence Act 1903 (No. 20, 1903), s. 6
Pearl Fisheries Act 1952 (No. 8, 1952), s. 3 (*Pearl Fisheries Act 1952* repealed by *Continental Shelf (Living Natural Resources) Act 1968*, s. 3)
Service and Execution of Process Act 1901 (No. 11, 1901), s. 2 (s. 2 subsequently repealed by *Service and Execution of Process Act 1963*, s. 3).
5. Section 7 – The number of senators for each State was increased to 12 by the *Representation Act 1983*, s. 3.

6. Section 9 – The following State Acts have been passed in pursuance of the powers conferred by s. 9:

State	Number	Short title	How affected
New South Wales	No. 73, 1900	<i>Federal Elections Act 1900</i>	Ss. 2, 3, 4, 5 and 6 and the Schedule repealed by No. 9, 1903; wholly repealed by No. 41, 1912
	No. 9, 1903	<i>Senators' Elections Act 1903</i>	(Still in force)
Victoria	No. 1715	<i>Federal Elections Act 1900</i>	Repealed by No. 1860
	No. 1860	<i>Senate Elections (Times and Places) Act 1903</i>	Repealed by No. 2723
	No. 2399	<i>Senate Elections (Times and Places) Act 1912</i>	Repealed by No. 2723
	No. 2723	<i>Senate Elections (Times and Places) Act 1915</i>	Repealed by No. 3769
	No. 3769	<i>Senate Elections (Times and Places) Act 1928</i>	Repealed by No. 6365
	No. 6365	<i>Senate Elections Act 1958</i>	(Still in force)
Queensland	64 Vic. No. 25	<i>The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900</i>	Operation exhausted
	3 Edw.VII. No. 6	<i>The Election of Senators Act of 1903</i>	Repealed by 9 Eliz. II. No. 20
	9 Eliz. II. No. 20	<i>Senate Elections Act 1960</i>	(Still in force)
South Australia	No. 834	<i>The Election of Senators Act 1903</i>	(Still in force)
Western Australia	No. 11, 1903	<i>Election of Senators Act 1903</i>	(Still in force)
Tasmania	64 Vic. No. 59	<i>The Federal Elections Act 1900</i>	Repealed by 26 Geo. V. No. 3
	3 Edw. VII No. 5	<i>The Election of Senators Act 1903</i>	Repealed by 26 Geo. V. No. 3
	26 Geo. V No. 3	<i>Senate Elections Act 1935</i>	(Still in force)

7. Section 13 was amended by the *Constitution Alteration (Senate Elections) 1906*, and previously read as follows:

“13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of the third year, and the places of those of the second class at the expiration of the sixth year, from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made in the year at the expiration of which the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of January following the day of his election, except in the case of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of January preceding the day of his election.”

8. Section 14—For the provisions applicable upon the increase in the number of senators to 12 made by the *Representation Act 1983*, see s. 3 of that Act.

9. Section 15 was amended by the *Constitution Alteration (Senate Casual Vacancies) 1977*, and previously read as follows:

“15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.”

10. Section 15 – The proposed law to alter the Constitution entitled “*Constitution Alteration (Simultaneous Elections) 1977*” was submitted to the electors in each State of the Commonwealth on 21 May 1977: it was not approved by a majority of all the electors voting in a majority of the States. See *Gazette* 1977, No. S100, p. 1.

11. Section 29 – The following State Acts were passed in pursuance of the powers conferred by s. 29, but ceased to be in force upon the enactment of the *Commonwealth Electoral Act 1902*:

State	Number	Short title
New South Wales	No. 73, 1900	<i>Federal Elections Act 1900</i>
Victoria	No. 1667	<i>Federal House of Representatives Victorian Electorates Act 1900</i>
Queensland	64 Vic. No. 25	<i>The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900</i>
Western Australia	64 Vic. No. 6	<i>Federal House of Representatives Western Australian Electorates Act 1900</i>

12. Section 51 – The following Imperial Acts extended the legislative powers of the Parliament:

Whaling Industry (Regulations) Act 1934, s. 15
Geneva Convention Act 1937, s. 2
Emergency Powers (Defence) Act 1939, s. 5
Army and Air Force (Annual) Act 1940, s. 3.

