

PART 1 – ANNOTATED CONSTITUTION

INTRODUCTION

Since federation in 1901 there have been four wide-ranging reviews of the Australian Constitution conducted by four different methods. They are:

- Royal Commission on the Constitution 1927–29, appointed by the Bruce Government
- Joint Committee on Constitutional Review 1956–59 (Joint Committee), appointed by the Commonwealth Parliament under the Menzies Government
- Australian Constitutional Convention 1973–85 (Constitutional Convention), which included delegates from the Commonwealth and State Parliaments, and from mainland territories and local government, and
- Constitutional Commission 1985–88 (Constitutional Commission), established by the Hawke Government.

Most of the recommendations made by these reviews have not been acted upon. Many of the problems identified still exist. The Committee has annotated the Constitution with reference to the recommendations of the past reviews.

Scope of the annotations

In this paper the Committee has focussed on the work of the Joint Committee, the Constitutional Convention and the Constitutional Commission. The Committee recognises that other groups, organisations and conferences have also reviewed various issues related to the Australian Constitution, however, the Committee selected the three reviews because their official status meant they were authoritative, and the reviews had been broad ranging and were relatively recent.

The Committee has excluded the recommendations of the Royal Commission conducted from 1927 to 1929 from its review, as the 70 year old recommendations are likely to be of diminished relevance.

The Committee has developed an annotated constitution which summarises proposals for reform made by the Joint Committee, Constitutional Convention and Constitutional Commission. Together, these three reviews contain over 300 recommendations. Only those proposals for amending the Constitution itself are included. The notes do not, for example, address the detailed proposals for codifying constitutional conventions made by the Constitutional Convention.

This report is not a comprehensive historical documentation of every individual recommendation made by the three reviews. Duplication is avoided. The

Committee notes that the reviews themselves often referred to earlier reviews where they dealt with related issues. The notations generally refer to the recommendations of each review even though recommendations on the same provisions may not be substantively different for the most recent recommendations.

Notes on the selected reviews

1. Joint Committee on Constitutional Review 1956–59

The Joint Committee was appointed by the Menzies Government in 1956 and assumed the title of Constitution Review Committee.

Members

- Prime Minister and the Leader of the Opposition (ex officio)
- Senator O'Sullivan (Chairman)
- Members of the House of Representatives – Mr Calwell, Mr Downer, Mr Drummond, Mr Hamilton, Mr Joske, Mr Pollard, Mr Ward and Mr Whitlam
- Other Senators – Senator Kennelly, Senator McKenna and Senator Wright

Resolution of appointment

That a Joint Committee be appointed to review such aspects of the working of the Constitution as the Committee considers it can most profitably consider, and to make recommendations for such amendment of the Constitution as the Committee thinks necessary in the light of experience.

Status of the inquiry

The Joint Committee was a joint parliamentary committee established under resolutions of the Senate and the House of Representatives, and having all the powers of such committees including the power to send for persons, papers and records, and to take evidence in public hearings.

Joint Committee outcomes

The Joint Committee presented an interim report in 1956 and a final report in 1959. Despite the bipartisan nature of its recommendations, the report was not debated in detail and only one of its proposals was submitted, unsuccessfully, to referendum in 1967. (For details about the referendum, refer below to Part 2, referendum of 27 May 1967, Question 1. See also, notes to section 24 of the Constitution in this Part.)

2. Australian Constitutional Convention 1973–85

The Convention consisted of delegates from the Commonwealth and State Parliaments and from local government and mainland territories.

Purpose of the Constitutional Convention

At its first meeting in 1973 the Constitutional Convention resolved to:

- identify the areas of the Constitution in need of change
- refer the areas so identified to standing committees for investigation and report.

Convention process

The Constitutional Convention met in plenary session in 1973, 1975, 1976, 1978, 1983 and 1985. It established four principal standing committees.

Convention outcomes

The Constitutional Convention produced more than 130 recommendations. Four recommendations were put to referendum in 1977 and three of them passed. (For details about these referendums refer below to Part 2, referendum of 21 May 1977.) One recommendation was put and failed in 1984. (For details about this referendum refer Part 2, referendum of 1 December 1984, Question 2. See also the notes to section 108 of the Constitution in this Part.) Some changes at state level resulted from the Constitutional Convention's recommendations.

3. Constitutional Commission 1985–88

The Constitutional Commission was established by the Hawke Government in December 1985; its final report was delivered in June 1988.

Members

- Sir Maurice Byers CBE QC (Chairman)
- Professor Enid Campbell OBE
- Hon Sir Rupert Hamer KCMG
- Hon E Gough Whitlam AC QC
- Professor Leslie Zines
- Hon Justice J L Toohey (resigned December 1986)

Advisory Committee Chairs

- Hon Justice D F Jackson (Australian Judicial System)
- Hon Sir John Moore AC (Distribution of Powers)
- Rt Hon Sir Zelman Cowan (Executive Government)
- Mr Terence Purcell (Individual and Democratic Rights)
- Hon Justice M G Everett (Trade and National Economic)

Terms of reference

To report on the revision of the Constitution to:

- (a) adequately reflect Australia's status as an independent nation and a federal parliamentary democracy;
- (b) provide the most suitable framework for the economic, social and political development of Australia as a federation;
- (c) recognise an appropriate division of responsibilities between the Commonwealth, the States, self-governing Territories and local government; and
- (d) ensure that democratic rights are guaranteed.

Commission process

The Constitutional Commission implemented an information program, held public hearings in all capital cities and some regional centres, undertook consultation and received submissions.

Commission outcomes

Four recommendations were put to a referendum in 1988. (For details about the referendums refer below to Part 2, referendums of 3 September 1988. See also the notes to sections 7, 24, 80, 119 in the Constitution in this Part.) The aim of these proposals was to:

- provide for four year maximum terms for members of both Houses of Parliament;
- ensure fair and democratic parliamentary elections throughout Australia;
- extend Constitutional recognition to local government; and
- extend the right to trial by jury and freedom of religion; and to ensure fair terms for persons whose property is acquired by any Government.

None of these proposals succeeded nor has there been a formal response to the other recommendations.

4. Conclusion

The Committee hopes the following version of the Constitution annotated with the results of former reviews, is of interest to all those interested in Australia's constitutional history. The Committee chooses not to add its comments to the recommendations. Let the recommendations speak for themselves.

THE CONSTITUTION

As altered 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)

Annotated with reference to various constitutional reviews

(63 & 64 VICTORIA, CHAPTER 12)

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:

[1988 Constitutional Commission: recommended against altering or repealing the preamble, and against the inclusion of a preamble to the Constitution proper (1988: p. 101, para. 3.2).]

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:—

[1988 Constitutional Commission: recommended that the enacting clause be repealed because it could give the reader the impression that Australia is still subject to the will of the legislature of the United Kingdom (1988: pp. 78–79, paras 2.147–2.149).]

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

Act to extend to the Queen's successor 2. 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.

