

SUBMISSION TO THE INQUIRY INTO AN AUSTRALIAN REPUBLIC

PART II

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This document accompanies Part I of my Submission to the Inquiry into an Australian Republic.

Part II consists of a draft Constitution, which codifies the “Constitutional Council” model. Part I consists of a response to the terms of reference of the Inquiry and an explanation of the Constitutional Council model for an Australian republic.

The draft Constitution is based on the current Constitution of the Commonwealth of Australia. Amendments and comments are shown thus:

- Deleted provisions are shown as ~~struck out text~~.
- Inserted provisions are shown as **bold text**.
- Comments are shown in *orange italics*.

Where a comment indicates that a provision is "spent", this means that the provision was effective at some time in the past, but is now of no effect.

Where a comment indicates that a provision is "obsolete", this means that the provision is, in a practical sense, no longer effective.

I have taken the liberty of deleting all spent or obsolete provisions, whether or not these relate to the establishment of a republic.

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A Constitution for an Australian Republic: The Constitutional Council Model

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

THE CONSTITUTION

(63 & 63 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:

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

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

Short title

~~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.~~

~~Act to extend to the Queen's successors~~

This will become obsolete at the establishment of a republic.

~~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.~~

~~Proclamation of Commonwealth~~

Spent.

~~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.~~

~~Commencement of Act~~

Spent.

~~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, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.~~

Operation of the Constitution and laws

This has been slightly reworded and moved to s126.

~~6. "The Commonwealth" shall mean the Commonwealth of Australia as established under this Act.~~

Definitions

~~"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.~~

This has been updated and moved to s127.

~~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

~~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.~~

This has been updated and moved to s12 of Schedule II.

~~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

This has been updated and moved to s13 of Schedule II.

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

Constitution

THE CONSTITUTION OF THE COMMONWEALTH OF AUSTRALIA

This Constitution is divided as follows:-

Constitution

[Chapter I - The President](#)

[Chapter IA - 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 Government](#)

[Chapter II - The Executive Government](#)

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[Chapter III - The Judicature](#)

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- [Chapter V](#) - The States
 - [Chapter VI](#) - New States
 - [Chapter VII](#) - Miscellaneous
 - [Chapter VIII](#) - Alteration of the Constitution
 - ~~The Schedule~~
 - [Schedule I](#) - Oaths and Affirmations
 - [Schedule II](#) - Transitional and Temporary Provisions
-

Chapter I - The President

See also Chapter IIA - The Constitutional Council. This explains, amongst other things, the way in which a President or other member of the Constitutional Council may be removed from office.

1. The President of the Commonwealth of Australia, herein-after called "The President," shall be the Head of State of Australia. The President

With the exception of powers or functions vested in the President by this Constitution, any power or function vested by any law, rule, decree or order in the President shall, unless otherwise provided, be exercised or performed only in accordance with the advice of the Federal Executive Council.

The Vice-President of Australia, herein-after called "The Vice-President," shall be the deputy of the President. The Vice-President

The Vice-President has no role apart from deputising for the President.

2. The Parliament of the Commonwealth may make laws prescribing the method of choosing the President and the Vice-President at each Presidential election following the declaration of the election of a new Constitutional Council, provided that only one of the following methods shall be prescribed: Election of the President and the Vice-President

(i) The new Constitutional Council shall, before proceeding to the dispatch of any other business, choose one of its full members to be the President and one of its full members to be the Vice-President. In so choosing the President and Vice-President, the full members of the Constitutional Council shall vote by secret ballot, and the method of voting shall be optional preferential.

(ii) The votes to fill the vacant places of full members of the Constitutional Council shall continue to be counted as though the election were conducted in order to fill two vacant places. The candidate obtaining the highest vote is thereby designated as the next President, and the candidate obtaining the second highest vote is thereby designated as the next Vice-President.

But in the absence of such provision, sub-section (i) shall apply.

If the office of President falls vacant, the Vice-President shall be designated as President, and until the Vice-President is inducted as President, he shall act as President.

At all other times, as often as the office of President or Vice-President becomes vacant the Constitutional Council shall, before proceeding to the dispatch of any other business, choose one of its full members to be the President and one of its full members to be the Vice-President. In so choosing the President and Vice-President, the full members of the Constitutional Council shall vote by secret

ballot, and the method of voting shall be optional preferential.

This empowers the Parliament to decide whether the President is directly (i.e., sub-section(i)) or indirectly (i.e., sub-section(ii)) popularly elected.

2A. The President or the Vice-President shall cease to hold his office if he ceases to be a member of the Constitutional Council.

If the Constitutional Council is dissolved, the term of the President and Vice-President ends.

Term of service of President and Vice-President

But unless a President (or a Vice-President) dies, resigns or is removed from office in accordance with this Constitution, notwithstanding the expiration of his term of service, the President (or the Vice-President) shall continue in office until his successor enters upon the office.

A person may not serve as President or as Vice-President for more than twelve years and six months cumulatively.

This prevents a person holding the office of President or Vice-President for an unacceptably long period of time.

The President and the Vice-President shall, as soon as practicable upon entering upon the office, make and subscribe an oath or affirmation of office as "President of Australia" and "Vice-President of Australia" respectively in the form set forth in Schedule I to this Constitution. The oath or affirmation shall be made and subscribed before the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, such officer as the Speaker shall, by Proclamation or otherwise, appoint.

President and Vice-President to make oath or affirmation of office

2B. Subject to section 2A, the President (or the Vice-President) shall not be removed from the office of President (or Vice-President) except by a resolution to that effect in both Houses of the Parliament in the same session affirmed by two thirds of the total number of the members of each of those Houses, providing for such removal on the ground of proved misbehaviour or incapacity.

Removal of President or Vice-President

The President may resign or stand aside from the office of President by writing addressed to the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth to such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, to such officer as the President shall appoint. Such act shall take effect at the time specified therein.

Resignation or standing aside of President or Vice-President

The Vice-President may resign or stand aside from the office of Vice-President by writing addressed to the President, or if there is no President or if the President is absent from the Commonwealth the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth to such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, to such officer as the President shall appoint. Such act shall take effect at the time specified therein.

3. If the office of President falls vacant and there is no Vice-President, or if no President has been chosen, or if the President is temporarily incapacitated, one of the persons herein-after specified, in order of precedence, shall thereupon act as President until a new President is chosen or until the President resumes his duties,

Acting President

as the case may be:

- (i) The Vice-President.
- (ii) Such full members of the Constitutional Council in such order of precedence as the Constitutional Council may prescribe.
- (iii) The President of the Senate.
- (iv) The Chairman of the House of Representatives.
- (v) Such officers in such order of precedence as the Speaker may, by Proclamation or otherwise, appoint.

Where there is no such person, or where such person is absent from the Commonwealth or is temporarily incapacitated, the person next in order of precedence shall act as President.

This takes measures to ensure that someone is always identified and available to act as President, thereby avoiding a "constitutional vacuum".

The President shall be deemed to be temporarily incapacitated upon declaration of the same by the President, or upon declaration of the same by the Speaker and the Constitutional Council. If the President stands aside from office the provisions of this Constitution relating to temporary incapacity of the President shall apply *mutatis mutandis*.

This clearly defines the conditions under which a President is temporarily incapacitated. If the President stands aside, the same conditions as temporary incapacity apply.

3A. An Acting President shall cease to act as President upon declaration of the same by the President, or when a successor to the President has entered upon the office, or upon resignation or removal from office in like manner as the President.

Term of service of Acting President

If within four days of such declaration the Speaker and the Constitutional Council declare that the President is temporarily incapacitated the Parliament shall meet not later than two days thereafter to decide the issue. Not later than twenty-one days after such declaration the Parliament may declare by a resolution to that effect in both Houses of the Parliament in the same session affirmed by two thirds of the total number of the members of each of those Houses that the President is temporarily incapacitated, but if a House rejects or fails to pass the resolution, or in the absence of a resolution, the President shall be deemed not to be temporarily incapacitated.

This ensures that a President cannot be unjustly prevented from resuming his/her duties.

A person acting as President shall not exercise a power or function of the President unless he has in respect of that term of service as Acting President made and subscribed, in like manner as the President, an oath or affirmation of office for the office of Acting President in the form set forth in Schedule I to this Constitution.

Acting President to make oath of affirmation of office

The provisions of this Constitution relating to the President, other than section 2, extend and apply to an Acting President.

Provisions relating to President to extend to Acting President

Chapter IA - The Parliament

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."~~ Legislative power
This has simply been renumbered as s4.

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.~~ Governor-General
This will become obsolete at the establishment of a republic.

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.~~ Salary of Governor-General

~~The salary of a Governor General shall not be altered during his continuance in office.~~
This will become obsolete at the establishment of a republic.

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 Legislative power
This will become obsolete at the establishment of a republic.

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of a Senate and a House of Representatives, and which is herein-after called "The Parliament," or "The Parliament of the Commonwealth."