13. Section 51 (xxiiiA) – This section was inserted by the *Constitution Alteration (Social Services) 1946*.

14. Section 51 (xxvi) was amended by the *Constitution Alteration (Aboriginals) 1967*, and previously read as follows:

“(xxvi) the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws;”

15. Section 51 (xxxvii) – The following Acts have been passed by the Parliaments of the States to refer matters to the Parliament under section 51 (xxxvii):

State	Number	Short title	How affected
New South Wales	No. 65, 1915	<i>Commonwealth Powers (War) Act 1915</i>	Expired 9 Jan 1921; see s. 5
	No. 33, 1942	<i>Commonwealth Powers Act 1942</i>	Expired; see s. 4
	No. 18, 1943	<i>Commonwealth Powers Act 1943</i>	Expired; see s. 4
	No. 48, 1983	<i>Commonwealth Powers (Meat Inspection) Act 1983</i>	Repealed by No. 147, 1997
	No. 182, 1986	<i>Commonwealth Powers (Family Law – Children) Act 1986</i>	(Still in force)
	No. 61, 1992	<i>Mutual Recognition (New South Wales) Act 1992</i>	(Still in force)
	No. 104, 1992	<i>Commonwealth Powers (State Banking) Act 1992</i>	(Still in force)
	No. 100, 1993	<i>Commonwealth Powers (Poultry Processing) Act 1993</i>	Repealed by No. 55, 1997
	No. 102, 1996	<i>Trans-Tasman Mutual Recognition (New South Wales) Act 1996</i>	(Still in force)
	No. 1, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	(Still in force)
	No. 114, 2002	<i>Terrorism (Commonwealth Powers) Act 2002</i>	(Still in force)
	No. 49, 2003	<i>Commonwealth Powers (De Facto Relationships) Act 2003</i>	(Still in force)
	No. 69, 2008	<i>Water (Commonwealth Powers) Act 2008</i>	(Still in force)
	No. 35, 2009	<i>Personal Property Securities (Commonwealth Powers) Act 2009</i>	(Still in force)
	No. 115, 2009	<i>Industrial Relations (Commonwealth Powers) Act 2009</i>	(Still in force)
Victoria	No. 6, 2010	<i>Credit (Commonwealth Powers) Act 2010</i>	(Still in force)
	No. 3108	<i>Commonwealth Powers (Air Navigation) Act 1920</i>	Repealed by No. 4502, 1937
	No. 3658	<i>Commonwealth Arrangements Act 1928</i>	Part III repealed by No. 4502, 1937; Parts I and II repealed by No. 6223, 1958
	No. 4009	<i>Debt Conversion Agreement Act 1931 (No. 2)</i>	Repealed by No. 73, 2005
	No. 4950	<i>Commonwealth Powers Act 1943</i>	Not proclaimed to come into operation and cannot now be so proclaimed
	No. 92, 1986	<i>Commonwealth Powers (Family Law – Children) Act 1986</i>	(Still in force)
	No. 2, 1993	<i>Mutual Recognition (Victoria) Act 1993</i>	Expired; see s. 6
	No. 59, 1996	<i>Commonwealth Powers (Industrial Relations) Act 1996</i>	Repealed by No. 24, 2009
	No. 4, 1998	<i>Trans-Tasman Mutual Recognition (Victoria) Act 1998</i>	(Still in force)
	No. 62, 1998	<i>Mutual Recognition (Victoria) Act 1998</i>	(Still in force)
	No. 6, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	(Still in force)
	No. 14, 2003	<i>Terrorism (Commonwealth Powers) Act 2003</i>	(Still in force)
	No. 84, 2004	<i>Commonwealth Powers (De Facto Relationships) Act 2004</i>	(Still in force)

