

# **The Constitution Proposed by the Advancing Democracy Model**

The proposed amendments to the Constitution are set out below. Words in plain type are already in the present Constitution and will remain unchanged following the amendment. New words proposed to be inserted in the Constitution are underlined and words proposed to be deleted from the Constitution are ~~ruled through~~.

## **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 House of Representatives and the Senate ~~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.~~

### **6A Sessions of Parliament**

The timing and conduct of sessions of each house of Parliament shall be determined by the standing orders made pursuant to section 50, provided that such standing orders must provide:

- (a) That after any general election of members of the house, each house must convene a session not less than 30 days after the date appointed for the declaration of the results of the election; and
- (b) That each house must convene a session at least once in each year, so that twelve months does not elapse between the last sitting of the last session and the first sitting of 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, 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 Deputy 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 laws prescribing the method of choosing the senators for that State.

#### ***Times and places***

The Parliament of a State may make laws 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 senators**

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.

#### **15 Casual vacancies**

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 Deputy 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, 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 Deputy~~ 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 Deputy 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, ~~other than those arising from decisions referred to in s.50(2)(i), shall be determined by a majority of votes, and each senator shall have one vote. A member presiding in the Senate is entitled to vote on a question put while he or she is presiding, but shall not have a casting vote. The President shall in all cases be entitled to a vote; and w~~ 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 in accordance with sections 57 or 58A(iii).

**29 Electoral divisions**

Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws 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 an Australian citizen, 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, other than those arising from decisions referred to in s.50(2)(i), shall be determined by a majority of votes, and each member shall have one vote, other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote. A member presiding in the House is entitled to vote on a question put while he or she is presiding, but shall not have a casting vote. When the votes are equal the question shall pass in the negative.~~

## **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~~
- (iv) holds any office of profit under the Government of the Commonwealth, a State or a Territory, or any pension payable at the discretion of the Government of the Commonwealth, 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~~ Standing orders**

(1) Each House of the Parliament may make ~~rules and~~ standing 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.

(2) The standing orders made pursuant to subsection (1) must:

(i) Provide that decisions made under the standing orders during proceedings in Parliament by any person presiding cannot be overruled otherwise than by a resolution passed by two-thirds of those voting on the resolution; and

(ii) Provide that upon a decision being made during proceedings in Parliament by the Governor-General or Deputy Governor-General that:

(a) A Minister has failed to adequately answer a question which the standing orders oblige the Minister to answer, the Minister must forfeit in favour of the Commonwealth one day's worth of the Minister's ministerial salary (but not allowances or other entitlements) for each such declaration; and

(b) A Member of the House is suspended from the House, the Member must forfeit in favour of the Commonwealth the Member's salary (but not allowances or other entitlements) as a Member of Parliament for the duration of the suspension.

For the purposes of sub-clause (ii)(a), “Minister” means the Prime Minister, Deputy Prime Minister, Minister of State and any other member of the House who holds office in the Government or in the House.

(3) The High Court may, on the application of any elector, amend the standing orders so as to bring them into compliance with the requirements of this Constitution.

## **Part V – Powers of the Parliament**

### **51 Legislative powers of the Parliament**

The Parliament shall, subject to this Constitution, have power 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) 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) 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, 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.~~

#### **56A How laws are made**

A proposed law becomes law, in accordance with such terms as to its commencement as are

set out in the proposed law, when it is passed by a majority of those who vote on the proposed law in both the House of Representatives and the Senate.

### **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~~ must at the request of the House of Representatives 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~~ must at the request of the House of Representatives 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 IA – The Head of State**

### **58A Governor-General of Parliament - duties, rights and powers**

There shall be a Governor-General of Parliament, referred to as the Governor-General, who shall act as the Head of State of the Commonwealth of Australia exercising only the duties, rights and powers which are set out in this Constitution, including:

- (i) The duty to convene and the right to preside over sessions of the House of Representatives in accordance with such standing orders as are made pursuant to section 50 and the

requirements of impartiality and fairness;

(ii) The duty to appoint and remove the Prime Minister and the Deputy Prime Minister in accordance with section 64A;

(iii) The duty to dissolve the House of Representatives and commence the process for a general election of members of the House, but only upon, and within 10 days of:

(a) The House of Representatives passing a resolution in favour of a dissolution;

(b) The House of Representatives failing to appoint a new Prime Minister within 60 days after the declaration of all the results of a general election or the removal of the Prime Minister under section 58A(ii); or

(c) The High Court, on the application by the Head of State or any elector, declaring that the House has sat for longer than the period permitted by section 28;

(iv) The duty to commence the process for the election of a new member to fill any vacancy in the House of Representatives in accordance with any request made by the Prime Minister, subject to any contrary resolution of the House of Representatives passed prior to the commencement of the process;

(v) The power to exercise any duty, right or power vested in the Deputy Governor-General, during any period in which that office is vacant, or the Deputy Governor-General is absent or otherwise unable to exercise the duty, right or power;

(vi) Powers incidental to the exercise of the above duties, rights and powers;

(vii) Such other powers in relation to the management of the House of Representatives as are from time to time conferred on the Governor-General by the House's Standing Orders; and

(viii) Such other powers not inconsistent with the above as are from time to time conferred on the Governor-General by law.