5. ~~The Governor General Speaker (subject to the advice of the Federal Executive Council) may, by Proclamation or otherwise, appoint such times for holding the sessions of the Parliament (including joint sittings of the members of the Senate and of the House of Representatives) as he thinks fit, and may also from time to time, by Proclamation or otherwise, in like manner prorogue the Parliament.~~ Sessions of Parliament, prorogation and dissolution

The original provision gives the Governor-General nominal discretion to act, though by convention, this is always exercised on advice. This model gives "qualified discretionary power" to the Speaker (see s126C for a definition of a qualified discretionary power, read in conjunction with s126A) to determine the sitting times of the Parliament. Convention dictates that under normal circumstances the Speaker would not act alone but would accept advice from the Federal Executive Council; however, under exceptional circumstances (such as the Federal Executive Council unreasonably refusing to advise that Parliament be convened) the Speaker might decide to act according to his discretion.

and Subject to this Constitution, the Speaker may in like manner, by Proclamation or otherwise, dissolve the House of Representatives.

This gives power to the Speaker to dissolve the House of Representatives in certain circumstances as described in s28, s57 and s63B.

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

Spent.

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.

The Senate

~~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.~~

Spent.

~~Until~~ **Unless** 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.

Using the word "unless" instead of "until" enables the provision to revive if, for some unlikely reason, all laws overriding this provision were repealed.

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~~ **President**.

This is a ceremonial role for the President. One might question whether Governors should continue to have a role here as the office of Governor might well become politicised in some States, particularly if Governors are directly elected.

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.

Qualification of electors

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 for 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

Spent.

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

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

Rotation of senators

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

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

14. 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.

Further provision for rotation

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.

Casual vacancies

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was so chosen, he was publicly recognised 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, 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 particular political party is chosen or appointed to hold the place of a senator whose place has 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 21](#) of this Constitution.

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

This is a ceremonial role for the President. See my comments in s7 regarding the role

of the Governor.

~~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 has become vacant after that commencement.~~

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

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

~~If, at or before the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977*, a law to alter the Constitution entitled "*Constitution Alteration (Simultaneous Elections) 1977*" came into operation, a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of a 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 come 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.~~

Spent.

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

Qualifications of senator

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 President of the Senate becomes vacant the Senate shall again choose a senator to be the President of the Senate.

Election of President of the Senate

The addition of the words "of the Senate" after the word "President" here and in the following few sections up to s23 merely clarifies that we are talking about the President of the Senate and not the President of Australia.

The President of the Senate 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 to the ~~Governor-General~~ President.

This is a ceremonial role for the President.

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

Absence of President of the Senate

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

Resignation of senator

This is a ceremonial role for the President.

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

Vacancy to be notified

This is a ceremonial role for the President. See my comments in s7 regarding the role of the Governor.

22. ~~Until~~ Unless 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

See my comments in s7 regarding use of the word "unless".

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

Voting in the Senate

Part III - The 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 senators.

Composition of House of Representatives

The number of members chosen in the several States shall be in proportion to the respective number of their people, and shall, until the Parliament otherwise provides, be determined, wherever 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 senators:

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

chosen in the State.

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

~~25. 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 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.~~

Provision as to races disqualified from voting

Obsolete.

~~26. Notwithstanding anything in section 24, 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: nine;~~

~~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.~~

Spent.

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

Alteration of number of members

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but ~~may~~ **shall** be sooner dissolved by the ~~Governor-General~~ **Speaker when so advised by the Prime Minister.**

Duration of House of Representatives

This gives discretionary power to the Prime Minister (through binding advice to the Speaker) to dissolve the House of Representatives. This should be read in conjunction with s5, s57 and s63B.

However, the Speaker may, according to his discretion, but subject to the review of the Constitutional Council, refuse to dissolve the House of Representatives on the advice of the Prime Minister when a Prime Minister has lost the confidence of the House of Representatives or has not yet obtained it.

Refusal to dissolve the House of Representatives

This is a codification of a reserve power currently exercisable by the Governor-General to refuse to dissolve the House of Representatives on the advice of the Prime Minister. In this model it is exercisable by the Speaker.

~~29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State~~ *[Spent.]* **The Parliament** 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.

Electoral divisions

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

~~30. Until the Parliament otherwise provides,~~ *[Spent.]* **The Parliament may make laws relating to the qualification of electors of members of the House of Representatives, but in the absence of such provision,** the qualification of electors of members of the House of Representatives shall be in each State that which is

Qualification of electors

prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State. ~~;- but in~~

In the choosing of members of the House of Representatives each elector shall vote only once.

~~31. Until the otherwise provides, but subject to this Constitution, the laws in force in each State for the time being [Spent.] The Parliament may make laws 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.~~

Application of State laws
Method of election of members

~~32. The Governor-General in Council Speaker may cause writs to be issued for general elections of members of the House of Representatives.~~

Writs for general election

~~After the first general election, the writs~~ **Writs** shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof. *This assigns the task of issuing writs to the Speaker alone. As a time limit is stipulated here within which action is required, any discretion, if exercised, is limited.*

~~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 President may issue the writ.~~
This is a duty which the Speaker is required to carry out, but in the absence of a Speaker the President may do so. The Executive Government should have no formal part in ensuring that vacant seats are filled.

Writs for vacancies

~~34. Until the Parliament otherwise provides, the~~ **The qualifications of a member of the House of Representatives shall be as follows:-**

Qualifications of members

(i) He must be of the full age of eighteen 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 naturalised 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 an Australian citizen:

(iii) Such other reasonable limits as the Parliament may prescribe as can be demonstrably justified in a free and democratic society.
C.f. the s1 of the Canadian Charter of Rights and Freedoms: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Although the Parliament has already provided otherwise in accordance with the original provision of "Until the Parliament otherwise provides", the amended provisions here set certain minimum criteria whilst preventing the Parliament from prescribing unreasonable limits.

~~35. The House of Representatives shall, before proceeding to the dispatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.~~

The Speaker

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.

The Speaker shall preside over the House of Representatives, and shall have and may exercise such powers and functions as are assigned to him by this Constitution.

This defines the role of the Speaker. The House of Representatives no longer chooses one of its own to be Speaker; see the s35A - s40. Cf, s1.

35A. Nominations of candidates for the office of Speaker may be made, jointly or severally, by the incumbent or any past Speaker, by the incumbent or any past Prime Minister, by the Leader of the Opposition, or by any five members of the Commonwealth Parliament. Any number of candidates may be nominated.

Nomination of the Speaker

Nominations shall close twenty-eight days prior to the expiration of the term of service of the incumbent Speaker, or twenty-eight days following an announcement of the intended resignation of the Speaker or a vacancy occurring in the office of Speaker, whichever first happens. If, at the close of nominations, no candidates have been nominated, the Constitutional Council may nominate such candidates as it thinks fit.

Although members of the House of Representatives no longer chooses one of its own to be Speaker, its members can still nominate candidates to the office. In recognition of the fact that the Speaker may exercise certain powers in respect of the Senate, senators too may nominate candidates to the office. Cf. 70B.

35B. As soon as practicable following the fourteenth day after the close of nominations for the office of Speaker, the Constitutional Council shall convene to choose one candidate from amongst those nominated to be designated as the next Speaker.

Designation of the Speaker

When more than two candidates have been nominated for the office of Speaker, the Constitutional Council shall, by secret ballot, assign between one and five votes to each candidate, and the total of all votes for each candidate shall be calculated. The name of the candidate (or in the case of equality of votes, candidates) having the smallest number of votes shall be excluded from subsequent ballots, and a fresh ballot shall take place; but if by reason of equality of votes less than two candidates would remain on the ballot following such exclusion, another ballot shall be taken. This shall be done as often as necessary, until two candidates remain on the ballot.

When only two candidates remain on the ballot, or when only two candidates have been nominated for the office of Speaker, the Constitutional Council shall, by secret ballot, elect one candidate, and the candidate so elected is thereby designated as the next Speaker; but if by reason of equality of votes the ballot is rendered inconclusive, a second ballot shall be taken. If by reason of equality of votes such second ballot is also rendered inconclusive, the President shall exercise his casting vote.

When only one candidate remains on the ballot, or when only one candidate has been nominated for the office of Speaker, that candidate is thereby designated as the next Speaker.

It is the job of the Constitutional Council to choose one of the candidates to be the Speaker. The method of election ensures that the candidate which most members of the Constitutional Council prefer is elected.

35C. Subject to this Constitution, the Parliament may make laws with respect to

Laws relating to nomination,

the conduct of the nomination, designation and induction of the Speaker, including the resolution of disputes in regard thereto. But any question respecting the qualification of the Speaker, or respecting a vacancy in the office of Speaker, and any question of a disputed designation of a Speaker, shall be determined by the High Court, sitting as the Court of Disputed Returns.

"Induction" means swearing in.

designation and induction of Speaker

The qualifications of the Speaker shall be the same as those of a member of the House of Representatives from time to time, except that a person who is or becomes a full member of the Constitutional Council, or a member of the Commonwealth Parliament, or a State Parliament, or a Territory legislature, or who is or becomes a member of a political party, shall be incapable of being inducted as Speaker, or of holding the office of Speaker.

