



The Australian Choice Model

Proposed Amendments to the Australian Constitution

Background

In January 2020, the Australian Republic Movement announced its intention to adopt a formal position on a preferred model for an Australian Head of State. This work proceeded on the premise that the primary barrier to Australia becoming a republic is not the British Monarchy, but uncertainty. Australians want to know what the credible alternative model is. As the peak body advocating for an Australian as our Head of State, the Australian Republic Movement's mission must be to advance support for real, workable referendum-winning change.

Over 2020 and 2021, the Australian Republic Movement (ARM) undertook extensive public and stakeholder consultation with more than 10,000 Australians, including through nationally representative public opinion research. We received more than 1300 long form submissions from the public and thousands of survey responses. We considered a number of model options in-depth, including the option proposed at the 1999 referendum. We consulted with decision makers, policy experts, academics and a huge cross-section of Australian society – from frontline workers like nurses and teachers, to retail workers and tradespeople.

The ARM National Committee considered and then agreed in-principle to a preferred model that would make Australia's Constitution stronger and more democratic and give Australians a choice about who speaks for them.

Members of the National Committee included:

Peter FitzSimons AM (Chair)	Wendy Le Cornu (Tasmanian Convenor)
Tully Fletcher (Senior Deputy Chair)	Anna Walker (National Youth Convenor)
Dr Meredith Doig OAM (Junior Deputy Chair)	Tarang Chawla
Nathan Hansford (Treasurer and Secretary and ACT Convenor)	Emeritus Professor Jenny Hocking
Alice Crawford (Executive Member)	Patrick McGorry AO
Bodhi Hardinge (Executive Member and WA Convenor)	Leanne Smith
Andrew Fraser (Executive Member and Queensland Convenor)	Tim Storer
Deborah Crossing (Women's Network Convenor and SA Convenor)	Michelle Wood
Tony Hockey (NSW Convenor)	Sandy Biar (CEO and National Director)
Tristan Layton (Victorian Convenor)	

The policy was then referred to the Australian Republic Movement's Constitutional Advisory Body (CAB), a panel that included many of Australia's most eminent constitutional law experts. The CAB provided advice to the ARM National Committee, consulted with other leading authorities on constitutional law and drafted the enclosed constitutional amendments to demonstrate how the *Australian Choice Model* could be incorporated into Australia's Constitution.

The ARM would like to recognise and pay tribute to the members of the Constitutional Advisory Body for their contribution to this important piece of public policy:

Professor Emerita Helen Irving (CAB Chair)	Scientia Professor George Williams AO
Professor Rosalind Dixon	Professor Kim Rubenstein
Professor Graeme Orr	Professor John Williams
Associate Professor Ryan Goss	Associate Professor Luke Beck
Michael do Rozario (Corrs Chambers Westgarth)	James Whittaker (Corrs Chambers Westgarth)

The policy endorsed unanimously by the ARM National Committee includes:

1. That the Head of State be elected by all Australians eligible to vote in House of Representatives elections to serve a five-year term.
2. That the Parliament of each State and Territory that wholly contains an electorate in the Federal Parliament be entitled to nominate one candidate for election.
3. That the Federal Parliament be entitled to nominate up to three candidates for election.
4. That if there is only one candidate nominated by Australia's parliaments for Head of State, that a vote be held to confirm or reject the election of that candidate.
5. That in order to be nominated, a person must:
 - a. Be an Australian citizen qualified to be elected to the House of Representatives;
 - b. Not be disqualified to sit as a member of the House of Representatives under s 44 of the Constitution;
 - c. Not be a current sitting member of any Australian Parliament; and
 - d. Not have been elected as Head of State for more than 1 term.
6. That the Federal Parliament be empowered to determine the method of election of the Head of State.
7. That in the event that the Head of State resigns, is removed or ceases to be eligible to hold office, the most senior State Governor serves as acting Head of State until such time as an election can be held. That the most senior State Governor will also act as Head of State if the Head of State is absent or unavailable.
8. That all powers of the Head of State be exercised on the advice of Prime Minister, ministers or the Federal Executive Council, except when:
 - a. Appointing a Prime Minister whom they believe is likely to be able to form a Government which has the confidence of the House of Representatives;
 - b. Terminating the appointment of a Prime Minister. The Head of State may not terminate the appointment of a Prime Minister who holds the confidence of the House of Representatives;
 - c. A Prime Minister who does not hold the confidence of the House requests an election: the Head of State may not grant an election to a Prime Minister who does not hold the confidence of the House;
 - d. Summoning the House of Representatives to determine the confidence of the House;
 - e. Dissolving the House of Representatives (and the ability to issue writs for an election) if the confidence of the House of Representatives is indeterminate for a period of no less than seven consecutive days.
9. That assent to proposed laws endorsed by voters now be granted automatically on the seventh day, unless the Head of State has been advised to grant assent earlier.
10. That the Head of State no longer has the power to withhold assent to a bill. That the power to return a bill with amendments to Parliament be exercised on advice. That the (obsolete) provision granting the power to veto laws 12 months after they have received assent, or reserve assent for up to 24 months assent be removed. That the Head of State no longer have the discretion to refuse assent to successful referenda.
11. That a Head of State may be removed by a motion passed in both Houses of the Parliament calling for the Head of State's removal for proved misbehaviour or incapacity.
12. That in the event the office of Head of State becomes vacant, there shall be an election held to replace them, provided it is not within four months of a scheduled election for Head of State.
13. That the title of Governor-General be replaced with 'Head of State' throughout the Constitution (other than in historical references), unless a consensus emerges about an alternative title.
14. That the States not be compelled by the ARM's proposed constitutional amendments to become republics; that they retain the ability to change their laws in accordance with the usual practice in that state.
15. That the definitions and 'binding nature of the Constitution' provisions from the Constitution Act's covering clauses be incorporated into the body of the text, to allow Australia's Constitution to become a self-standing document not dependent on the text of the British Act.
16. That gender neutral language be incorporated throughout the Constitution.

17. That in the non-discrimination provision (regarding residents of other states) in s 117, the reference to ‘subject of the Queen’ be replaced with ‘resident’.
18. That the ARM does not take a position on the precise form of a new preamble, but recognises the need for one to be drafted through further consultation with Australians.
19. That certain ‘dead-letter’ provisions that no longer have legal effect, such as those previously allowing appeals to the Privy Council, be removed.
20. That the Oath and Affirmation for Members of Parliament and the Head of State be as follows:
 - a. Oath: I, A.B., do swear that I will be loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold.
SO HELP ME GOD!
 - b. Affirmation: I, A.B., do swear that I will be loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold.

This policy is reflected in the amendments prepared by the CAB and provided in this document. This document should be read in conjunction with the detailed policy outline found at www.republic.org.au/policy.

Notes on Drafting

Preliminary

The Constitutional Advisory Body worked with the ARM’s *Australian Choice Model* for the nomination, election and removal of a republican Head of State. The CAB’s role was to draft provisions to put this model into constitutional language, and to propose and draft amendments to the Constitution throughout that would give effect to this model in practice. The CAB also considered principles of republicanism, and made recommendations to the ARM on the amendments that would be necessary to achieve a republic that would reflect and preserve Australia’s democratic federal parliamentary system, and would be consistent with Australia’s constitutional history. The notes below describe the matters identified by the CAB that needed attention and the reasoning behind its proposed amendments. The full Constitution that follows includes all the amendments in detail.

It should be noted that the Constitution has been amended, by referendum, eight times since 1901. There are copies of the Constitution available both in print form and online. Some copies show the text of the relevant sections prior their amendment (sometimes with the text struck out, to indicate that they no longer operate). Some show the Constitution with the current text alone. We have reproduced the Constitution and inserted our proposed changes, without including the pre-amendment text, in order to avoid confusion between actual and proposed amendments. None of the eight amendments has direct relevance to the goal of achieving a republic.

Titles

References to the ‘Governor-General’ have been changed throughout to ‘Head of State’, except where the reference is specifically to the office of ‘Governor-General’ at the relevant historical moment. The historical term has been retained in: ss 69, 83, 85.

References to the Queen have been deleted, again except for historically specific references. Note that the expression ‘the Queen in Council’ – in section 73 – means the Privy Council (full title: ‘Judicial Committee of the Privy Council’). At the time of the Constitution’s adoption, it was the highest court of appeal from courts around the British Empire (and remains so for some countries, but not Australia).

Note also the term ‘subject of the Queen’, currently in sections 34 and 117. Section 34 has been amended, to remove the provisions that specified the qualifications (eligibility) of MPs (and Senators: section 16). The qualifications set out in s 34 were not intended to be permanent. They were to apply ‘until the Parliament otherwise provides’; that is, they were expressly open to change by act of Parliament. They have been changed by the Parliament on a number of occasions. Our proposed amendment reflects the simple fact that, under this provision, it is the Parliament that decides what an MP’s/Senator’s qualifications should be. Hence, there was no need to amend the words ‘subject of the Queen’, as this reference has been removed.