[1973-85 Constitutional Convention: recommended that covering clause 2 be deleted and replaced by a provision referring to the Queen in the sovereignty of Australia (1975: p. 173, resolution 15; 1976: p. 205, resolution 12).

[1988 Constitutional Commission: similarly recommended omitting the words 'the United Kingdom' and inserting 'Australia' (1988: pp. 79-80, paras 2.150-2.156).]

Proclamation of Commonwealth 3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation 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.

Commencement of Act 4. 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.

Operation of the constitution and laws 5. 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, 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.

[1988 Constitutional Commission: recommended omitting all words after 'laws of any State' because they are outmoded (1988: p. 112, paras 3.54-3.60).]

Definitions 6. "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. 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.

Repeal of Federal Council Act 48 & 49 Vict c 60

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

[1973-85 Constitutional Convention: recommended repealing s. 7 (1975: p. 174, resolution 15; 1976: p. 205, resolution 12).

1988 Constitutional Commission: similarly recommended repealing covering clauses 7 and 8, and consequential amendments to other legislation (1988: pp. 113-118, paras 3.61-3.94).]

8. 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.

Application of Colonial Boundaries Act 58 & 59 Vict c 34

9. The Constitution of the Commonwealth shall be as follows:—

THE CONSTITUTION

Constitution

This Constitution is divided as follows:—

- Chapter I—The Parliament:**
 - Part I—General:**
 - Part II—The Senate:**
 - Part III—The House of Representatives:**
 - Part IV—Both Houses of the Parliament:**
 - Part V—Powers of the Parliament:**
- Chapter II—The Executive Government:**

Chapter III—The Judicature:
Chapter IV—Finance and Trade:
Chapter V—The States:
Chapter VI—New States:
Chapter VII—Miscellaneous:
Chapter VIII—Alteration of the Constitution.
The Schedule.

CHAPTER I

Chap I
The Parliament

THE PARLIAMENT

PART I.—GENERAL

Part I
General

1. 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 herein-after called "The Parliament," or "The Parliament of the Commonwealth."

Legislat-
ive
power

Governor-
General

2. 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.

[1988 Constitutional Commission: recommended that s. 2 be repealed and replaced to remove the suggestion that there are some powers which the Governor-General cannot exercise unless they have been expressly assigned (1988: pp. 340-346, paras 5.144-5.173).]

Salary of
Governor-
General

3. 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.

[1973-85 Constitutional Convention: recommended updating the reference to the Governor-General's salary with expression that would not become dated, such as 'such annual sum as the Parliament provides' (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1988 Constitutional Commission: recommended that s. 3 be repealed and replaced to make it clear that although the salary payable to the Governor-General cannot be reduced by the parliament during a continuance of office, it can be increased (1988: pp. 337–340, paras 5.128–5.143).]

4. 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.

Provisions relating to Governor-General

5. 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.

Sessions of Parliament
Prorogation and dissolution

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.

Summoning Parliament

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

First session

[1973-85 Constitutional Convention: recommended the repeal of the last paragraph of s. 5 as it is expended (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1988 Constitutional Commission: recommended that the Constitution provide that the Governor-General exercise these powers on the advice of the Federal Executive Council, and that after a general election of the House, the Parliament shall meet not later than 75 days after polling day. The Commission further recommended that similar provisions be included for state parliaments and territory legislatures (1988: pp. 168–175, paras 4.214–4.216).]

6. 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.

Yearly session of Parliament

PART II.—THE SENATE

7. 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 Governor-General.

[1956-59 Joint Committee on Constitutional Review: recommended that the Constitution provide that parliament have power to determine the number of senators, retaining equal representation of original states, and that original states have between six and ten senators (1959: p. 18, para. 112).

1973-85 Constitutional Convention: recommended that no original state should have less than ten senators (1975: p.173, resolution 12; 1976: p. 204, resolution 7).

1988 Constitutional Commission: recommended that the number of senators for each original state be fixed at 12 (1988: pp. 176 & 186, paras 4.250 & 4.300-4.302).

1956-59 Joint Committee: further recommended that the Constitution provide that senators hold their places until the expiry or dissolution of the second House of Representatives after a senator's election (1959: p. 37, paras 255-256).

1973-85 Constitutional Convention: recommended that the Constitution provide that the term of the House of Representatives be four years, and the term of senators be twice that (1983: p. 296, resolution 6(b)).

1988 Constitutional Commission: similarly recommended that the Constitution provide that the term of the House of Representatives be a maximum of four years, and that state senators serve two such terms, and territory senators one (1988: pp. 195-210, paras 4.345-4.443).]

8. 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. 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.

Method of election of senators

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

Times and places

10. 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.

Application of State laws

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

Failure to choose senators

12. 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.

Issue of writs

[1956-59 Joint Committee: the recommended amendment to s. 7 affecting a senator's term would involve a consequential amendment to s. 12 about the timing of issuing the writs and for the expiry of the House of Representatives (1959: p. 38, para. 260).

1973-85 Constitutional Convention: recommended that the ten day period for return of the writs be replaced with a less restrictive period, such as 21 days (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1973-85 Constitutional Convention: recommended that the Constitution provide expressly for Senate and House of Representatives elections to be held at the same time (1976: p. 204, resolution 6).

1988 Constitutional Commission: recommended that ss 9, 10, 11, 12 and 31 be repealed and replaced with new ss 9, 10 and 31. New ss 9 and 10 would provide the same *method of election* of senators from states and territories and the *same polling day* as the House of Representatives. The Governor-General in Council would issue writs when senators' terms expired (no more than 10 days after) or when they were about to expire (1988: pp. 211-215, paras 4.444-4.465).

The Commission also recommended repeal of s. 394(1) of the *Commonwealth Electoral Act 1918* which prohibits State electoral events on a federal polling day on the grounds that there would be great administrative advantages in arranging federal and state elections on the same polling day, and this would promote coordinated federal and state policies (1988: pp. 215-218, paras 4.466-4.474).]

Rotation
of
senators
Altered
by No 1.
1907, s 2

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~~ **three years**, and the places of those of the second class at the expiration of ~~the sixth year~~ **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 ~~in the year at the expiration of which~~ **within one year before** the places are to become vacant.

For the purpose of this section the term of service of a senator shall be taken to begin on the first day of ~~January~~ **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 ~~January~~ **July** preceding the day of his election.

[1956-59 Joint Committee: recommended that the Constitution expressly provide for the division of senators into two classes following a double dissolution, in accordance with their relative success at the election, when arranging for the rotation of senators for subsequent elections (1959: pp. 38-42, paras 262-284).

[1973-85 Constitutional Convention: made a similar recommendation (1983: p. 295, resolution 5(c)).]

Further
provision
for
rotation

14. 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.

Casual
vacancies
Substitut-
ed by No
82, 1977,
s 2

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, 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 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 so 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 a 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 the 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.

[1988 Constitutional Commission: recommended that provision be made in similar terms for territory senators filling casual vacancies in the Senate. It also recommended that the last four paragraphs of s. 15 be repealed, because they are expended (1988: pp. 191–194, paras 4.326–4.344).]