This means that an MP, or a member of a political party, may be nominated as Speaker and chosen by the Constitutional Council; however, he/she must then resign this membership before being inducted.

Qualifications of Speaker

The actions of a person otherwise duly inducted as Speaker under this section are not invalidated only because the person was not qualified to be nominated as a candidate for the office of Speaker, or of being designated as Speaker, or of holding the office of Speaker.

Actions of Speaker not invalidated

35D. The Speaker-designate shall enter upon the office of Speaker upon the expiration of the term of service of the incumbent Speaker. But if, when a person is designated as Speaker, the office of Speaker is vacant or the term of service of the outgoing Speaker has expired, the Speaker-designate shall enter upon the office of Speaker on the day after making and subscribing the oath or affirmation of office.

Term of service of Speaker

The Speaker shall continue in office until the expiration of five years from the date on which he enters upon that office, unless before the expiration of that term of service he dies, resigns or is removed from office in accordance with this Constitution.

But unless a Speaker dies, resigns or is removed from office in accordance with this Constitution, notwithstanding the expiration of his term of service, the Speaker shall continue in office until his successor enters upon the office.

A person may serve more than one term of service as Speaker.

The Speaker has a fixed term of service which is not tied to terms of the House of Representatives. This will tend to enhance the independence of the office of Speaker.

The Speaker-designate shall not enter upon the office of Speaker unless he has made and subscribed an oath or affirmation of office in the form set forth in Schedule 1 to this Constitution. The oath or affirmation shall be made and subscribed before the President, or if there is no President or if the President is absent from the Commonwealth the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, such officer as the incumbent Speaker shall, by Proclamation or otherwise, appoint.

Speaker to make oath or affirmation of office

The Speaker shall receive such remuneration, payable out of the Consolidated Revenue Fund, as the Parliament fixes.

Remuneration of Speaker

The remuneration of a Speaker shall not be altered during his continuance in

office; and no such person shall be entitled to receive any remuneration from the Commonwealth in respect of any other office during his continuance in office.
C.f. original s3. This is similar to the arrangement which applies to the Governor-General. This will tend to enhance the independence of the office of Speaker.

35E. The Speaker shall not be removed except by the Constitutional Council, on an address from the House of Representatives, praying for such removal on the ground of proved misbehaviour or incapacity. Within four days of such address the Constitutional Council may remove the Speaker from office, but following the fourth day thereafter the address shall be of no effect.
The Constitutional Council exercises discretion not only in the appointment of the Speaker but also in the removal of the Speaker. However, this removal must be initiated by the House of Representatives.

Removal of Speaker

At any sitting of the House of Representatives, while any motion for an address praying for the removal of the Speaker is under consideration, the Speaker shall not preside, though he may otherwise take part in the proceedings of the House. Upon such address having been made, the Speaker shall be deemed to be temporarily incapacitated until the Constitutional Council has voted to decide the issue, or until the expiration of four days from the said address, whichever first happens. During such period of temporary incapacity, the Acting Speaker shall preside over the House of Representatives, and the President may, with the consent of the Constitutional Council, exercise any other power of the Speaker.
This prevents a "Mexican stand-off" when an action to dismiss a Speaker is pending. During this time the President exercises the powers of the Speaker, with the Acting Speaker presiding over the House of Representatives.

The Speaker may resign or stand aside from his office by writing addressed to the President, or if there is no President or if the President is absent from the Commonwealth the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth to such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, to such officer as the President shall appoint. Such act shall take effect at the time specified therein.

Resignation or standing aside of Speaker

35F. The Speaker may, with the consent of the Constitutional Council, appoint any person, or any persons jointly or severally, to be his deputy or deputies, and in that capacity to exercise during the pleasure of the Speaker (including while the Speaker is absent from Australia) such powers and functions of the Speaker as the Speaker thinks fit to assign to such deputy or deputies subject to any limitations expressed or directions given by him; but the appointment of such deputy or deputies shall not affect the exercise by the Speaker himself (including while the Speaker is absent from Australia) of any power or function of the Speaker.
This is similar to the Governor-General's power under s 126 in the current Constitution.

Deputies of the Speaker

Subject to this Constitution, a deputy of the Speaker shall not exercise a power or function of the Speaker on any occasion:

- (i) except in accordance with the instrument of appointment;
- (ii) except at the request of the Speaker that he exercise that power or function on that occasion;
- (iii) unless since being appointed a deputy of the Speaker he has made and subscribed, in like manner as the Speaker, an oath or affirmation of office for the office of deputy of the Speaker in the form set forth in

Limitations on powers of deputies of the Speaker. Deputies of the Speaker to make oath or affirmation of allegiance and oath or affirmation of office

Schedule I to this Constitution.

This is based on the Letters Patent that apply to the Governor-General.

35G. If the office of Speaker falls vacant, or if no Speaker has been chosen, or if the Speaker is temporarily incapacitated, one of the following persons, in order of precedence, shall thereupon act as Speaker:

Acting Speaker

(i) Such deputies of the Speaker in such order of precedence as the Speaker may prescribe for the purpose.

(ii) Such officers in such order of precedence as the Constitutional Council may prescribe for the purpose.

(iii) The Chairman of the House of Representatives.

(iv) Such officers in such order of precedence as the Speaker may, by Proclamation or otherwise, appoint for the purpose.

(v) Such officers in such order of precedence as the Parliament may prescribe for the purpose.

Where there is no such person, or where such person is absent from the Commonwealth or has been removed from the office of Acting Speaker, the person next in order of precedence shall act as Speaker.

This takes measures to ensure that someone is always identified and available to act as Speaker, thereby avoiding a "constitutional vacuum". C.f. s3.

The Speaker shall be deemed to be temporarily incapacitated upon declaration of the same by the Speaker, or upon declaration of the same by the Constitutional Council. If the Speaker stands aside from office the provisions of this Constitution relating to temporary incapacity of the Speaker shall apply *mutatis mutandis*.

This clearly defines the conditions under which a Speaker is temporarily incapacitated. C.f. s3.

35H. An Acting Speaker shall cease to act as Speaker upon declaration of the same by the Speaker, or when a successor to the Speaker has entered upon the office, or upon resignation or removal from office in like manner as the Speaker.

Term of service
of Acting
Speaker

If within four days of such declaration the Constitutional Council declares that the Speaker is temporarily incapacitated the House of Representatives shall meet not later than two days thereafter to decide the issue. Not later than twenty-one days after such declaration the House of Representatives may declare by a resolution to that effect affirmed by two thirds of the total number of the members that the Speaker is temporarily incapacitated, but if the House of Representatives rejects or fails to pass the resolution, or in the absence of a resolution, the Speaker shall be deemed not to be temporarily incapacitated.

This ensures that a Speaker cannot be unjustly prevented from resuming his/her duties. C.f. s3A.

A person acting as Speaker shall not exercise a power or function of the Speaker unless he has in respect of that term of service as Acting Speaker made and subscribed, in like manner as the Speaker, an oath or affirmation of office for the office of Acting Speaker in the form set forth in Schedule I to this Constitution.

Acting Speaker
to make oath of
affirmation of
office

The provisions of this Constitution relating to the Speaker, other than sections

Provisions
relating to

35A and 35B, extend and apply to an Acting Speaker.

Speaker to extend to Acting Speaker

36. Before or during any absence of the Speaker ~~or a deputy of the Speaker~~, the House may choose a person to ~~perform his duties~~ **be the Chairman of the House of Representatives to preside over the House** in his absence. **Before or during any absence of the Chairman, the House may choose a person to perform his duties in his absence.**

Absence of Speaker
Chairman of the House of Representatives

The Chairman may be removed from office by the Speaker, or by a vote of the House, or he may resign his office or his seat by writing addressed to the Speaker.
Recognising that the Speaker (or Acting Speaker) or a deputy of the Speaker might not be able to attend sittings of the House of Representatives, this section enables the House to choose a “Chairman” (or “Chancellor”) to preside over the House in the same way as the Speaker. However, the powers and functions of the Chairman do not extend beyond that of presiding over the House to other constitutional powers and functions of the Speaker. The title “Chancellor” is based on the title of the Speaker of the UK House of Lords, “Lord Chancellor”, and might be more desirable for a number of reasons; e.g., it is non-gender specific, it relates back to the “mother” Parliament, and “Chairman of the House of Representatives” could be confused with “Chairman of Committees”.

37. A member may by writing addressed to the Speaker, or to the ~~Governor-General~~ **President** if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.
This is a ceremonial role for the President.

Resignation of member

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

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.

Quorum

40. The Speaker shall not be entitled to vote in questions arising in the House. Questions arising in the House of Representatives shall be determined by a majority of votes ~~other than that of the Speaker. The Speaker~~ **whilst the Speaker or a Deputy of the Speaker is presiding, and by a majority of votes other than that of the Chairman of the House of Representatives when the Chairman is presiding. Whenever presiding, the Chairman of the House of Representatives shall not vote unless the numbers are equal, and then he shall have a casting vote.**
The Speaker should never be able to vote in the House - this enhances the independence of the office. The Chairman, when presiding, should only exercise a casting vote.