A reference to a resolution passed by the House of Representatives means a resolution on which a majority of those who vote on the resolution cast a vote in favour of the resolution.

### **58B Governor-General of Parliament - method of appointment**

The Governor-General:

(i) Shall be appointed for a term which expires no later than six months after the date of polling for the next general election of Members of the House; and

(ii) May be removed prior to the expiry of that term;  
by a resolution passed by two-thirds of the members of the House of Representatives who  
vote on the resolution.

#### **59A Deputy Governor-General of Parliament - duties, rights and powers**

There shall be a Deputy Governor-General of Parliament, referred to as the Deputy Governor-  
General, who shall act as the Deputy Head of State of the Commonwealth of Australia  
exercising only the duties, rights and powers which are set out in this Constitution, including:

- (i) The duty to convene and the right to preside over sessions of the Senate in accordance with  
such standing orders as are made pursuant to section 50 and the requirements of impartiality  
and fairness;
- (ii) The duty to exercise any duty, the right to exercise any right and the power to exercise any  
power vested in the Governor-General, during any period in which that office is vacant, or the  
Governor-General is absent or otherwise unable to exercise the duty, right or power;
- (iii) Powers incidental to the exercise of the above duties, rights and powers;
- (iv) Such other powers in relation to the management of the Senate as are from time to time  
conferred on the Deputy Governor-General by the Senate's Standing Orders; and
- (v) Such other powers not inconsistent with the above as are from time to time conferred on  
the Deputy Governor-General by law.

#### **59B Deputy Governor-General of Parliament - method of appointment**

The Deputy Governor-General:

- (i) Shall be appointed for a term which expires no later than six months after the earliest  
polling day determined by the States for the next Senate election, whether that be an election  
for the whole Senate or half the Senate; and
- (ii) May be removed prior to the expiry of that term;  
by a resolution passed by two-thirds of the members of the Senate who vote on the resolution.

#### **60A Status of the Governor-General and Deputy Governor-General**

(1) The exercise by the Governor-General or the Deputy Governor-General of any power

conferred by sections 58A(v), 58A(vii) or 59A(iv) is not justiciable.

(2) The exercise by the Governor-General or the Deputy Governor-General of any duty, right or power conferred by a law pursuant to sections 58A(viii) or 59A(v) is justiciable to the extent specified in the law, or if the law does not so specify, justiciable under s.75(v).

(3) The exercise by the Governor-General or Deputy Governor-General of any duty, right or power conferred by this Constitution, other than a power referred to in subsections (1) or (2), is, on the application of any elector, justiciable before the High Court, which may, among other remedies, declare whether the duty, right or power has been, or may be, validly exercised.

(4) Parliament may make such laws as it considers appropriate concerning the costs of court applications made pursuant to this section.

(5) For the purpose of sections 51(xxxix) and 75(v), the Governor-General and Deputy Governor-General shall be regarded as officers of the Commonwealth.

(6) Otherwise, the Governor-General and Deputy Governor-General shall have the same status and immunities as a Member of the House of Representatives, but are not, and cannot become during their terms of office, members of either the House of Representatives or the Senate.

### **60B Acting Governor-General and Supplementary Provisions**

(1) Each House of Parliament may make standing orders to appoint a member or members of the House to preside over proceedings in the House during any period in which the office of either the Governor-General or Deputy Governor-General is vacant, or either is absent or otherwise unable to so preside.

(2) Parliament may make laws not inconsistent with this Constitution:

(i) Appointing persons to act on a temporary basis in place of the Governor-General or Deputy Governor-General during any period in which either office is vacant, or either is absent or otherwise unable to so act, in the event of which appointment references in this Constitution to the Governor-General or Deputy Governor-General shall be taken to refer to the person(s) so acting;

(ii) Defining the meaning of the terms vacancy, absence and inability in sections 58A(v),

59A(ii), 60B(1) and 60B(2)(i); and

(iii) Determining the remuneration and other entitlements of the Governor-General, Deputy Governor-General and any person acting in their positions, provided that such office holders must be liable to taxation in the same way as a Minister of State.

## **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 force~~**

~~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.~~

### **61A Vesting of executive power in the Commonwealth Government**

The executive power of the Commonwealth is vested in the Government of the Commonwealth, comprised of the Prime Minister, the Deputy Prime Minister and Ministers of State.