Qualific-
ations of
senator

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

Election
of
President

17. 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.

Absence
of
President

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

19. 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.

Resignation of senator

[1973-85 Constitutional Convention: recommended that the effective date of a senator's resignation should be upon the receipt of the written resignation (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).]

20. 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.

Vacancy by absence

21. 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.

Vacancy to be notified

22. 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.

Quorum

23. 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.

Voting in the Senate

PART III.—THE HOUSE OF REPRESENTATIVES

Part III
House of Representatives

24. 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.

Constitution of House of Representatives

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.

[1956-59 Joint Committee: recommended that the number of members of the House of Representatives be determined on the basis of 80,000 people for each member, and there should be no less than five members in each original state (1959: pp. 6-19, paras 43-127).

[1973-85 Constitutional Convention: made a similar recommendation (1975: pp. 172-173, resolution 11; 1976: pp. 204-205, resolution 8).

[1988 Constitutional Commission: similarly recommended that the nexus between the number of senators and members be broken, subject to a limitation on the size of both Houses (1988: pp. 176-191, paras 4.250-4.325).

[1973-85 Constitutional Convention: approved an amendment to ensure that members of parliament of the Commonwealth and of the parliaments of the states and of self-governing territories are chosen directly by the people in the form proposed in the private member's bill - Constitution Alteration (Democratic Elections) Bill 1985 - introduced by Senator Macklin in the Senate on 17 April 1985 (1985: p. 398, resolution B9(c)).

[1988 Constitutional Commission: recommended that the Constitution expressly provide that members of each state parliament and territory legislature be directly chosen by the people of that state or territory, with exception for the filling of casual vacancies (1988: pp. 157-160, paras 4.160-4.176).]

Provision
as to
races
disqualif-
ied from
voting

25. 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.

[1956-59 Joint Committee: considered it appropriate to repeal s. 25 although noting it had never operated to affect the reckoning of the number of people of any state (1959: p. 19, paras 123-127).

[1973-85 Constitutional Convention: recommended that s. 25 be repealed because of its undesirable implications (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

[1988 Constitutional Commission: recommended that s. 25 be repealed because it contradicts the spirit and substance of a right to vote and the principle of one vote one value (1988: pp. 155 & 157, paras 4.146-4.159).]

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

Representatives in first Parliament

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.

[1956-59 Joint Committee: considered it appropriate to repeal s. 26 because it is expended (1959: p. 19, paras 124-127).
1973-85 Constitutional Convention: recommended that s. 26 be repealed because it is redundant (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).
1988 Constitutional Commission: also recommended that s. 26 be repealed (1988: pp. 176-191, paras 4.250-4.325).]

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

Alteration of number of members

[1988 Constitutional Commission: recommended that the principle of one vote one value be entrenched by including certain provisions in the Constitution (1988: pp. 145-150, paras 4.102-4.120).]

28. 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.

Duration of House of Representatives

[1973-85 Constitutional Convention: recommended that the Constitution provide that the term of the House of Representatives be four years (1983: p. 296, resolution 6(a)).
1988 Constitutional Commission: similarly recommended that the Constitution provide that the maximum term of the House of Representatives be four years with a three year minimum in most circumstances (1988: pp. 195-207, paras 4.345-4.419).]

Electoral divisions

29. 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.

[1956-59 Joint Committee: recommended that the Constitution provide that all electoral divisions for which members of the House of Representatives may be chosen are single member electorates and that the number of electors for each division was uniform. Section 29 should be repealed and replaced by five separate provisions (1959: pp. 51-54, paras 365-380).]

Qualification of electors

30. 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.

Application of State laws

31. 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.

Writs for general election

32. 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.

Writs for vacancies

33. 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.

Qualifications of members

34. 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.

[1973-85 Constitutional Conventions: recommended that the Constitution provide that the qualifications for a member of parliament be 18 years of age, eligibility to vote and Australian citizenship (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1988 Constitutional Commission: recommended that the Constitution provide that the qualifications for a member of parliament be 18 years of age and Australian citizenship (1988: pp. 281-283, paras 4.756-4.767).

It also recommended that entitlement to vote not be a necessary qualification to be a member of parliament, but that the Constitution provide parliament with express power to make laws which could qualify membership with regard to reasonable conditions as to residence (1988: pp. 283-289, paras 4.768-4.799).]

35. 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.

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

Absence
of
Speaker

37. 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.

Resign-
ation of
member

[1973-85 Constitutional Convention: recommended that the effective date of a member's resignation should be upon the receipt of the written resignation (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).]

38. 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.

Vacancy
by
absence

Quorum

39. 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.

Voting in House of Representatives

40. 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

PART IV.—BOTH HOUSES OF THE PARLIAMENT

Right of electors of States

41. 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.

[1973-85 Constitutional Convention: recommended that an adult be defined as a person of 18 years of age (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1988 Constitutional Commission: recommended that the Constitution expressly guarantee citizens a right to vote in all Australian parliamentary elections, and include certain qualifications (1988: pp. 128-144, paras 4.16-4.97).

The Commission also recommended the repeal of s. 41 because it was a transitional provision and has not operated since the *Commonwealth Franchise Act 1902* came into force (1988: pp. 128-129, paras 4.16-4.97).]

Oath or affirmation of allegiance

42. 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.

Member of one House ineligible for other

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

44. 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:

Disquali-
fication

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

But sub-section 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.

[1988 Constitutional Commission: recommended that s. 44(i) be deleted because dual nationality should not be reason to exclude a person as a member of parliament (1988: pp. 288–289, paras 4.793–4.797).

The Commission also recommended that s. 44 (ii) be amended to provide that any person convicted of treason and not subsequently pardoned be disqualified from being a member of parliament. The Commission further recommended that the Constitution provide parliament with express power to make laws which could disqualify a person serving a sentence for an offence against an Australian law (1988: pp. 289–293, paras 4.800–4.818).

The Commission recommended that s. 44 (iii) and s. 45(ii) be deleted because bankruptcy and insolvency should not be reason to exclude a person as a member of parliament in modern Australia (1988: pp. 293–294, paras 4.819–4.826).

It also recommended that the Constitution provide expressly that a person of unsound mind be disqualified from being a member of parliament and that

parliament have power to make laws to determine unsound mind (1988: pp. 295–296, paras 4.827–4.836).

The Commission recommended that the Constitution provide that a member who becomes a judge, public servant, member of the defence force, member of an other Australian legislature or officer of certain public authorities be disqualified as a member of parliament (1988: pp. 296–301, paras 4.837–4.863).

It also recommended that the Constitution provide that parliament have power to disqualify a member of parliament who holds interests which might constitute a risk of conflict of interest (1988: pp. 301–304, paras 4.864–4.881.)]

Vacancy
on
happen-
ing of
disquali-
fication

45. 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.

Penalty
for
sitting
when
disquali-
fied

46. 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.

Disputed
elections

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or member of the House or 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.