Voting in the House of Representatives

Part IV - Both Houses of the Parliament

41. No ~~adult~~ **person of the full age of eighteen years** 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.
Removes any possibility of inconsistency from the definition of adult. (This amendment is unrelated to the establishment of a republic.)

Right of electors of States

Oath or

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

affirmation of allegiance

This is a ceremonial role for the President.

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

Member of one House ineligible for other

44. Any person who –

Disqualification

(i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

(ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii) Is an undischarged bankrupt or insolvent: or

(iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

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

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

But 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.

Obsolete references removed.

45. If a senator or member of the House of Representatives –

Vacancy on happening of disqualification

(i) Becomes subject to any of the disabilities mentioned in the last preceding section: or

(ii) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

(iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

46. ~~Until~~ **Unless** 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

Penalty for sitting when disqualified

Representatives shall, for every day on which he so sits, be liable to pay the sum of ~~one hundred pounds~~ **two hundred dollars** to any person who sues for it in any court of competent jurisdiction.

See my comments in s7 regarding use of the word "unless".

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

Disputed elections

See my comments in s7 regarding use of the word "unless".

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

Allowance to members

See my comments in s7 regarding use of the word "unless".

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 etc. of Houses

Spent references removed.

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

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:

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

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

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

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

(vi) The ~~naval and~~ military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:

Obsolete references removed.

- (vii)** Lighthouses, lightships, beacons and buoys:
- (viii)** Astronomical and meteorological observations:
- (ix)** Quarantine:
- (x)** Fisheries in Australian waters beyond territorial limits:
- (xi)** Census and statistics:
- (xii)** Currency, coinage, and legal tender:
- (xiii)** Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
- (xiv)** Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:
- (xv)** Weights and measures:
- (xvi)** Bills of exchange and promissory notes:
- (xvii)** Bankruptcy and insolvency:
- (xviii)** Copyrights, patents of inventions and designs, and trade marks:
- (xix)** Naturalisation and aliens:
- (xx)** Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
- (xxi)** Marriage:
- (xxii)** Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:
- (xxiii)** Invalid and old-age pensions:
- (xxiiiA)** The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances:
- (xxiv)** The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
- (xxv)** The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:
- (xxvi)** The people of any race for whom it is deemed necessary to make special laws:
- (xxvii)** Immigration and emigration:

(xxix) The influx of criminals:

(xxx) The relations of the Commonwealth with the islands of the Pacific:

(xxxii) 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:

(xxxiii) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:

(xxxiv) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:

(xxxv) Railway construction and extension in any State with the consent of that State:

(xxxvi) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:

(xxxvii) Matters in respect of which this Constitution makes provision until **or unless** the Parliament otherwise provides:

See my comments in s7 regarding use of the word "unless".

(xxxviii) Matters referred to the Parliament of the Commonwealth by the 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:

(xxxix) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all States directly concerned, of any power **not otherwise vested by this Constitution in the Commonwealth, except such powers the exercise of which is prohibited by** ~~which can at the establishment of this Constitution can be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:~~

The effect of "any power not otherwise vested by this Constitution in the Commonwealth, except such powers the exercise of which is prohibited by this Constitution" is functionally equivalent to the effect 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"; i.e., powers which are neither vested in the States or in the Commonwealth. See also s20 in Schedule II.

(xl) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in any department or officer of the Commonwealth.

(xl) The execution of any power vested by this Constitution in any Principal Officer of the Commonwealth, or in the Federal Judicature, or in the Government of the Commonwealth, or in any authority or person exercising the executive power of the Commonwealth.

States unambiguously certain undisputed legislative powers.

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-

Exclusive powers of the Parliament

(i) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

(ii) Matters relating to **any officer, organ or authority established by or under this Constitution, or to any department of the public service, including those the control of which is by this Constitution are transferred to the Executive Government of the Commonwealth:**

(iii) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

52A. 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.

Prohibition to legislate in respect of religion

Moved from s166.

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 provision for the imposition or appropriation of fines or other pecuniary penalties, or for the demand for payment or appropriation of fees for licences, or fees for services under the proposed law.

Powers of the Houses in respect of legislation

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

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

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

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

54. 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.

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~~ **Speaker (subject to the advice of the Federal Executive Council)** to the House in which the proposal originated.

Recommendation of money votes

The original provision gives the Governor-General nominal discretion to act, though by convention, this is always exercised on advice. This model gives "qualified discretionary power" to the Speaker (see s126C for a definition of a qualified discretionary power, read in conjunction with s126A) to recommend appropriation. Convention dictates that under normal circumstances the Speaker

would not act alone but would accept advice from the Federal Executive Council; however, under exceptional circumstances (such as the Federal Executive Council unreasonably refusing to fund an election) the Speaker might decide to act according to his discretion.

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~~ **Speaker, acting in accordance with the advice of the Federal Executive Council**, 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.

This is the power to call a double dissolution.

However, the Speaker may, according to his discretion, but subject to the review of the Constitutional Council, refuse to dissolve the Senate and the House of Representatives simultaneously.

This is a codification of a reserve power currently exercisable by the Governor-General to refuse to call a double dissolution. In this model it is exercisable by the Speaker.

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~~ **Speaker (subject to the advice of the Federal Executive Council)** may convene a joint sitting of the members of the Senate and of the House of Representatives.

The original provision gives the Governor-General nominal discretion to act, though by convention, this is always exercised on advice. This model gives "qualified discretionary power" to the Speaker (see s126C for a definition of a qualified discretionary power, read in conjunction with s126A) to convene a joint sitting. Convention dictates that under normal circumstances the Speaker would not act alone but would accept advice from the Federal Executive Council; however, under exceptional circumstances (such as the Federal Executive Council ignoring the clear will of the Parliament) the Speaker might decide to act according to his discretion.

This provision should be read in conjunction with s5, s28 and s63B.

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~~ **President** for the ~~Queen's~~ assent.

58. When a proposed law passed by both Houses of the Parliament is presented to the ~~Governor-General~~ **President** 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~~ **to it**, or that he withholds assent, ~~or that he reserves the law for the Queen's pleasure.~~

If the President withholds assent, the bill "lies on the table" without being returned to

Disagreement between the Houses

Refusal to dissolve the Senate and the House of Representatives simultaneously

Joint sitting

Assent to Bills

the Parliament, in which case the bill becomes law in 10 days as though it were assented to in accordance with s59. This enables the President to indicate his opposition to a bill in a symbolic manner.

The ~~Governor-General~~ **President** may, **with the consent of the Constitutional Council**, 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.

Recommendations
by ~~Governor-General~~
President

If after having been thus returned both Houses of the Parliament, in the same or the next session, again pass the proposed law without any amendments the proposed law shall again be presented to the President for assent; but a proposed law thus presented may not be returned.

If the President returns the bill to the Parliament, but if the bill is again passed without amendments, the first paragraph of this section again applies, except that the President may not return the bill a second time; i.e., he may either assent to the bill or withhold assent.

This power enables the President to involve himself in a political process, but while the power itself is not only weak but also dependent on the consent of the Constitutional Council, its symbolism, when exercised judiciously, could be strong.

~~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 House of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is made known.~~

Bills not assented
to

Obsolete.

If within ten days after having been presented to the President for assent a proposed law has not been assented to nor been returned, the same shall be deemed to have been assented to, unless the House in which it originated by its adjournment has prevented its return, in which case the House shall deal with the proposed law when it next sits.

See my comments in s58.

~~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.~~

Signification of
Queen's pleasure
on Bills reserved

Obsolete.

Chapter II - The Executive Government

60. The Federal Executive Council shall administer the Government of the Commonwealth, and shall have and may exercise in the Commonwealth such powers and functions as are assigned to it by this Constitution and by law.

Federal
Executive
Council

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

Executive
Power of the
Commonwealth

The powers, functions, rights, privileges, immunities and prerogatives of the Crown in right of the Commonwealth shall be enjoyed by the Federal Executive

Council, or by the Commonwealth, as the case may be, subject to this Constitution and to such regulations as the Parliament prescribes.

~~62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the~~ **The members of the Federal Executive Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure: the Ministers of State for the time being, who shall each make the oath or affirmation prescribed by the Parliament.**

Members of the Federal Executive Council

The Prime Minister or a Vice-President of the Federal Executive Council so authorised by him may convene meetings of the Federal Executive Council.

Unless the Parliament otherwise provides, the presence of at least three members of the Federal Executive Council, including either the Prime Minister or the Vice-President of the Federal Executive Council, shall be necessary to constitute a meeting of the Federal Executive Council.

~~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.~~

Provisions referring to Governor-General/The Prime Minister

A Prime Minister shall be the chief Minister of State and the Head of Government of the Commonwealth, and shall be the President of the Federal Executive Council.

Not later than ten days after the day appointed for the return of the writs after any general election, or not later than ten days after the office of Prime Minister becomes vacant, the Speaker shall, according to his discretion, but subject to the review of the Constitutional Council, appoint as Prime Minister that person whom he believes would be most likely to command the confidence of the House of Representatives.