We also propose removing the term ‘subject of the Queen’ currently in section 117 of the Constitution. This provision prohibits state laws that discriminate specifically on the basis of residence in another state. While the 1999 Constitution (Establishment of Republic) Bill substituted ‘Australian citizen’ for ‘subject of the Queen’, this would narrow the scope of s 117 beyond that intended by the current wording. Our view is that section 117 should not permit discrimination against any Australian resident purely on the ground of their residency in another state.

Note also that several sections of the current Constitution (ss 17, 18, 19, 21, 23) include the term ‘President’. These refer specifically to the office of the President of the Senate, and should not be confused with any proposal for the title ‘President’ for a republican Head of State (as found in the 1999 Constitution (Establishment of Republic) Bill), nor pre-empt any future decision about the title.

References to the State Governors have not been changed, in keeping with the principle that it is for the States to decide on their own titles, and consistent with proposed Schedule 2 (4) that recognises each State’s own power to determine when links between it and the Crown will cease.

The Act and Covering Clauses

The Constitution as it stands is actually Clause 9 of the Commonwealth of Australia Constitution Act 1900 (Imp) – in other words, part of an Act of the British/Imperial Parliament. As a result of a number of Acts passed in the twentieth-century, the British Parliament no longer has any power to amend the Constitution Act (at least not without an Australian request, and even that is doubtful). The Constitutional Advisory Body decided that the Imperial Act provisions – the Preamble and the Covering Clauses – should not be amended, despite their references to the Queen. There are several reasons:

- First, it remains uncertain whether amendment to the Constitution, following the procedure set out in s 128, can reach the Imperial Act provisions (s 128 refers to alteration of ‘this Constitution’, not to the Act, as such).
- Secondly, the Preamble and the Covering Clauses are a record, among other things, of the historical processes by which the Constitution was adopted. Apart from the value of keeping a record of history, the Constitution’s history has been referred to by the High Court in interpreting the Constitution, and amendment of these historical clauses could create complications for interpretation.

For these reasons, the current Preamble has been left as it is and where it is (along with the Covering Clauses).

However, we also recommend that a new preamble should be adopted, and should sit at the head of the Constitution itself. The wording of such a preamble would be a matter of much reflection, and we did not attempt to draft one.

The retention of the Imperial Act provisions does not prevent the Constitution itself from being considered separately with respect to proposed amendments. We note that in 1999, the Constitution Alteration (Establishment of Republic) Bill that was put to a referendum did not include the Imperial Act provisions, or make any proposals for either their retention or amendment.

Definitions and Operation of the Constitution

While the Covering Clauses of the Imperial Act should be left as they are (most are obsolete now, in any case), we agreed that two of the Covering Clauses still have relevance for a Constitution amended for an Australian republic.

Covering Clause 6 defines the key terms of the Constitution: ‘Commonwealth’; ‘States’; ‘Original States’. Such a definition is necessary. Specifically, a definition of ‘Original States’ is needed. The Original States are those that joined the Commonwealth at its origin in 1901. The Constitution makes provision for their equal representation in the Senate (s 7), and guarantees each a minimum number of Members in the House of Representatives (s 24). It does not extend these guarantees to any new State. Our draft therefore includes a version of Covering Clause 6 (proposed section 1), which has been amended to reflect some modern realities (New Zealand has been removed from the definition of the States; the reference to the Northern Territory as a territory of South Australia has been removed.)

Covering Clause 5 is a ‘supremacy’ operation clause. It is a statement of the supreme and binding legal operation of the Commonwealth Constitution and of laws made by the Commonwealth Parliament under the Constitution. We have included a version of this clause – proposed section 2 – to follow the Definition clause. (Our section 2 removes references to British/the Queen’s ships that are found in Covering Clause 5).

Adopting these amended clauses in the Constitution will mean that the Constitution is not reliant on the Imperial provisions, and may be treated as a separate, ‘stand-alone’ instrument. Retaining the Imperial provisions, as we propose, does not mean that the Constitution cannot be reproduced without them. As noted above, the 1999 Bill did not reproduce the Imperial provisions, even though it did not seek to repeal or amend them.