Allow-
ance to
members

48. 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.

[1973-85 Constitutional Convention: recommended that the reference to allowances of members of parliament be updated (1975: p. 174, resolution 15; 1976: p. 206, resolution 12).

1988 Constitutional Commission: recommended that s. 48 be replaced with a new provision because it is outmoded (1988: pp. 262–263, paras 4.686–4.693).]

49. 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.

Privileges, &c. of Houses

[1988 Constitutional Commission: recommended removing the reference to the powers, privileges and immunities of the House of Commons, its members and committees, but so as to preserve the powers, privileges and immunities of both Houses of federal parliament in force at the time of the amendment (1988: pp. 263–274, paras 4.694–4.734).]

50. Each House of the Parliament may make rules and orders with respect to—

Rules and orders

- (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

Part V Powers of the Parliament

51. 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:—

Legislative powers of the Parliament

- (i.) Trade and commerce with other countries, and among the States:

[1956-59 Joint Committee: recommended that parliament be provided with express power to establish, legislatively, a marketing authority for primary products, which would be within power under s. 51(i) (1959: pp. 120–133, paras 873–978).

1956-59 Joint Committee: recommended that parliament be provided with express power to make laws with respect to consumer credit (1959: pp. 145–148, paras 1088–1116).

1956-59 Joint Committee: further recommended that parliament be provided with an express concurrent legislative power with respect to loans secured by mortgage of land (1959: pp. 148&149, paras 1117–1135).

1956-59 Joint Committee: recommended that parliament be provided with power to refer to the Inter-State Commission restrictive trade practice matters and an express power to make laws with respect to restrictive trade practices found by the Inter-State Commission to be, contrary to the public interest (1959: pp. 113-120, paras 824-872).

1988 Constitutional Commission: recommended that parliament's power to make laws with respect to trade and commerce be extended by deleting 'with other countries, and among the States' (1988: pp. 775-789, paras 11.11-11.86). Section 101 would require a consequential amendment (1988: pp. 838-845, paras 11.337-11.372).]

- (ii.) Taxation; but so as not to discriminate between States or parts of States:

[1973-85 Constitutional Convention: recommended that s. 51(ii) be amended to refer only to taxation by the Commonwealth, consequential on recommendation about s. 90 that states be able to impose duties of excise (1985: p. 393, resolution B2(D)).

1988 Constitutional Commission: recommended that the federal parliament be provided with the power to so discriminate where the Inter-State Commission judges that it would be in the national interest (1988: pp. 814-817, paras 11.208-11.224).]

- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:

[1988 Constitutional Commission: recommended that the federal parliament be provided with the power to make laws with respect to bounties which are not uniform where the Inter-State Commission judges that it would be in the national interest (1988: pp. 814-817, paras 11.208-11.224).]

- (iv.) Borrowing money on the public credit of the Commonwealth:

[1973-85 Constitutional Convention: recommended that parliament be provided with an express power to make laws with respect to the borrowing of money by the Commonwealth for local government bodies constituted under the law of a state or territory (1975: p. 171, resolution 5).]

- (v.) Postal, telegraphic, telephonic, and other like services:

[1956-59 Joint Committee: recommended that parliament be provided with an express power to make laws with respect to broadcasting, television and other services which involve the communication, transmission or reception of signs, writing, signals, images sounds or energy by means of electro-magnetic systems (1959: pp. 81-86, paras 586-624).

1973-85 Constitutional Convention: recommended extending the power to make laws for or with respect to similar modern modes of communication (1975: p. 176, resolution 16; 1976: p. 208, resolution 14).

1988 Constitutional Commission: recommended that the Constitution provide the federal parliament with express power to make laws with respect to means of communication (1988: pp. 650–656, paras 10.50–10.80).]

- (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:

[1988 Constitutional Commission: recommended that parliament be provided with express power to make laws with respect to admiralty and maritime matters (1988: pp. 665–666, paras 10.130–10.139).]

- (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:

[1973-85 Constitutional Convention: recommended that paragraph (xviii) be expanded to expressly include modern developments in property rights over broadcast material, industrial designs, protection of services marks and rights of breeders of plants (1975: p. 176, resolution 17; 1976: p. 208, resolution 15).

1988 Constitutional Commission: similarly recommended that the federal parliament be provided with express power to make laws with respect to trade marks and other like protection for the products of intellectual activity in industry, science, literature and the arts (1988: pp. 666–669, paras 10.140–10.153).]

(xix.) Naturalization and aliens:

[1988 Constitutional Commission: recommended that the federal parliament be provided with an express power to make laws with respect to nationality and citizenship (1988: pp. 160–165, paras 4.177–4.198).]

(xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:

[1956-59 Joint Committee: recommended that parliament be provided with a broader express power to make laws with respect to corporations (1959: pp. 108–112, paras 784–823).

1956-59 Joint Committee: further recommended that the federal parliament be provided with an express power to make laws with respect to capital issues (1959: pp. 133–145, paras 979–1087).

1988 Constitutional Commission: similarly recommended that parliament be provided with express power to make laws with respect to the incorporation, organisation and administration of corporations. (1988: pp. 789–794, paras 11.87–11.118).

The Commission also recommended that parliament be provided with express power to make laws with respect to financial, investment and other like markets and services.

1973-85 Constitutional Convention: recommended that paragraph (xx) be amended to include an express provision saving state statutory corporations from discrimination (1985: p. 393, resolution B2(E)).]

(xxi.) Marriage:

(xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

[1988 Constitutional Commission: recommended that paragraph (xxii) be repealed and replaced to provide parliament with express power to make laws with respect to divorce and matrimonial causes, property and financial rights between defacto couples, adoption, legitimacy and the determination of parentage, custody and guardianship of children, parental rights and maintenance of children (1988: pp. 669–690, paras 10.154–10.250).]

(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:

[1988 Constitutional Commission: recommended that parliament be provided with express power to make laws with respect to other forms of social welfare (1988: pp. 690–692, paras 10.251–10.262).

1988 Constitutional Commission: recommended that parliament also be provided with express power to make laws with respect to accident compensation and rehabilitation (1988: pp. 692–698, paras 10.263–10.301).]

- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:

[1988 Constitutional Commission: recommended that parliament be provided with express power to make laws with respect to the process, judgments and orders of the courts and tribunals of the states and territories (1988: pp. 698–702, paras 10.302–10.325).

1988 Constitutional Commission: recommended that parliament be provided with express power to make laws with respect to principles of choice of law (1988: pp. 702–707, paras 10.326–10.351).]

- (xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:

[1988 Constitutional Commission: recommended that parliament be provided with express power to make laws with respect to the laws, public Acts and records and the judicial proceedings of territories as well as states (1988: pp. 702–707, paras 10.236–10.351).]

- (xxvi.) The people of any race, ~~other than the aboriginal race in any State,~~ for whom it is deemed necessary to make special laws:

Altered
by No 55,
1967, s 2

[1988 Constitutional Commission: recommended that paragraph (xxvi) be repealed and replaced. The Constitution should provide the federal parliament with express power to make laws with respect to Aborigines and Torres Strait Islanders (1988: pp. 707–731, paras 10.352–10.460).]