Speaker to appoint Prime Minister

This is a codification of the reserve power currently exercisable by the Governor-General to appoint a Prime Minister. In this model it is exercisable by the Speaker.

But if the House of Representatives declares that another person commands the confidence of the House of Representatives, the Speaker shall appoint that person to be Prime Minister.

Prime Minister to command confidence of the House of Representatives

The Prime Minister shall continue in office, subject to this Constitution, until he dies, resigns, or is removed from office by the Speaker in accordance with this Constitution.

Term of service of Prime Minister

The person who leads the party or coalition of parties which occupies the greatest number of seats in the House of Representatives, excluding the party or coalition of parties which the Prime Minister leads or of which he is a member, shall be known as the Leader of the Opposition.

The Leader of the Opposition

63A. The Speaker may, according to his discretion, but subject to the review of the Constitutional Council, remove from office a Prime Minister who has lost the confidence of the House of Representatives and has failed to resign, unless the Prime Minister has advised the Speaker to dissolve the House of Representatives, and the Speaker has accepted that advice.

Removal of Prime Minister on loss of confidence

This is a codification of the reserve power currently exercisable by the Governor-General to dismiss a Prime Minister. In this model it is exercisable by the Speaker.

63B. If the Speaker believes that the Executive Government of the

Removal of Prime Minister

Commonwealth is breaching this Constitution, or is not complying with an order of a court, or is persisting in other unlawful behaviour, the Speaker may, according to his discretion, but subject to the review of the Constitutional Council, dissolve the House of Representatives or dissolve the House of Representatives and remove the Prime Minister from office. In the event of the Prime Minister being so removed from office, the Speaker may, according to his discretion, appoint as Prime Minister such other person whom the Speaker believes will take all reasonable steps to end the contravention and who will maintain the administration of the Commonwealth pending the outcome of the general election following such dissolution.

if Executive Government behaving unlawfully

This is a codification of the reserve power currently exercisable by the Governor-General to force a dissolution of the House of Representatives, to dismiss a Prime Minister and to appoint a caretaker Prime Minister. In this model it is exercisable by the Speaker.

~~64. The Governor-General~~ **The Prime Minister may appoint and remove from office Ministers of State, and may appoint officers such Ministers of State to administer such departments of State of the Commonwealth as the Governor-General in Federal Executive Council may establish, or to be the Vice-President of the Federal Executive Council.**

Ministers of State

~~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.~~

By convention the Governor-General always accepts the advice of the Prime Minister regarding this. This amendment formalises the convention by vesting the power in the Prime Minister rather than in the Speaker acting with the advice of the Prime Minister, as the Speaker's involvement would be redundant.

~~After the first general election no~~ *[Spent.]* **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.**

Ministers to sit in Parliament

~~65. Until the Parliament otherwise provides, the~~ *[Spent.]* **The Ministers of State shall not exceed seven in number, and** *[Spent.]* **shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General Prime Minister directs.**

Number of Offices held by Ministers of State

See my comments in s64.

~~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.~~

Salaries Remuneration of Ministers

The Ministers of State shall receive as remuneration such annual sum, payable out of the Consolidated Revenue Fund, as the Parliament fixes.

~~67. Until~~ **Unless** 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~~ **Federal Executive Council**, unless the appointment is delegated by the ~~Governor-General in~~ **Federal Executive Council** or by a law of the Commonwealth to some other authority.

Appointment of public servants

See my comments in s7 regarding use of the word "unless".

By convention the Governor-General always accepts the advice of the Federal Executive Council regarding this. This amendment formalises the convention by vesting the power in the Federal Executive Council rather than in the Speaker acting with the advice of the Federal Executive Council, as the Speaker's involvement would be redundant.

68. The President shall be the Commander in Chief ~~command in chief of the naval and military forces of the Commonwealth is vested in the Governor General as the Queen's representative, but any power or function vested in the President as Commander in Chief shall be exercised or performed only in accordance with the advice of the Federal Executive Council.~~

Command of military forces

This is a ceremonial role for the President.

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:

Transfer of certain departments

~~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.~~

Spent.

69. The President, acting only in accordance with the advice of the Federal Executive Council, and subject to such regulations as the Parliament prescribes, shall have power to:

Certain powers of the President

(i) Declare war on foreign powers;

(ii) Appoint ambassadors, consuls and other diplomatic representatives.

These powers, which are typically exercised by the Head of State, are ceremonial roles for the President.

69A. The President, acting only in accordance with the advice of the Constitutional Council, and subject to such regulations as the Parliament prescribes, shall have power to confer honours and titles, provided that no such honour or title shall be hereditary or otherwise transferrable.

Certain powers of the President

These powers, which are typically exercised by the Head of State, are ceremonial roles for the President, but with discretion vested in the Constitutional Council.

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.

Certain powers of Governors to vest in Governor-General

This has been updated and moved to s10 of Schedule II.

Chapter IIA - The Constitutional Council

70. There shall be a Constitutional Council, which shall have and may exercise

Constitutional

only such powers and functions as are assigned to it by this Constitution, and such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance of those provisions of this Constitution relating to the Constitutional Council, and of all laws made thereunder.

Modelled on s101.

Council

The Constitutional Council may engage in such symbolic or ceremonial activities as it thinks fit.

This means that the President, the Vice-President and the other three members may engage in the sort of symbolic or ceremonial activities typically engaged in by the Governor-General, by the Queen or by members of the extended royal family.

The Constitutional Council has the right to seek advice, to encourage or to warn at any time.

These are the typical rights of a Head of State in a Westminster system, and they also apply to the Governor-General.

70A. The Constitutional Council shall consist of five full members and four associate members. The full members shall be directly chosen by the people of the Commonwealth, voting as one electorate, and the method of voting shall be proportional representation by means of the single transferable vote, and such election may be referred to as a "Presidential election". The associate members shall be, *ex officio*, the Speaker, the immediate past Speaker, the immediate past President and the immediate past Vice President.

Composition
of the
Constitutional
Council

For the purposes of this section, the immediate past Speaker, the immediate past President and the immediate past Vice President shall be taken to be the most recent person incumbent in that office other than the current incumbent, except that persons having been removed from office as Speaker, President, Vice President or member of the Constitutional Council shall be disregarded.

The proportional representation method of election (as is used for the Senate) means that, whilst containing the size of the Constitutional Council to a small number, its elected members are broadly representative of the population, while the associate members bring experience and attitudes from the past. The "immediate past" office-holder is taken to be the last person incumbent in the office other than the current incumbent.

70B. Nominations of candidates for the office of full member of the Constitutional Council may be made, jointly or severally, by any citizen or citizens by means of a petition to the Senate containing the names and signatures of at least one thousand persons qualified to be an elector of the members of the House of Representatives.

Nomination of
members of
the
Constitutional
Council

Nominations are by the general public.

The Senate may review any such nomination and may reject it by a resolution affirmed by two thirds of the total number of the members of Senate.

Nominees may be excluded as candidates only with broad bipartisan support. Politicians would have to bear the political ramifications of such a controversial act.

Nominations shall open from the first day of the term of service of the Constitutional Council and shall close three months before the expiry of the Constitutional Council by effluxion of time, or twenty-eight days following the dissolution of the Constitutional Council, whichever first happens.

Nominees may be nominated over almost the entire term of the Council, giving the public plenty of time to do so.

If, at the close of nominations, fewer than fifteen candidates have been nominated,

the Senate may choose such candidates as it thinks fit such that the total number of candidates will be fifteen, and in so choosing it shall vote, by secret ballot and by the method of proportional representation by means of the single transferable vote.

But if, at the close of nominations, more than fifty candidates have been nominated, the Senate may vote, by secret ballot and by the method of proportional representation by means of the single transferable vote, to choose fifty candidates from amongst those already nominated, following the determination of which the remaining candidates shall be eliminated.

The Parliament can ensure that there are at least 15 candidates but no more than 50. The method by which candidates are excluded if there are more than 50 in order to bring the total down to 50 ensures that only those candidates who are least popular amongst MPs are eliminated.

70C. Within ten days from the expiry of the Constitutional Council or the dissolution thereof, the Speaker shall cause writs to be issued for a Presidential election. The election shall be held within twenty-eight days from the expiry of the Constitutional Council, or within three months following the dissolution of the Constitutional Council, whichever last happens, notwithstanding that if a general election of the members of the House of Representatives is due to occur within that period, the election may be expedited or delayed by a further twenty-eight days at the discretion of the Speaker. The qualification of electors of full members of the Constitutional Council shall be the same as the qualification for electors of members of the House of Representatives.

Election of full members of the Constitutional Council

70D. Subject to this Constitution, the Parliament may make laws with respect to the conduct of the nomination, election and induction of members of the Constitutional Council, including the resolution of disputes in regard thereto. But any question respecting the qualification of a member of the Constitutional Council, or respecting a vacancy on the Constitutional Council, and any question of a disputed election of a member of the Constitutional Council, shall be determined by the High Court, sitting as the Court of Disputed Returns.