Pronouns

The Constitution currently refers to all persons/officers by the masculine singular pronoun ‘he.’ We have proposed the incorporation of gender-neutral language throughout the Constitution – not only in the provisions that would be amended to achieve a republic. This decision reflected more than our commitment to gender inclusiveness, but specifically a commitment to the republican goal of genuine popular participation in political institutions and decision-making.

Administrator of the Commonwealth

Section 4 of the current Constitution makes provision for the appointment (by the Queen) of a person ‘to administer the Government of the Commonwealth’ in the Governor-General’s place, but does not specify the reasons or qualifications for this appointment. The practice has been that the most senior State Governor occupies the office of ‘Administrator of the Commonwealth’ if the Governor-General is absent or incapacitated.

The references to the Governor-General and Queen in s 4 must be removed if Australia becomes a republic. That makes it also necessary to identify an alternative mechanism for the appointment of an Administrator. The proposed provision was framed to give effect to the current practice ‘until the Parliament otherwise provides’. These changes rule out the exercise of discretion in appointment.

‘In Council’

Our view is that the Head of State should rarely exercise power independently, without or contrary to the advice of an elected Government. The Head of State’s powers should therefore in most cases be exercised ‘in Council’ – that is, acting on governmental advice – unless otherwise expressly provided for.

A general provision was drafted to reflect this view (s 63). Section 63, as proposed, also reflects the reality that the Governor-General also takes advice from the Prime Minister and Ministers (i.e. not always or specifically from the Federal Executive Council), and that this would not change with a republic.

No existing ‘in Council’ references were removed: i.e., the Head of State’s discretionary powers were not expanded beyond those currently exercised by the Governor-General.

A number of the Governor-General’s discretionary powers were converted in our draft to ‘in Council’ powers: sections 5, 64, 65. Section 68 has been amended to make the Head of State’s command in chief of Australia’s military forces exercisable on ministerial advice (not requiring a meeting of the Federal Executive Council).

Additionally, we proposed the amendment of section 128 which currently gives the Governor-General the power to refuse assent on a Constitution Alteration Bill that has been approved by the electors in a referendum. A Head of State in an Australian republic should not have the power to overturn the result of a referendum. The proposed amendment states that the Head of State must give assent to a successful Constitution Alteration Bill.

Section 126 currently empowers the Queen to authorise the Governor-General to appoint a deputy or deputies to exercise the Governor-General’s powers and functions. We have amended this to make the Head of State’s power to appoint deputy/deputies subject to the advice specifically of the Prime Minister.

Additionally, section 5 (iii) provides for the Head of State to summon Parliament to determine confidence without acting in Council (this is discussed further below).

The prerogative powers

The Governor-General's prerogative powers are historically discretionary powers, not exercised on advice, although in practice they typically are (these powers include, among others, the conferral of honours, the grant of mercy, the power to declare war and peace). The prerogatives are mostly a matter of historical convention, and are in practice left unspecified. In the Constitution, they are included by implication in section 61, and our view is that they remain there.

Head of State's power to prorogue and dissolve

Section 5 has been amended in a number of ways:

- First, the Head of State's power of prorogation and appointment of times for holding sessions of Parliament has become an 'in Council' power.
- Secondly, while the Head of State's power to dissolve the House of Representatives is expressly not an 'in Council' power, it has been limited.

The Head of State must – 'shall' – dissolve the House of Representatives where the Prime Minister who holds the confidence of the House of Representatives so requests. This reflects the view that a Head of State should not refuse a request from a Prime Minister for an election, so long as the Prime Minister retains confidence. This would not prevent the Head of State from discussing the timing of an election with the Prime Minister, but it makes express the convention that it is the Prime Minister's right to determine when an election will be held (subject, of course, to the relevant timing provisions of the Constitution).

The Head of State *may* dissolve the House if the confidence of the House is indeterminate for a period of no less than seven consecutive days. This limits the Head of State's discretion, and places the resolution of indeterminacy as to the government of the day in the hands of the Australian voters. It should be read along with (proposed) s 70A (v): 'The Head of State shall not terminate the appointment of a Prime Minister who holds the confidence of the House of Representatives.' (This would mean that the dismissal of the Prime Minister by the Governor-General in the circumstances of 1975 could not reoccur.)

Proposed s 70A (v) at the same time restrains a 'rogue' Prime Minister who has lost the confidence of the House, but advises the Head of State to dissolve the House and call an election.