- (xxvii.) Immigration and emigration:
- (xxviii.) The influx of criminals:
- (xxix.) External affairs:
- (xxx.) The relations of the Commonwealth with the islands of the Pacific:
- (xxx.) 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:

[1973-85 Constitutional Convention: recommended that the Constitution be amended to ensure that the 'just terms' requirement extends to mainland territories and territories under s. 122 (1975: p. 176, resolution 20; 1976: p. 209, resolution 19).

1988 Constitutional Commission: recommended that the Constitution provide that a law of a state or territory or a law made for a territory government may not provide for the acquisition of property from any person except on just terms (1988: pp. 600–609, paras 9.747–9.793).]

- (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:

1956-59 Joint Committee: recommended that parliament be provided with a broader express power to make laws with respect to terms and conditions of industrial employment (1959: pp. 86–106, paras 625–783).

1988 Constitutional Commission: similarly recommended that paragraph (xxxv) be repealed and replaced with 'industrial relations' (1988: pp. 794–803, paras 11.119–11.157).]

- (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:

1988 Constitutional Commission: recommended that the Constitution provide expressly for the inter-change of legislative powers between the federal and state parliaments (1988: pp. 753–757, paras 10.564–10.587).]

- (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:

1973-85 Constitutional Convention: recommended that 'or by the Federal Council of Australasia' be omitted from paragraph (xxxviii) (1975: p. 173, resolution 13; 1976: p. 205, resolution 10).

1988 Constitutional Commission: recommended that a paragraph be inserted to provide the federal parliament with an express power to make laws with respect to succession to the throne and regency in the sovereignty of Australia (1988: pp. 80–82, paras 2.157–2.166).]

- (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.

[1956-59 Joint Committee: recommended that parliament be provided with an express concurrent legislative power over aviation (1959: pp. 65–71, paras 472–508).

1956-59 Joint Committee: recommended that parliament be provided with express concurrent legislative power over the carrying on and promotion of scientific and industrial research (1959: pp. 71–73, paras 509–533).

1956-59 Joint Committee: recommended that parliament be provided with an express power to make laws with respect to the manufacture of nuclear fuels and the generation and use of nuclear energy, and ionising radiations (1959: pp. 74–81, paras 534–585).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 662–664, paras 10.110–10.129).

1973-85 Constitutional Convention: recommended that parliament be provided with power to make laws with respect to defamation (1975: p. 172, resolution 6; 1976: p. 203, resolution 2).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 656–661, paras 10.81–10.109).

1988 Constitutional Commission: further recommended that the federal parliament be provided with express power to make laws with respect to places acquired by the Commonwealth for public purposes (1988: pp. 749–753, paras 10.545–10.563).]

52. 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.

Exclusive powers of the Parliament

[1973-85 Constitutional Convention: recommended that 'and all places acquired by the Commonwealth for public purposes' be deleted from paragraph (i) and inserted in s. 51, effecting a deferral of powers to the states from the Commonwealth (1975: p. 172, resolution 9; 1976: p. 204, resolution 5; 1985: p. 394, resolution B2J).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 749-753, paras 10.545-10.563).

1973-85 Constitutional Convention: recommended that paragraph (ii) be repealed (1985: p. 394, resolution B2K).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 357-363, paras 5.222-5.241).]

Powers of
the Houses
in respect
of
legislation

53. 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.

[1973-85 Constitutional Convention: recommended that the Constitution expressly provide that certain appropriations are not to be taken to be appropriations for ordinary annual services - public works, land, buildings, major plant and equipment, financial assistance to the states, new policy proposals and services of the Parliament (1983: p. 296, resolution 8).

1988 Constitutional Commission: recommended that ss 53 and 54 be repealed and replaced with expanded provisions that effect the removal from the Senate of the power to deny a government financial means to administer programs and policies which have been the subject of appropriations in the previous financial year or which have already been approved by legislation. A senate power of veto should however be retained for the last year of a four year term providing for the possibility of a double dissolution (1988: pp. 218-243, paras 4.475-4.590).]

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

55. 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. Tax Bill

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.

[1988 Constitutional Commission: recommended that the first paragraph be omitted (1988: pp. 218–242, paras 4.475–4.585).]

56. 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. Recommendation of money votes

[1988 Constitutional Commission: recommended that the Constitution provide expressly for the Crown's financial initiative to be exercisable by the Governor-General, only on Ministerial advice (1988: pp. 243–247, paras 4.591–4.611).]

57. 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. Disagreement between the Houses

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.

[1956-59 Joint Committee: recommended that the Constitution provide that where resolving a disagreement between the Senate and the House of Representatives, there should be a distinction between money bills and other bills, and the federal government should be provided with more than one means of resolving a deadlock (1959: pp. 19-20, paras 128-130).

1973-85 Constitutional Convention: recommended that the Constitution provide expressly for a disagreement between the Houses involving money bills (1978: p. 205, resolution 5).

1988 Constitutional Commission: recommended that s. 57 should not apply to those categories of money Bills which the Senate may not amend - appropriation and taxation bills. It also recommended other changes to remove uncertainty surrounding the operation of s. 57 as it relates to bills initiated by the House and which the Senate may amend (1988: pp. 247-262, paras 4.613-4.685).]

Royal
assent to
Bills

58. 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.

Recomm-
endations
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.

[1973-85 Constitutional Convention: recommended that the references to the Governor-General reserving bills for the Queen's assent be repealed (1983: p. 295, resolution 5(b)).

1988 Constitutional Commission: recommended that the Governor-General's power to assent to a proposed law in the Queen's name or to return it to the originating house, be exercisable only on Ministerial advice (1988: pp. 82 & 83, paras 2.167-2.172).]

Disallow-
ance by
the Queen

59. 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.

[1973-85 Constitutional Convention: recommended that s. 59 be repealed as it is never used and is out of step with reality (1975: pp. 173 & 175, resolutions 14 & 15; 1976: pp. 205 & 207, resolutions 11 & 12; 1983: p. 295, resolution 5(a)).

1988 Constitutional Commission: recommended that s. 59 be repealed because the purpose of the provision relates to circumstances of imperial surveillance which no longer exist (1988: pp. 82-83, paras 2.167 -2.172).]

60. 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.

Signific-
ation of
Queen's
pleasure
on Bills
reserved

[1988 Constitutional Commission: recommended that s. 60 be repealed because the purpose of the provision relates to circumstances of imperial surveillance which no longer exist (1988: pp. 82-83, paras 2.167-2.172).]

CHAPTER II

Chap II
The
Government

THE EXECUTIVE GOVERNMENT

61. 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.

Executive
power

62. 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.

Federal
Executive
Council

[1988 Constitutional Commission: recommended that ss 62-66 be repealed and replaced with provisions which more clearly reflect practice and convention. The Constitution should provide that most of the powers invested in the Governor-General are invested in the Governor-General in Council, or the Governor-General acting in accordance with the advice of the Prime Minister.