Laws relating to nomination, election and induction of members of the Constitutional Council

The qualifications of a full member of the Constitutional Council shall be the same as those of a member of the House of Representatives from time to time, except that a person who is or becomes a member of the Commonwealth Parliament, or a State Parliament, or a Territory legislature, or who is or becomes a member of a political party, shall be incapable of sitting as a full member of the Constitutional Council.

Qualifications of members of the Constitutional Council

This means that an MP, or a member of a political party, may be elected as a member of the Constitutional Council; however, he/she must then resign this membership before being inducted.

The actions of a person otherwise chosen as a full member of the Constitutional Council under this section are not invalidated only because the person was not qualified to be nominated as a candidate for the office of full member of the Constitutional Council, or to be chosen or of sitting as a full member of the Constitutional Council.

Actions of members of the Constitutional Council not invalidated

70E. The places of the full members of the Constitutional Council shall become vacant at the expiration of their term of service.

Term of service of members of the Constitutional Council

The term of service of a new Constitutional Council shall be six years, taken to begin on the first day of November nearest the expiration of the term of service of the previous Constitutional Council, except in the case of the election next after any dissolution of the Constitutional Council, when the term of service shall be taken to begin on the first day of November preceding the day of its election.

Unless a member of the Constitutional Council dies, resigns or is removed from office in accordance with this Constitution, notwithstanding the expiration of his term of service, that member of the Constitutional Council shall continue in office until his successor enters upon the office.

A person may serve more than one term of service as a member of the Constitutional Council.

The Constitutional Council has a fixed term.

A member of the Constitutional Council shall not exercise a power or function of a member of the Constitutional Council unless he has made and subscribed an oath or affirmation of office for the office of member of the Constitutional Council in the form set forth in Schedule I to this Constitution. The oath or affirmation shall be made and subscribed before the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, such officer as the Speaker shall, by Proclamation or otherwise, appoint.

Members of the Constitutional Council to make oath or affirmation of office

Members of the Constitutional Council shall receive such remuneration, payable out of the Consolidated Revenue Fund, as the Parliament fixes. The remuneration of a member of the Constitutional Council shall not be altered during his continuance in office.

Remuneration of members of the Constitutional Council

70F. If four or more full members of the Constitutional Council die, resign or are removed from office, the Constitutional Council is thereby dissolved.

Dissolution of the Council - and thereby, dismissal of the President - requires broad bipartisan support in both Houses. The Council must retain at least two of its originally elected members to continue.

Dissolution of the Constitutional Council

A member of the Constitutional Council shall not be removed except by a resolution to that effect in both Houses of the Parliament in the same session affirmed by two thirds of the total number of the members of each of those Houses, providing for such removal on the ground of proved misbehaviour or incapacity.

Dismissal of a member - including the President - requires broad bipartisan support in both Houses.

Removal of members of the Constitutional Council

The President may resign his office as member of the Constitutional Council by writing addressed to the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth to such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, to such officer as the President shall appoint. Such resignation shall take effect at the time specified therein.

Resignation of members of the Constitutional Council

A member of the Constitutional Council other than the President may resign his office as member of the Constitutional Council by writing addressed to the President, or if there is no President or if the President is absent from the Commonwealth the Vice-President, or if there is no Vice-President or if the Vice-President is absent from the Commonwealth the Chief Justice of the High Court, or if there is no Chief Justice of the High Court or if the Chief Justice of the High Court is absent from the Commonwealth to such officers as the Parliament may prescribe for the purpose, or in the absence of such provision, to such officer as the President shall appoint. Such resignation shall take effect at the time specified therein.

70G. If the place of a full member of the Constitutional Council becomes vacant

Casual

before the expiration of his term of service, persons who were candidates in the last preceding election of the Constitutional Council but who were not elected shall be invited to nominate as candidates, and from amongst those candidates, using the method of counting back of ballots cast in the last preceding election of the Constitutional Council, the candidate obtaining the highest vote shall hold the place until the expiration of the term.

vacancies

The method of "counting back" is used fill vacant places and thus to avoid by-elections. This method is already used in the Tasmanian House of Assembly and the A.C.T. Legislative Assembly.

70H. The President shall be the President of the Constitutional Council, and the Vice-President shall be the Vice-President of the Constitutional Council.

The President and the Vice-President

70I. The President, or any two full members of the Constitutional Council, may convene meetings of the Constitutional Council.

Meetings of the Constitutional Council

The presence of all full members shall be necessary to constitute a meeting of the Constitutional Council for the exercise of its powers.

Subject to this Constitution, questions arising in the Constitutional Council shall be determined by the vote of a majority of full members, and each full member shall have one vote. The President shall in all cases be entitled to vote; and when the votes are equal the President shall have a casting vote. Associate members shall not be entitled to vote in questions arising in the Constitutional Council.

C.f. s.40.

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~~ six, as the Parliament prescribes.

Judicial power and Courts

This amendment simply recognises the status quo.

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

Judges' appointment, tenure and remuneration

(i) Shall be appointed by the ~~Governor-General in Council~~ **President in accordance with the advice of the Constitutional Council after considering submissions made by any Justice of the High Court, by the Prime Minister, by the Leader of the Opposition, or by any five members of the Commonwealth Parliament:**

In this case it is the President, not the Speaker, who performs this function. The reason for this is that the Speaker's involvement extends to matters concerning the Parliament and to the Executive (particularly in respect of the exercise of reserve powers) - both partisan arenas. The appointment of judges, in contrast, should be free from partisanship, and direct involvement by the head of state should lend more dignity to the office of head of state. Accordingly, in the area of the judiciary, it is the President, rather than the Speaker, who is involved.

It would be reasonable to suggest that the method of nomination and appointment be set out in more detail, such as is done in respect of the Speaker, though this may not be necessary. It might also be reasonable to suggest a role for the Senate in confirming judicial appointments, as happens

in the United States.

(ii) Shall not be removed except by the ~~Governor-General in Council~~ **President in accordance with the advice of the Constitutional 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:

See my comments in sub-section (i).

(iii) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

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

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

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

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

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

This is a ceremonial role for the President.

~~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.~~

This has been moved to s11 of Schedule II.

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

73. 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-

Appellate
jurisdiction of
High Court

(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~~ **no** appeal lies to the ~~Queen in Council~~ **Supreme Court of that State:**

This guarantees that, subject to limitations imposed by Parliament, appeals from any court may potentially reach the High Court. The deleted text might

have provided a loophole by which States could prevent appeals from certain courts to the High Court.

(iii) Of the Inter-State Commission, but as to questions of law only:
References to the Inter-State Commission are probably obsolete.

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.

This guarantees that no limitations may be imposed by Parliament in respect of appeals from State Supreme Courts, regardless of whether the right to appeal to the Privy Council existed in 1901.

Until the Parliament otherwise provides, the conditions of any 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.

Spent.

~~74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.~~

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

Obsolete.

74. The President may, with the consent of all full members of the Constitutional Council, and subject to such regulations as the Parliament prescribes:

Certain powers of the President

- (i) Grant reprieves, pardons and commutation of sentences;**
- (ii) Grant special leave to appeal (or to re-appeal) to the High Court or to any other court.**

These are prerogative powers of the President, exercisable only with the unanimous support of the Constitutional Council.

75. In all matters-

Original jurisdiction of High Court

- (i) Arising under any treaty:**
- (ii) Affecting ambassadors, consuls or other representatives of other**

countries:

(iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

(iv) Between States, or between residents of different States, or between a State and a resident of another State:

(v) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction.

76. 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 difference 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.

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.

Proceedings
against
Commonwealth
or State

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

Number of
judges

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.

Trial by jury

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.

Consolidated
Revenue Fund

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.

Expenditure charged thereon

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

Money to be appropriated 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.~~

Spent.

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.

Transfer of officers

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.~~

Spent.

85. When any department of the public service of a State is transferred to the Commonwealth-

Transfer of property of State

(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~~ *[Spent.]*

(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~~ **that time:**

This reflects the fact that transfer of departments from a State to the Commonwealth could, in theory, occur at any time, and not just at the

establishment of the Commonwealth.

(iii) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:

(iv) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

~~86. 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.~~

Spent.

~~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 this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.~~

Spent.

~~88. Uniform duties~~ Duties of customs shall be **uniform throughout the Commonwealth.** ~~imposed within two years after the establishment of the Commonwealth.~~

Uniform duties of customs

Spent references removed.

~~89. Until the imposition of uniform duties of customs~~

Payment to States before uniform duties

~~(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.~~

Spent.

~~90. On the imposition of uniform duties of customs the~~ **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~~ **is** exclusive.

Exclusive power over customs, excise, and bounties

~~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.~~
Spent references removed.

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.

Exceptions as to bounties

92. ~~On the imposition of uniform duties of customs, trade~~ **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.~~

Spent references removed.

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 sub-section, 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.

Spent.

94. ~~After five years from the imposition of uniform duties of customs, the~~ **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.

Distribution of surplus

Spent references removed.

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.~~

Customs duties of Western Australia

~~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 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.~~

Spent.