The seven-day 'indeterminacy' period gives Members of the House of Representatives some time to sort out their position and decide whom they will support for Prime Minister/Government (this would probably apply in most cases to Independents). It also restrains the Head of State from acting too swiftly to dissolve the House.

Thirdly, we have added a power for the Head of State to summon Parliament to determine confidence: s 5 (iii). This again limits the Head of State's discretion, and also addresses the possibility that a Prime Minister or alternative leader may claim to hold confidence, but confidence has not been tested.

(Note: the s 5 paragraph headed '*Summoning Parliament*' has been left as it is in the Constitution. The current s 5 paragraph headed 'First session' has been deleted, as it referred only to the very first session of Parliament after the establishment of the Commonwealth in 1901.)

Section 32 – regarding the issuing of the writs for an election – has been amended to make it consistent with s 5.

Head of State's assent to bills

The Head of State has been retained in the definition of the legislative power (s 3). The Head of State thus retains a role in the passage of legislation. However, in keeping with the principle that the Head should rarely exercise discretion, we propose amending s 58 (which expressly makes assent a discretionary power of the

Governor-General and describes the G-G as acting in the Queen's name), to make s 58 an 'automaticity' provision: a Bill will be taken to have received the Head's assent seven days after its passage, unless the Head assents earlier. In other words, it will become law independently of the Head's action after seven consecutive days have passed.

Repeal of spent provisions

Sections 59 and 60 should be repealed. These sections provide for the Queen to disallow Australian laws after the Governor-General has given assent, and make any law that was reserved for and given the Queen's assent inoperative unless the Governor-General has informed the Parliament of her assent. These provisions are obsolete now and clearly have no place in a Constitution amended for an Australian republic.

Section 74 should be deleted in its entirety. This provision, which provided for appeals in some circumstances from Australian courts to the Privy Council (the 'Queen in Council') has become obsolete following various Australian Acts (which s 74 also expressly permitted the Parliament to pass). It has no relevance today.

Appointment and removal of Prime Minister

The Constitution makes no reference to the office of Prime Minister. This office is occupied, by convention, by the person who holds the confidence of the House of Representatives. By convention, following an election or a leadership spill, or death or resignation of the Prime Minister, the Governor-General exercises his or her discretionary power to identify and appoint such a person. Again by convention, that person must be, or must quickly become, a Member of the House of Representatives.

The proposed amendments to the Constitution outline how the Prime Minister is to be appointed by the Head of State, the means for the removal of the Prime Minister and the Prime Minister's role in advising the Head of State. The conventions surrounding the Prime Minister are expressly stated in the amendments, as are limits on the Head of State's discretion in these matters. It is therefore essential that the office of Prime Minister be defined and provided for in the amendments. Proposed section 70A largely follows the provisions proposed by the late Professor George Winterton (in Winterton (ed.) *We, The People: Australian Republican Government*, Allen & Unwin 1994), but we have added an express statement that the Head of State does not act 'in Council' when terminating a Prime Minister's appointment: s 70A (iv). This would avoid an obvious conflict between a Prime Minister who refuses to resign or to accept their dismissal (having lost the confidence of the House) and who purports to advise the Head of State not to terminate their appointment, and, similarly, between the Head of State and members of the Executive Council who might purport to advise the termination of the PM's appointment.

The reference to the PM's resignation in s 70A (iv) will cover circumstances where party leadership, and thereby the PM changes, through a spill.

An express statement was also added (in s 70A (v)) that the Head of State shall not terminate the appointment of a Prime Minister who holds the confidence of the House of Representatives. (Note also: the Head of State's discretion in this regard will also be limited by s 5.)

Transitional and savings provisions

Transitional and savings provisions are needed to ensure that offices and laws in operation prior to the coming into force of a Constitution amended for an Australian republic will continue without rupture until they are specifically changed. Our proposed provisions largely follow those found in the Constitution Alteration (Establishment of Republic) Bill 1999.

The States

Finally, a provision from the 1999 Bill was adopted to leave it to each state individually to decide when to sever its links with the Crown.