State	Number	Short title	How affected
Victoria (continued)	No. 75, 2008	<i>Water (Commonwealth Powers) Act 2008</i>	<i>(Still in force)</i>
	No. 24, 2009	<i>Fair Work (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 60, 2009	<i>Personal Property Securities (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 11, 2010	<i>Credit (Commonwealth Powers) Act 2010</i>	<i>(Still in force)</i>
Queensland	12 Geo. V. No. 30	<i>The Commonwealth Powers (Air Navigation) Act 1921</i>	Repealed by 1 Geo. VI. No. 8
	22 Geo. V. No. 30	<i>The Commonwealth Legislative Power Act 1931</i>	Repealed by No. 46, 1983
	7 Geo. VI. No. 19	<i>Commonwealth Powers Act 1943</i>	Expired; see s. 4
	14 Geo. VI. No. 2	<i>The Commonwealth Powers (Air Transport) Act 1950</i>	<i>(Still in force)</i>
	No. 37, 1990	<i>Commonwealth Powers (Family Law – Children) Act 1990</i>	<i>(Still in force)</i>
	No. 67, 1992	<i>Mutual Recognition (Queensland) Act 1992</i>	<i>(Still in force)</i>
	No. 43, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	<i>(Still in force)</i>
	No. 79, 2002	<i>Terrorism (Commonwealth Powers) Act 2002</i>	<i>(Still in force)</i>
	No. 45, 2003	<i>Trans-Tasman Mutual Recognition (Queensland) Act 2003</i>	<i>(Still in force)</i>
	No. 78, 2003	<i>Commonwealth Powers (De Facto Relationships) Act 2003</i>	<i>(Still in force)</i>
	No. 58, 2008	<i>Water (Commonwealth Powers) Act 2008</i>	<i>(Still in force)</i>
	No. 37, 2009	<i>Personal Property Securities (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 49, 2009	<i>Fair Work (Commonwealth Powers) and Other Provisions Act 2009</i>	<i>(Still in force)</i>
	No. 16, 2010	<i>Credit (Commonwealth Powers) Act 2010</i>	<i>(Still in force)</i>
South Australia	No. 1469, 1921	<i>Commonwealth Powers (Air Navigation) Act 1921</i>	Repealed by No. 2352, 1937
	No. 2061, 1931	<i>Commonwealth Legislative Power Act 1931</i>	<i>(Still in force)</i>
	No. 3, 1943	<i>Commonwealth Powers Act 1943</i>	Expired; see s. 5
	No. 89, 1986	<i>Commonwealth Powers (Family Law) Act 1986</i>	<i>(Still in force)</i>
	No. 72, 1993	<i>Mutual Recognition (South Australia) Act 1993</i>	<i>(Still in force)</i>
	No. 27, 1999	<i>Trans-Tasman Mutual Recognition (South Australia) Act 1999</i>	<i>(Still in force)</i>
	No. 21, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	<i>(Still in force)</i>
	No. 50, 2002	<i>Terrorism (Commonwealth Powers) Act 2002</i>	<i>(Still in force)</i>
	No. 43, 2008	<i>Water (Commonwealth Powers) Act 2008</i>	<i>(Still in force)</i>
	No. 47, 2009	<i>Personal Property Securities (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 57, 2009	<i>Fair Work (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 86, 2009	<i>Commonwealth Powers (De Facto Relationships) Act 2009</i>	<i>(Still in force)</i>
	No. 2, 2010	<i>Credit (Commonwealth Powers) Act 2010</i>	<i>(Still in force)</i>
Western Australia	No. 4, 1943	<i>Commonwealth Powers Act 1943</i>	Repealed by No. 58, 1965
	No. 57, 1945	<i>Commonwealth Powers Act 1945</i>	Repealed by No. 58, 1965
	No. 30, 1947	<i>Commonwealth Powers Act 1943, Amendment Act 1947</i>	Repealed by No. 58, 1965
	No. 31, 1947	<i>Commonwealth Powers Act 1945, Amendment Act 1947</i>	Repealed by No. 58, 1965
	No. 73, 1947	<i>Commonwealth Powers Act 1945, Amendment Act (No. 2) 1947</i>	Repealed by No. 58, 1965
	No. 81, 1947	<i>Commonwealth Powers Act 1945–1947, Amendment (Continuance) Act 1947</i>	Repealed by No. 58, 1965
	No. 53, 1995	<i>Mutual Recognition (Western Australia) Act 1995</i>	Expired, see s. 7
	No. 6, 2001	<i>Mutual Recognition (Western Australia) Act 2001</i>	<i>(Still in force)</i>
	No. 7, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	<i>(Still in force)</i>
	No. 53, 2002	<i>Terrorism (Commonwealth Powers) Act 2002</i>	<i>(Still in force)</i>
	No. 26, 2006	<i>Commonwealth Powers (De Facto Relationships) Act 2006</i>	<i>(Still in force)</i>
	No. 30, 2007	<i>Trans-Tasman Mutual Recognition (Western Australia) Act 2007</i>	<i>(Still in force)</i>
	No. 13, 2010	<i>Credit (Commonwealth Powers) Act 2010</i>	<i>(Still in force)</i>
Tasmania	11 Geo. V. No. 42	<i>Commonwealth Powers (Air Navigation) Act 1920</i>	Repealed by 1 Geo. VI. No. 14
	No. 46, 1952	<i>Commonwealth Powers (Air Transport) Act 1952</i>	<i>(Still in force)</i>
	No. 62, 1966	<i>Commonwealth Powers (Trade Practices) Act 1966</i>	Expired; see s. 2
	No. 5, 1987	<i>Commonwealth Powers (Family Law) Act 1987</i>	<i>(Still in force)</i>
	No. 33, 1993	<i>Mutual Recognition (Tasmania) Act 1993</i>	<i>(Still in force)</i>
	No. 39, 2001	<i>Corporations (Commonwealth Powers) Act 2001</i>	<i>(Still in force)</i>
	No. 68, 2002	<i>Terrorism (Commonwealth Powers) Act 2002</i>	<i>(Still in force)</i>
	No. 60, 2003	<i>Trans-Tasman Mutual Recognition (Tasmania) Act 2003</i>	<i>(Still in force)</i>
	No. 18, 2006	<i>Commonwealth Powers (De Facto Relationships) Act 2006</i>	<i>(Still in force)</i>
	No. 51, 2009	<i>Credit (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>
	No. 88, 2009	<i>Industrial Relations (Commonwealth Powers) Act 2009</i>	<i>(Still in force)</i>