<p>96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the The Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.</p>	<p>Financial assistance to States</p>
<p><i>Spent references removed.</i></p>	
<p>97. Until the The Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State may make laws with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the revenue 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 of an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned and the audit thereof.</p>	<p>Audit</p>
<p><i>Spent references removed.</i></p>	
<p>98. The power of the Parliament to make laws in respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.</p>	<p>Trade and commerce includes navigation and State railways</p>
<p>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.</p>	<p>Commonwealth not to give preference</p>
<p>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.</p>	<p>Nor abridge right to use water</p>
<p>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.</p>	<p>Inter-State Commission</p>
<p><i>Probably obsolete, but retained as it could be revived.</i></p>	
<p>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.</p>	<p>Parliament may forbid preferences by State</p>
<p><i>References to the Inter-State Commission are probably obsolete.</i></p>	
<p>103. The members of the Inter-State Commission-</p>	<p>Commissioners' appointment, tenure and remuneration</p>
<p>(i) Shall be appointed by the Governor-General in President in accordance with the advice of the Federal Executive Council:</p>	
<p><i>C.f. s72.</i></p>	
<p>(ii) Shall hold office for seven years, but may be removed within that time by the Governor-General in President in accordance with the advice of the Federal Executive 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:</p>	

C.f. s72.

(iii) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Probably obsolete, but retained as it could be revived.

104. Nothing in this Constitution shall render unlawful any rate of 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.

Saving of certain rates

References to the Inter-State Commission are probably obsolete.

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

Taking over public debts of States

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

- (a) the taking over of such debts by the Commonwealth;
- (b) the management of such debts;
- (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
- (d) the consolidation, renewal, conversion and redemption of such debts;
- (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
- (f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

(2) The Parliament may make laws for validating any such agreement ~~made before the commencement of this section.~~

Obsolete. This has been moved to s14 of Schedule II.

(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 105 of this Constitution.

Chapter V - The States

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
Constitutions

107. Every power of the Parliament of a territory 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.

Saving of power
of State
Parliaments

108. Every law in force in any territory 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 territory had until the territory became a State.

Saving of State
laws

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

110A. The Governor of a State shall be inducted in like manner as the Speaker. Insofar as sections 35A to 35H apply to the Speaker, they shall apply *mutatis mutandis* to the nomination, designation and removal of a Governor, except that:

The Governor
of a State

(i) nominations of candidates for the office of Governor may also be made by the Premier, by the Leader of the Opposition, or by any five members of the Parliament of the State; and

(ii) an address praying for the removal of a Governor may also be made by the Parliament of the State.

The Constitutional Council is entitled to decline to participate in any part of the process relating to the nomination, designation and removal of a Governor. The law of the State may provide for an alternative process of nomination, designation and removal of a Governor which shall apply in cases where the Constitutional Council declines to participate. Subject to this Constitution the Governor of a State shall be nominated, designated and removed in accordance with the law of the State.

The induction (i.e., swearing in) of a Governor is a ceremonial role for the President. This section employs the services of the Constitutional Council in the nomination, designation and removal of a Governor, though the Constitutional Council is free to decline involvement. The State would have to provide for alternative mechanisms in the event of the Constitutional Council so declining.

110B. Subject to section 110A, the executive power of a State is vested in and is

Executive
power of a

exercisable by the Governor of the State subject to such limitations as may be imposed by this Constitution and by the Constitution of the State, and to such regulations as the Parliament of the State prescribes.

State

C.f. s61. It is up to a State to determine the extent to which, for example, the Executive Council of the State exercises de facto executive power and the Governor exercises nominal executive power.

The powers, functions, rights, privileges, immunities and prerogatives of the Crown in right of the State shall be enjoyed by the Governor of the State, or by the State, as the case may be, subject to this Constitution and to such regulations as the Parliament of the State prescribes.

C.f. s61.

Subject to this Constitution, the Parliament of the Commonwealth may make laws to give effect to the provisions of section 110A and of this section, notwithstanding that the powers and functions of the Governor and other matters relating to the office of Governor may be prescribed by the law of the State.

Enables the Commonwealth and State Parliaments to specify the details of these arrangements in their respective spheres of responsibility whilst avoiding conflict between Commonwealth and State laws dealing with this matter.

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

~~112. After uniform duties of customs have been imposed, a~~ **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.

Spent references removed.

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

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

~~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.~~

Prohibition to legislate in respect of religion

Moved to 52A as this pertains to the legislative power of the Commonwealth, not to the States.

~~117. A subject of the Queen~~ **An Australian citizen**, 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~~ **an Australian citizen** resident in such other State.

Rights of residents in States

Obsolete references amended.

118. Full faith and credit shall be given, throughout the Commonwealth, to the laws, the public Acts and records, and the judicial proceedings of every State.	Recognition of laws, etc. of States
119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.	Protection of States from invasion and 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 the laws of the Commonwealth

Chapter VI - 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.
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, and such territory shall be known as a "Territory of the Commonwealth" . <i>Obsolete references removed and usage of the term "territory" when used in this sense clarified.</i>	Government of territories.
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.	Alterations of limits of 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.	Formation of new States.

Chapter VII - Miscellaneous

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.	Seat of Government
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.
Spent.

~~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 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.~~
C.f. s35F.

Power of Governor-General to appoint deputies

This Constitution, and all laws made under it by the Parliament of the Commonwealth, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State.

Operation of Constitution and laws

Moved from clause 5 of the original Preamble to the Act and updated.

126A. When a provision of this Constitution requires a Principal Officer of the Commonwealth to act, if:

Principal Officers of the Commonwealth - required acts

- (a) there is no such Officer; or
- (b) no person is acting as that Officer; or
- (c) that Officer refuses to act or fails to act in accordance with such provision,

that act shall nevertheless be deemed to have been performed:

- (a) at noon, ten days after the date on which the act was required by such provision to have been performed; or
- (b) at a time and date set by the Constitutional Council; or
- (c) at a time and date set by the Federal Executive Council,

whichever first happens.

C.f. original s63. This applies to cases where the Constitution itself requires an act to be performed. In some cases that requirement may be triggered by the tendering of advice, usually by the Federal Executive Council.

126B. When a provision of this Constitution provides that a Principal Officer of the Commonwealth may act as he thinks fit, or according to his discretion, he may act (or omit to act) with, without, or contrary to, the advice of the Federal Executive Council, or of the Prime Minister, or of any other Minister of State, or of any person acting with the authority of any of those officers, or of any other person exercising executive power.

Principal Officers of the Commonwealth - discretionary acts

In so acting (or omitting to act), the Principal Officer shall have due regard to established conventions.

C.f. original s63. This affects powers in ss28, 35A, 35F, 58, 63, 63A, 63B and 70.

126C. When a provision of this Constitution provides that a Principal Officer of the Commonwealth may act subject to the advice of the Federal Executive Council, he may act (or omit to act) according to his discretion, except that no more than four days before so acting he shall inform the Federal Executive

Principal Officers of the Commonwealth - qualified discretionary acts

Council of his intention to act, notwithstanding that whenever the Federal Executive Council advises the Principal Officer to act on any occasion he shall on that occasion act in accordance with that advice, except that a Principal Officer may not be prevented from acting by the advice of the Federal Executive Council.

In so acting (or omitting to act), the Principal Officer shall have due regard to established conventions.

C.f. original s63. This affects the powers of the Speaker in s5, s56 and s57. The original provision of these sections give the Governor-General nominal discretion to act, though by convention, this is always exercised on advice. This model gives "qualified discretionary power" to the Speaker. Convention dictates that under normal circumstances the Speaker would not act alone but would accept advice from the Federal Executive Council, and indeed when advised to act by the Federal Executive Council, the advice is binding. However, under exceptional circumstances the Speaker might decide to act according to his discretion without having received advice from the Federal Executive Council.

126D. When a provision of this Constitution provides that an act of the Speaker is subject to the review of the Constitutional Council, the Speaker may act (or omit to act) according to his discretion, except that no more than four days before so acting he shall inform the Constitutional Council of his intention to act, and within one day of the Speaker having so acted, the Constitutional Council may, by a resolution affirmed by four full members (one of whom shall be the President), disallow the act of the Speaker, and such disallowance shall annul the act from the time the act was performed.

Review by the Constitutional Council of discretionary acts of the Speaker

127. In this Constitution:

Definitions

The Commonwealth means the Commonwealth of Australia as established and continuing under this Constitution.

The Crown refers to the sovereignty of Australia vested in the Commonwealth, the States, the Territories and any other authorities exercising powers or functions under the Constitution, but, subject to this Constitution and to law, where this term is used to refer to an individual personage, it refers to the President.

The Original States means New South Wales, Queensland, Tasmania, Victoria, Western Australia and South Australia.

The States means the original States, and such territories as may be admitted into or established by the Commonwealth as States.

A Principal Officer of the Commonwealth means one or any of the President, the Vice-President, the Constitutional Council, the Chief Justice, the Speaker, the President of the Senate, the Prime Minister or the Federal Executive Council.

Induction means the making and subscribing of an oath or affirmation of office.