It also recommended that the Constitution provide that membership of the Federal Executive Council be confined to the Prime Minister, Ministers and Assistant Ministers of State for the time being.

The Commission recommended that the Constitution provide expressly for a Prime Minister to be appointed as head of the government (1988: pp. 316-337, paras 5.30-5.127).]

Provisions
referring to
Governor-
General

63. 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.

Ministers
of State

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

Ministers
to sit in
Parlia-
ment

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.

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.

[1973-85 Constitutional Convention: recommended that the early part of the third paragraph of s. 64 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).]

Number
of
Ministers

65. Until the Parliament otherwise provides, the Ministers of the 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.

[1973-85 Constitutional Convention: recommended that s. 65 be redrafted to enable parliament to determine the number of ministers (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).]

Salaries
of
Ministers

66. 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.

[1973-85 Constitutional Convention: recommended that the reference to salaries of ministers be updated (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).]

Appoint-
ment of
civil
servants

67. 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.

Command of naval and military forces

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

[1988 Constitutional Commission: recommended that the Constitution provide that the Governor-General may only exercise the powers associated with having the command in chief of the defence force in accordance with Ministerial advice (1988: pp. 346-350, paras 5.174-5.191).]

Transfer of certain departments

69. 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.

[1988 Constitutional Commission: recommended that s. 69 be repealed because it is expended (1988: pp. 357-363, paras 5.222-5.242).]

Certain powers of Governors to vest in Governor-General

70. 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.

Chap III
The
Judicature

CHAPTER III

THE JUDICATURE

71. 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.

Judges' appointment, tenure and remuneration

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.

Paragraph added by No 83, 1977, s 2

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.

Paragraph added by No 83, 1977, s 2

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.

Paragraph added by No 83, 1977, s 2

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

Paragraph added by No 83, 1977, s 2

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.

Paragraph added by No 83, 1977, s 2

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.

Paragraph added by No 83, 1977, s 2

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.

Paragraph
added by
No 83,
1977, s 2

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.

[1988 Constitutional Commission: recommended that the Constitution provide that there be a Judicial Tribunal established by parliament to determine matters of judicial misbehaviour (1988: pp. 402–406, paras 6.180–6.203). The Commission also recommended that the Constitution provide for the removal of a judge of a superior court of a state or self-governing territory (1988: pp. 407–409, paras 6.204–6.213).

It also recommended that the Constitution provide for the appointment and removal of federal magistrates (1988: pp. 409–411, paras 6.214–6.221). The Commission also recommended that the Constitution provide that the grounds and procedures for removal of members of an inferior court of a state or territory be the same as those for removal of federal magistrates (1988: pp. 411–413, paras 6.222–6.229).]

Appellate
jurisdiction
of
High
Court

73. 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.

[1973-85 Constitutional Convention: recommended that s. 73 be amended to make express provisions for High Court jurisdiction and to remove references to the 'Queen in Council' (1978: p. 204, resolution 2).

1988 Constitutional Commission: recommended that s. 74 be repealed and that s. 73 provide that decisions of the High Court shall not be subject to any appeal or prerogative appeal. The Constitution should provide that the High Court cannot be deprived by parliament of the power to grant special leave to appeal from decisions of any court in Australia. The Constitution should provide further, that the appellate jurisdiction of the High Court extends to appeals from decisions and interlocutory judgments of other courts, the Inter-State Commission - but only as to questions of law - and a Justice of the High Court (1988: pp. 385-389, paras 6.95-6.114).]

Appeal
to Queen
in
Council

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as 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 leave may be asked, but proposed laws containing any such limitations shall be reserved by the Governor-General for Her Majesty's pleasure.

[1973-85 Constitutional Convention: recommended that the reference to the Governor-General reserving bills for the Queen's assent be repealed (1983: p. 295, resolution 5(b)).]

Original
jurisdiction
of High
Court

75. 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.

[1973-85 Constitutional Convention: recommended that ss 75 and 76 be amended to expressly provide for the jurisdiction of the High Court (1978: pp. 204 & 205, resolution 2).

1988 Constitutional Commission: also recommended that ss 75 and 76 be amended, to provide that the High Court have entrenched original jurisdiction in matters involving the Constitution, matters between two or more of the Commonwealth, the States and the Territories (1988: pp. 373-382, paras 6.46-6.74).

The Commission also recommended that the High Court be provided with the power to remit matters to other courts where it thinks it appropriate (1988: pp. 390-391, paras 6.125-6.126).]

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

Additional
original
jurisdiction

- (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. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

Power to
define
jurisdiction

- (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.

[1973-85 Constitutional Convention: recommended that the Governor-General and state Governors be given the power to seek an advisory opinion on certain matters from the High Court (1978: p. 203, resolution 1; 1983: pp. 291-293, resolution 2).

1988 Constitutional Commission: similarly recommended that the Constitution invest the High Court with jurisdiction to make a declaration on certain questions of law referred to it by the Governor-General in Council or by the Governor in Council of a state or the Administrator in Council of a territory (1988: pp. 414-421, paras 6.237-6.271).

The Commission recommended that the Constitution empower state and territorial legislatures, with the consent of the federal parliament, to confer state and territorial jurisdiction respectively on federal courts (1988: pp. 371-373, paras 6.29-6.39).

It further recommended that the Constitution provide the parliament with power to invest any court of a territory with federal jurisdiction (1988: pp. 389-390, paras 6.115-6.123).

The Commission also recommended that the Constitution provide the federal parliament with power to authorise a court to request the Inter-State Commission to inquire and report on any fact relating to trade and commerce that is relevant to a matter that arises under the Constitution or involves its interpretation (1988: pp. 382-385, paras 6.75-6.94).]

Proceed-
ings
against
Common-
wealth or
State

78. 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.

[1988 Constitutional Commission: recommended that the Constitution clarify those matters in respect of which the parliament may make laws conferring rights to proceed (1988: pp. 421-425, paras 6.272-6.293).]

Number
of judges

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

Trial by
jury

80. 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.

[1973-85 Constitutional Convention: recommended that s. 80 be extended to territories equally with states where a s. 122 law applies (1975: p. 177, resolution 20; 1976: p. 209, resolution 19).

1988 Constitutional Commission: recommended that the Constitution provide for a right of trial by jury in all cases where the accused is liable to capital punishment, corporal punishment or imprisonment for two years or more, except in cases of trial for contempt of court or the trial of defence force personnel under defence law. This guarantee should apply to offences against

laws of the Commonwealth, States and Territories (1988: pp. 593–599, paras 9.703–9.746).

1973-85 Constitutional Convention: also recommended that the Constitution provide for agreements between the Commonwealth and the states for the creation, jurisdiction, financing and administration of Australian courts (1978: p. 205, resolution 6).

The Convention further recommended that the Constitution provide expressly for an integrated national court system (1983: p. 291, resolution 1).]