16. Section 72 was amended by the *Constitution Alteration (Retirement of Judges) 1977*, and previously read as follows:

“72. The Justices of the High Court and of the other courts created by the Parliament:

- (i) shall be appointed by the Governor-General in Council;
- (ii) shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
- (iii) shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.”

17. Section 74 – See *Privy Council (Limitation of Appeals) Act 1968*, *Privy Council (Appeals from the High Court) Act 1975* and *Kirmani v Captain Cook Cruises Pty Ltd (No. 2)*; *Ex parte Attorney-General (QLD)* (1985) 159 CLR 451.

18. Section 105 was amended by the *Constitution Alteration (State Debts) 1909*, and previously read as follows:

“105. The Parliament may take over from the States their public debts as existing at the establishment of the Commonwealth, or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.”

19. Section 105A – This section was inserted by the *Constitution Alteration (State Debts) 1928*.

20. Section 126 – See clause IV of the Letters Patent relating to the Office of Governor-General, published in *Gazette* 2008 S179, pp. 3 and 4.

21. Section 127 (titled “Aborigines not to be counted in reckoning population”) was repealed by the *Constitution Alteration (Aboriginals) 1967*, and previously read as follows:

“127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.”

22. Section 128 was amended by the *Constitution Alteration (Referendums) 1977*, and previously read as follows:

“128. This Constitution shall not be altered except in the following manner:

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen’s assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.”