Moved from clause 6 of the original Preamble to the Act and updated to include definitions of "Crown" and "Principal Officer of the Commonwealth".

Chapter VIII - Alteration Of The Constitution

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

Mode of
altering
Constitution

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 **of the Commonwealth** to the electors qualified to vote for the election of members of the House of Representatives.

But if either House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree, and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the ~~Governor-General~~ **Speaker, acting in accordance with the advice of the Federal Executive Council**, 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 **of the Commonwealth** qualified to vote for the election of the House of Representatives.

By convention the Governor-General always accepts the advice of the Federal Executive Council regarding this. This amendment formalises the convention.

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.~~

Spent references removed.

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~~ **President** for the ~~Queen's~~ assent.

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

In this section "Territory **of the Commonwealth**" means any territory referred to in [section 122](#) of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

Schedule

OATH

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

AFFIRMATION

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

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

Schedule I - Oaths and Affirmations

Part I - Oath or affirmation of allegiance

OATH

Under God, I, *A.B.*, do swear that I will be loyal to and will well and truly serve the Commonwealth of Australia and the Australian People, whose rights and liberties I respect, whose democratic beliefs I share, and whose laws I will uphold, and that I will do right to all manner of people according to law without fear or favour, affection or ill will.

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm that I will be loyal to and will well and truly serve the Commonwealth of Australia and the Australian People, whose rights and liberties I respect, whose democratic beliefs I share, and whose laws I will uphold, and that I will do right to all manner of people according to law without fear or favour, affection or ill will.

Part II - Oath or affirmation of office

OATH

Under God, I, *A.B.*, do swear that I will be loyal to and will well and truly serve the Commonwealth of Australia and the Australian People, whose rights and liberties I respect, whose democratic beliefs I share, and whose laws I will uphold, and that I will do right to all manner of people according to law without fear or favour, affection or ill will, and that I will faithfully and conscientiously fulfil the duties of the office of President of Australia.

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm that I will be loyal to and will well and truly serve the Commonwealth of Australia and the Australian People, whose rights and liberties I respect, whose democratic beliefs I share, and whose laws I will uphold, and that I will do right to all manner of people according to law without fear or favour, affection or ill will, and that I will faithfully and conscientiously fulfil the duties of the office of President of Australia.

(NOTE - The title of the office of President of Australia is to be substituted with the title of such other office as the case may require.)

Schedule II - Transitional and Temporary Provisions

1. The provisions of this Constitution referring to the establishment of the republic shall be construed as referring to the commencement of Schedules 1 and 2 to the *Constitution Alteration (Establishment of Republic) 200x*.
This refers to a hypothetical "Constitution Alteration (Establishment of Republic) 200x" act.
- Establishment of the republic
2. The Governor-General incumbent in the office at the establishment of the republic shall assume the office of President and shall continue in that office until the expiration of his term of service, which shall be no more than five years from the commencement of his term of service.
- The Governor-General
- The first President may be chosen before the expiration of the term of service of the incumbent Governor-General.
3. Before the establishment of the republic, the Parliament may make laws that the Parliament could have made after that time because of the enactment of the *Constitution Alteration (Establishment of Republic) 200x*, and such laws may take effect before that time.
- Parliament may make laws during transitional period
4. The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x* do not affect:
- Savings
- (i) the validity or continued effect, after the establishment of the republic, of anything done before that time under this Constitution or under the law in force in the Commonwealth; or
 - (ii) the continuity of the Parliament and its proceedings after the establishment of the republic; or
 - (iii) the qualifications of a senator or a member of the House of Representatives for the remainder of the term of a person who is a senator or member at the establishment of the republic; or
 - (iv) the continuity of the Executive Government of the Commonwealth, including in particular the membership and proceedings of the Federal Executive Council, after the establishment of the republic; or
 - (v) the continuity of courts and their jurisdiction and proceedings after the establishment of the republic.
5. If, after the *Constitution Alteration (Establishment of Republic) 200x* has been assented to, but before the establishment of the republic, the Parliament of a State resolves that the Queen shall continue to be head of state of the State after the establishment of the republic, she shall continue to be head of state of the State (provided that Her Majesty does not decline to so continue), and under such circumstances, the provisions of Chapter V of this Constitution referring to the Constitutional Council or to the President in respect of that State shall be construed as referring to the Queen in respect of that State, and the provisions of this Constitution, or of the Constitution of a State, or in any law, rule, decree or order of the Commonwealth or of the State referring to the Crown (in the case of an individual personage) in right of that State shall be construed as referring to the Queen. The Parliament of that State may at any time thereafter declare by resolution that the Queen shall cease to be head of state of that State, and such resolution shall be irrevocable.
- The States

But after the establishment of the republic, in the absence of a resolution declaring that the Queen shall continue to be head of state of the State, or following a resolution by the Parliament of a State declaring that the Queen shall cease to be head of state of that State:

(i) the Queen shall cease to be head of state of the State, and shall have no powers or functions in respect of the State;

(ii) the Governor of the State shall cease to be Her Majesty's representative in the State;

(iii) the provisions of any law, rule, decree or order of the Commonwealth, or of the Constitution of a State, or of any law, rule, decree or order of a State referring to the Crown (in the case of an individual personage) in right of that State, or to the Queen in right of the State, shall be construed as referring to the President.

The continuity of the office of a Governor of a State shall not be affected by the alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x*, and a person holding the office of Governor of the State immediately before the Queen ceases to be head of state of the State shall continue to hold the office as if he had at the time of his appointment to that office been appointed in accordance with the Constitution as altered by the *Constitution Alteration (Establishment of Republic) 200x*.

References to the Queen in this clause shall extend to the Queen's heirs and successors in the sovereignty of the United Kingdom.

6. Subject to section 5 of this Schedule, the provisions of any law, rule, decree or order of the Commonwealth, or of the Constitution of a State, or of any law, rule, decree or order of a State referring to the Crown (in the case of an individual personage), or to the Queen, or to the Governor-General shall be construed as referring to the President.

References to the Crown, the Queen and the Governor-General

7. The alterations of this Constitution made by the *Constitution Alteration (Establishment of Republic) 200x* do not affect the continuity of the federal system, including the unified system of law, under this Constitution.

Unified federal system

8. The Commonwealth Parliament may, at the request of a State Parliament, amend section 7 of the *Australia Act 1986* and section 7 of the *Australia Act 1986* of the United Kingdom to the extent that it forms part of the law of the Commonwealth or that State, to provide that those sections do not apply to the State.

Amendment of Australia Act

Nothing in this clause prevents the amendment of section 7 of the *Australia Act 1986*, or section 7 of the *Australia Act 1986* of the United Kingdom to the extent that it forms part of the law of the Commonwealth or a State, in accordance with subsection 15(1) of the *Australia Act 1986*.

9. The enactment of the *Constitution Alteration (Establishment of Republic) 200x* does not prevent the evolution of the constitutional conventions relating to the exercise of the reserve powers exercisable by any of the Principal Officers of the Commonwealth.

Continued conventions

10. Subject to this Constitution, abolition of the monarchy in itself shall not affect any power, function, right, privilege, immunity, or prerogative derived from the royal prerogative and exercisable by the Crown, and any prerogative derived

Continuation of prerogative

from the royal prerogative and enjoyed by the Crown in right of the Commonwealth immediately before the establishment of the republic shall continue to be enjoyed by the Commonwealth, or by such Principal Officer of the Commonwealth, as the case requires.

11. 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 President, or in the Speaker, or in the Federal Executive Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

Certain powers of Governors to vest in Speaker

12. Nothing in the provisions added to [section 72](#) 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.

Continuance in office of Judges

13. 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

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.

14. 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

15. The Parliament may make laws for validating any agreement made pursuant to [section 105A](#) before the commencement of that section.

Saving of agreements with respect to State debts

16. The provisions section 107 and section 108 referring to a territory shall be construed as including a reference to a Colony which became a State at the establishment of the Commonwealth.

Reference to Colonies

17. Nothing in this Constitution shall be taken to prevent the continued use of the terms "Crown", "Royal" or other related terms (including the use of the terms "Crown land" and "Crown lease"), or of the royal insignia, by any person or organisation, whether public or private. Any change that may be effected in any context to the terms "Crown", "Royal" or other related terms shall not affect any existing rights and entitlements in respect of that to which those terms apply.

Provision for continued use of "Crown" etc.

18. Until the Parliament otherwise provides, any person of the full age of eighteen years who is not a citizen of the Commonwealth, but who was qualified as an elector for the House of Representatives immediately before the *Constitution Alteration (Establishment of Republic) 200x* takes effect shall remain so qualified, notwithstanding the provisions of section 30.

Saving of qualifications of electors

19. Until the powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House are declared by the Parliament, they 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.

Powers, privileges and immunities of Parliament

20. The reference in section 52 (xxxviii) to a "power not otherwise vested by this

Powers of the

Constitution in the Commonwealth, except such powers the exercise of which is prohibited by this Constitution" shall be construed as including a reference to a power which as at the establishment of this Constitution could be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia.

**Parliament of
the United
Kingdom and
the Federal
Council of
Australasia**