Chap IV
Finance
and Trade

CHAPTER IV

FINANCE AND TRADE

81. 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.

Consolid-
ated
Revenue
Fund

[1973-85 Constitutional Convention: recommended amending the Constitution to ensure that s. 81 does not prevent a territory being given control of its revenues (1975: p. 176, resolution 18; 1976: p. 208, resolution 17).

1988 Constitutional Commission: recommended that the federal parliament be provided with the power to allow the appropriation of the Consolidated Revenue Fund for any purpose that it thinks fit (1988: pp. 831–834, paras 11.296–11.315).]

82. 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.

Expendit-
ure
charged
thereon

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

Money to
be
appropri-
ated 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.

[1973-85 Constitutional Convention: recommended that the last paragraph of s.83 be omitted as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12). **1988 Constitutional Commission:** made a similar recommendation (1988: pp. 831-834, paras 11.296-11.316).]

Transfer
of
officers

84. 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.

[1973-85 Constitutional Convention: recommended that the last paragraph be deleted (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).

1988 Constitutional Commission: recommended that ss 84 and 85 be repealed because they are obsolete (1988: pp. 357-364, paras 5.222-5.244).]

Transfer
of
property
of State

85. 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.

[1973-85 Constitutional Convention: recommended that the second phrase of paragraph one be deleted as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).]

86. 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.

[1973-85 Constitutional Convention: recommended that s. 86 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).

1988 Constitutional Commission: made a similar recommendation (1988: p. 845, paras 11.373-11.374).]

87. 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 the 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.

[1973-85 Constitutional Convention: recommended that s. 87 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).

1988 Constitutional Commission: made a similar recommendation (1988: p. 845, paras 11.373–11.374).]

Uniform
duties of
customs

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

Payment
to States
before
uniform
duties

89. 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.

[1988 Constitutional Commission: recommended that s. 89 be repealed as expended (1988: p. 845, paras 11.373–11.374).]

Exclusive
power
over
customs,
excise,
and
bounties

90. 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.

[1973-85 Constitutional Convention: recommended that the second paragraph of s. 90 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).

1973-85 Constitutional Convention: also recommended that the state tax base be extended by enabling the states to impose duties of excise (1985: p. 392, resolution B2A).

Exceptions as to bounties

1988 Constitutional Commission: recommended that the Constitution provide that the states be empowered to levy excise duties, by omitting the words 'and of excise' from s. 90 (1988: pp. 820-829, paras 11.242-11.285).]

91. 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. 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.

Trade within the Commonwealth to be 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.

[1956-59 Joint Committee: recommended that state parliaments be provided with express power to impose charges, approved by the Inter-State Commission, in respect of interstate road transport (1959: pp. 150-157, paras 1136-1207).

1973-85 Constitutional Convention: recommended that the second paragraph of s. 92 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12). **1988 Constitutional Commission:** made a similar recommendation (1988: pp. 803-814, paras 11.158-11.207).

1973-85 Constitutional Convention: also recommended that in relation to state taxation s. 92 apply only to protectionist state laws (1985: p. 392, resolution B2).]

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

Payment to States for five years after uniform tariffs

- (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.

**[1973-85 Constitutional Convention: recommended that s. 93 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).
1988 Constitutional Commission: made a similar recommendation (1988: p. 845, paras 11.373-11.374).]**

Distribut-
ion of
surplus

94. 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.

Customs
duties of
Western
Australia

95. 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.

**[1973-85 Constitutional Convention: recommended that s. 95 be repealed as spent (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).
1988 Constitutional Commission: made a similar recommendation (1988: p. 845, paras 11.373-11.374).]**

Financial
assistance
to States

96. 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.

[1973-85 Constitutional Convention: recommended that parliament be provided with an express power to grant financial assistance to any local government body constituted under the law of a state or territory (1975: pp. 171-172, resolution 5).

The Convention further recommended that in relation to financial assistance, conditions not be attached to general revenue payments and that certain conditions attach to grants (1985: p. 392, resolution B2).

1988 Constitutional Commission: recommended that the reference to the transitional period of federation be deleted from s. 96 as it is expended (1988: pp. 835-838, paras 11.317-11.336).]

Audit

97. 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.

[1973-85 Constitutional Convention: recommended that s. 97 be repealed but that it be replaced by an updated provision, as this provision is the basis of power for the *Audit Act 1901* (1975: p. 175, resolution 15; 1976: p. 207, resolution 12).

1988 Constitutional Commission: recommended that s. 97 be repealed as expended and redundant (1988: p. 845, paras 11.373-11.374).]

Trade and commerce includes navigation and State railways

98. 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.

[1956-59 Joint Committee: recommended that parliament be provided with an express concurrent legislative power over navigation and shipping (1959: pp. 57-65, paras 470 & 471).]

Commonwealth not to give preference

99. 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.

[1988 Constitutional Commission: recommended that parliament be provided with the power to give preference to one state over another based on the judgement of the Inter-State Commission that to do so would be in the national interest (1988: pp. 814-817, paras 11.208-11.224).]

Nor
abridge
right to
use
water

100. 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.

Inter-
State
Commis-
sion

101. 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.

Parliament
may forbid
preferences
by State

102. 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.

Commis-
sioners'
appoint-
ment,
tenure, and
remuner-
ation

103. 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.

[1956-59 Joint Committee: recommended that in the interests of continuity of membership the appointment of Commission members be for terms of up to a maximum of seven years (1959: pp. 119 & 120, paras 866-872).]

Saving of
certain
rates

104. 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. 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.

Taking over public debts of States
Altered by No 3, 1910, s 2

105A.—(1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

Agreements with respect to State debts
Inserted by No 1, 1929, s 2

- (a) the taking over of such debts by the Commonwealth;
- (b) the management of such debts;
- (c) the paying 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 provision of section one hundred and five of this Constitution.

Chap V
The
States

CHAPTER V

THE STATES

Saving of
Constitu-
tions

106. 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.

Saving of
Power of
State
Parlia-
ments

107. 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.

[1973-85 Constitutional Convention: recommended that the Constitution expressly provide for the general immunity of the Commonwealth from state laws (1985: p. 394, resolution B2I).]

Saving of
State
laws

108. 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.

[1973-85 Constitutional Convention: recommended that the Constitution provide for an interchange of powers between the Commonwealth and the states confined to matters which are already within Commonwealth power, and the empowering of state parliaments to vest jurisdiction in matters arising under state law in federal courts (1983: pp. 297-298, resolution 15).]

109. 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. Inconsistency of laws

110. 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. Provisions referring to Governor

111. 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. States may surrender territory

[1973-85 Constitutional Convention: recommended that the Constitution expressly provide that a territory formed under s. 111 may later become a state under s. 121 (1975: p. 176, resolution 19; 1976: p. 209, resolution 18).]

112. 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. States may levy charges for inspection laws

113. 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. Intoxicating liquids

114. 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. States may not raise forces. Taxation of property of Commonwealth or State

[1973-85 Constitutional Convention: recommended that s. 114 be amended by deleting all words after 'military force'; consequential amendment to recommendation on s. 90 (1985: p. 395, resolution B2M).]