### **62A The power to govern defined**

The executive power of the Commonwealth is the power to govern the Commonwealth. It is comprised of and limited to:

- (i) The administration, implementation and protection of this Constitution;
- (ii) The administration and implementation of the laws of the Commonwealth;
- (iii) The administration of the Government of the Commonwealth;
- (iv) The power on behalf of Australia to make agreements and arrangements with, and take action with, against or with respect to, those outside Australia, and to exercise any rights conferred, and fulfill any obligations imposed, on Australia by international law;
- (v) The command of such naval, military and defence forces as are established by law;
- (vi) The power to engage in activities for the benefit of Australia where in the circumstances prevailing at the time of such engagement the States lack the practical power to engage in those activities;

- (vii) The power to make contracts, acquire property and spend appropriated money with respect to any subject on which the Commonwealth Parliament has the power to make laws;
- (viii) The power to research or conduct an inquiry with respect to any subject other than the administration of a Government or entity which is accountable to a State Parliament; and
- (ix) With respect to the exercise of the above powers, such of the powers of a natural person as can be exercised by a Government.

### **62B Executive power - abolition of prerogative and reserve powers**

On commencement of this section, in respect of the Crown in right of the Commonwealth:

- (i) The prerogative powers and any reserve powers formerly vested in the Queen or the Governor-General are abolished;
- (ii) All proprietary interests formerly vested in the Queen or the Governor-General shall, subject to any law to the contrary, vest in the Commonwealth Government; and
- (iii) All other prerogative rights, immunities and capacities formerly vested in the Queen or the Governor-General are abolished;  
provided that such abolition does not affect any powers, rights, immunities or capacities which are conferred by this Constitution expressly or by necessary implication

### **63A Control of executive power**

Executive powers must be exercised in accordance with this Constitution and the laws of Australia, including any law made by the Commonwealth Parliament to control the exercise of such powers.

### **64A How Governments are formed**

The Prime Minister and Deputy Prime Minister shall be appointed and removed by resolutions passed by the House of Representatives in accordance with section 40, provided that if a vacancy arises when the House is not in session, a member may be appointed by the Governor-General if an absolute majority of the House of Representatives requests in writing the member's immediate appointment.

Ministers of State shall be appointed and removed, and may be suspended, by the Prime

Minister, subject to any resolution of the House of Representatives.

#### **65A Management of executive power**

The Prime Minister may:

- (i) Convene a Cabinet of Ministers to make collective decisions on behalf of the Government, and appoint some or all Ministers of State to Cabinet and remove Ministers from Cabinet;
- (ii) Determine the order of seniority of Ministers of State, commencing with the Deputy Prime Minister as the most senior Minister after the Prime Minister;
- (iii) Subject to any law, delegate the exercise of some or all executive power to the Ministers of State and may withdraw such delegation of power; and
- (iv) Subject to any law, appoint or remove all other officers of the Government.

#### **66A Acting Prime Minister**

During any period in which the office of Prime Minister is vacant or the Prime Minister is unable to communicate with his or her Ministers the powers of the Prime Minister may (without any formal appointment) be exercised by the next most senior Minister who is available to so act, in accordance with the latest order of seniority determined pursuant to section 65A(ii), and that person shall be called the Acting Prime Minister.

#### **67A Ministers to be Members of Parliament**

The only persons eligible for appointment as Prime Minister or Deputy Prime Minister are members of the House of Representatives.

The only persons eligible for appointment as Ministers or Acting Prime Minister are members of Parliament.

A person appointed as Prime Minister, Deputy Prime Minister or Minister when eligible must not remain in that position longer than 90 days after his or her eligibility for appointment ceases.

### **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 remuneration

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~~ Government;
- (ii) shall not be removed except by the ~~Governor-General in Council~~ Government, 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~~ Government.

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, 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~~ Government;
- (ii) shall hold office for seven years, but may be removed within that time by the ~~Governor-General in Council~~ Government, 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.

### **105A Agreements with respect to State debts**

- (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.~~

### 110A State Governors

(1) If the Constitution of a State vests a function in a foreign power, or a representative of a foreign power, or provides that the Governor of the State or any other person is subject to appointment, control or removal by such a foreign power or representative, that Constitution shall be read as if the function or the power of appointment, control or removal is vested in the Governor-General, and this section and the relevant sections of the State Constitution shall be treated as laws to which section 109 applies.

(2) This section prevails over section 106 to the extent of any inconsistency.

(3) Nothing in this Constitution implies that a State must have a Governor, and references to a State's Governor in sections 7, 12, 15, 21 and 24 shall be taken as referring to any person authorised by the Constitution of a State to undertake the functions referred to in those sections.

### **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;~~ A resident of any State shall not be subject in any other State to any disability or discrimination which would not be equally applicable to the resident if he or she was ~~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 deputies 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 [Repealed in 1967]**

### **Chapter VIII – Alteration of the Constitution**

#### **128 Mode of altering the Constitution**

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~~ the Government must at the request of the House of Representatives 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, this Constitution shall thereby be altered as set out in 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.