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

Commonwealth not to legislate in respect of religion

116. 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.

[1973-85 Constitutional Convention: recommended that the Constitution expressly provide that s. 116 applies in relation to mainland territories and to the laws of states (1975: p. 177, resolution 21; 1976: p. 209, resolution 20).

1988 Constitutional Commission: recommended that the Constitution provide that the guarantee of freedom of religion applies to the Commonwealth and to the States and Territories and that it extends beyond the making of laws (1988: pp. 609-617, paras 9.794-9.833).]

Rights of residents in States

117. 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.

[1973-85 Constitutional Convention: recommended that 'an Australian citizen' be substituted for 'a subject of the Queen' (1975: p. 175, resolution 15; 1976: p. 208, resolution 12).

1973-85 Constitutional Convention: further recommended that s. 117 be extended to apply to a resident of a mainland territory equally with a resident of a state (1975: p. 177, resolution 20; 1976: p. 209, resolution 19).

1988 Constitutional Commission: recommended that the protection offered by s. 117 permit a law providing for reasonable residency requirements as a condition of enrolment as an elector. It also recommended that an elector not be confined to subjects of the Queen, be extended to persons in and from territories and include persons who are permanently or temporarily resident or domiciled in a state or territory (1988: pp. 66-68, paras 2.82-2.91).]

Recognition of laws, &c. of States

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

[1973-85 Constitutional Convention: recommended that the Constitution provide expressly that mainland territories form part of the Commonwealth for the purposes of s. 118 (1975: p. 177, resolution 20; 1976: p. 209, resolution 19).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 702-707, paras 10.236-10.351).]

Protection of States from invasion and violence

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

120. 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.

Custody of offenders against laws of the Commonwealth

[1988 Constitutional Commission: recommended that local government be given express recognition in the Constitution (1988: pp. 435-443, paras 8.1-8.48).]

CHAPTER VI

Chap VI
New States

NEW STATES

121. 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.

New States may be admitted or established

[1973-85 Constitutional Convention: recommended that the Constitution provide that a territory may be constituted as a new state with a status similar to, but not more favourable than, an original state (1975: p. 176, resolution 19).

[1988 Constitutional Commission: recommended that the Constitution prescribe the entitlement of territories and new states to parliamentary representation (1988: pp. 176-191, paras 4.250-4.325).

The Commission also recommended that the Constitution provide more precise and simplified means for the creation of new states addressing the ways in which new states come into existence and the entitlement of a new state to membership of each of the Houses of Parliament (1988: pp. 429-434, paras 7.1-7.30).]

122. 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.

Government of territories

[1973-85 Constitutional Convention: recommended that parliament be provided with express power to delegate its legislative power in respect of a territory to enable any legislature established by an Act to operate autonomously including having the ability to establish an executive (1975: p. 176, resolution 18; 1976: pp. 208 & 209, resolution 17).]

Alteration
of limits
of States

123. 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.

Formation
of new
States

124. 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.

[1956-59 Joint Committee: recommended that parliament be provided with power to form a new state if a majority of electors in the area of the proposed state and a majority of electors in each affected state, vote in favour of the formation of the proposed state (1959: pp. 158-169, paras 1214-1284).

[1988 Constitutional Commission: recommended that the Constitution provide, in a new chapter, express guarantees for rights and freedoms. The provisions are to address: the extent of guarantees; remedies; limits; freedom of conscience; freedom of movement; equality of rights; no cruel or inhuman punishment; search and seizure; liberty of the person; rights of persons arrested; rights of persons charged; and no retrospective offences (1988: pp. 445-592, paras 9.1-9.700).]

Chap VII
Miscella-
neous

CHAPTER VII

MISCELLANEOUS

Seat of
Govern-
ment

125. 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.

[1973-85 Constitutional Convention: recommended that the last sentence be deleted as it is expended (1975: p. 175, resolution 15; 1976: p. 208, resolution 12).]

126. 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.

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

[1988 Constitutional Commission: recommended that the Governor-General be empowered to appoint deputies on the advice of the Prime Minister - without having to obtain the Queen's authority to do so - because this would be consistent with Australia's status as a sovereign, independent nation (1988: pp. 350-354, paras 5.192-5.206).

The Commission further recommended that the Constitution provide for a person who claims that his or her rights have been infringed by a breach of, or failure to comply with, certain constitutional provisions to have standing to seek an appropriate judicial remedy (1988: pp. 165-168, paras 4.199-4.213).]

~~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.~~

Aborigines not to be counted in reckonings 127 repealed by No 55, 1967, s 3.

CHAPTER VIII

ALTERATION OF THE CONSTITUTION

Chap VIII
Alteration of Constitution

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

Mode of altering the Constitution

Paragraph
altered by
No 84, 1977
s 2

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.

Paragraph
altered by
No 84, 1977
s 2

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.

Paragraph
altered by
No 84, 1977
s 2

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.

[1956-59 Joint Committee: recommended that the Constitution provide that a proposed law to alter the Constitution should be submitted for Royal assent if it has been approved by a majority of all the electors voting and by a majority of the electors voting in at least one-half of the number of states (1959: pp. 170-172, paras 1289-1309).

1973-85 Constitutional Convention: made a similar recommendation (1975: p. 171, resolution 3).

1988 Constitutional Commission: recommended that the Constitution provide that a proposed law to alter the Constitution will be passed if it receives an overall majority of votes in favour and in not fewer than half the states (1988: pp. 878-879, paras 13.137-13.145).

The Commission also recommended changes to the second paragraph to remove uncertainty surrounding the operation of s. 128 (1988: pp. 881-883, paras 13.159-13.169). Similarly, it recommended drafting changes to paragraph five for greater clarity (1988: pp. 885-888, paras 13.186-13.198).

It also recommended that the Governor-General in Council be required to submit a proposed law to electors (1988: pp. 883-885, paras 13.170-13.185).

The Commission recommended that a savings provision be included to clarify the effect of constitutional alterations (1988: pp. 889-893, paras 13.207-13.222).

1973-85 Constitution Convention: recommended that the states be able to initiate a constitutional amendment to be put to a referendum, in certain circumstances (1985: p. 398, resolution B9B).

1988 Constitutional Commission: made a similar recommendation (1988: pp. 851-878, paras 13.1-13.136).

1988 Constitutional Commission: recommended that the second sentence of the third paragraph of s. 128 be deleted as it is expended (1988: p. 852, para 13.1).

1988 Constitutional Commission: recommended that the Constitution provide that the federal parliament, with the consent of the parliaments of the states, be allowed to make laws for the omission of a provision, or part of a provision which has ceased to have any operation (1988: pp. 879-881, paras 13.146-13.158).]

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.*)

[1988 Constitutional Commission: recommended omitting the words '*the United Kingdom of Great Britain and Ireland*' and inserting '*Australia*' (1988: pp. 79–80, paras 2.150–2.156).]