**THE CONSTITUTION OF THE COMMONWEALTH
OF AUSTRALIA**

(as amended to achieve an Australian Republic)

Commonwealth of Australia Constitution Act

An Act to constitute the Commonwealth of Australia

[9th July 1900]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

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

1. Short title

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

2. Act to extend to the Queen's successors

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

3. Proclamation of Commonwealth

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

4. Commencement of Act

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

5. Operation of the Constitution and laws

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

6. Definitions

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

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

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

7. Repeal of Federal Council Act

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

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

8. Application of Colonial Boundaries Act

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

9. Constitution

The Constitution of the Commonwealth shall be as follows:

<i>Proposed Amendments to the Australian Constitution</i>	<i>As Amended</i>	<i>Notes</i>
<p>The Constitution</p> <p>This Constitution is divided as follows:</p> <p>Chapter I—The Parliament</p> <p>Part I—General</p> <p>Part II—The Senate</p> <p>Part III—The House of Representatives</p> <p>Part IV—Both Houses of the Parliament</p> <p>Part V—Powers of the Parliament</p> <p>Chapter II—The Executive Government</p> <p>Chapter III—The Judicature</p> <p>Chapter IV—Finance and Trade</p> <p>Chapter V—The States</p> <p>Chapter VI—New States</p> <p>Chapter VII—Miscellaneous</p> <p>Chapter VIII—Alteration of the Constitution</p> <p>Chapter IX – Election and removal of Head of State</p> <p>The Schedule 1 – Oath and Affirmation</p> <p>Schedule 2 – Transitional provisions for the establishment of the republic</p>	<p>The Constitution</p> <p>This Constitution is divided as follows:</p> <p>Chapter I – The Parliament</p> <p>Part I – General</p> <p>Part II – The Senate</p> <p>Part III – The House of Representatives</p> <p>Part IV – Both Houses of the Parliament</p> <p>Part V – Powers of the Parliament</p> <p>Chapter II – The Executive Government</p> <p>Chapter III – The Judicature</p> <p>Chapter IV – Finance and Trade</p> <p>Chapter V – The States</p> <p>Chapter VI – New States</p> <p>Chapter VII – Miscellaneous</p> <p>Chapter VIII – Alteration of the Constitution</p> <p>Chapter IX – Election and removal of Head of State</p> <p>Schedule 1 – Oath and Affirmation</p> <p>Schedule 2 – Transitional provisions for the establishment of the republic</p>	<p>The contents page has been amended to reflect the new sections required for the transition to an Australian republic.</p>

Chapter I—The Parliament

Part I—General

1. Legislative power [Section moved]

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

~~2. Governor General~~

~~A Governor General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.~~

1. Definitions

The Commonwealth shall mean the Commonwealth of Australia as established under the Commonwealth of Australia Constitution Act (1900) and the [insert Constitution Alteration Act & date].

The States shall mean such of New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western 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 were parts of the Commonwealth at its establishment.

2. Operation of the Constitution and Laws

The Constitution of Australia, 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 Australian ships

Covering clauses 5 and 6 have been incorporated into the Australian Constitution to make it a self-standing document that no longer relies on the Imperial (UK) Act.

This section has been amended to incorporate the definitions from clause 6. The section relating to legislative power has been moved from section 1 to section 3.

Covering clause 5 of the Imperial Act is a statement of the supreme and binding legal operation of the Commonwealth Constitution and of laws made by the Commonwealth Parliament under the Constitution. It has been incorporated as an amendment to remove the need for reliance on the Imperial Act. This amendment excludes references to British/the Queen's ships that are found in Covering Clause 5.

The powers and role of the Head of State are defined in later amendments, so references to the Governor-General are removed here.

~~3. Salary of Governor General~~

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

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

(For reference, from Section 1)

1. Legislative power

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

3. Legislative power

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

Provisions referring to the salary of the Head of State are replicated in section 133 of the amendments.

Provisions outlining the legislative power of the Commonwealth and the definition of The Parliament have been moved to section 3.

4. Provisions relating to ~~Governor-General~~Head of State

The provisions of this Constitution relating to the ~~Governor-General~~Head of State and all other powers vested in the Head of State extend and apply to the ~~Governor-General~~Head of State for the time being, ~~or such person as the Queen may appoint to administer the Government of the Commonwealth; but~~ In the event of the absence out of Australia, incapacity, or unavailability of the Head of State, the administration of the Commonwealth shall pass to the senior available Governor of a State for the period of the Head of State's absence, incapacity or unavailability, until the Parliament otherwise provides. No such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during ~~his~~that person's administration of the Government of the Commonwealth.

4. Provisions relating to Head of State

The provisions of this Constitution relating to the Head of State and all other powers vested in the Head of State extend and apply to the Head of State for the time being. In the event of the absence out of Australia, incapacity, or unavailability of the Head of State, the administration of the Commonwealth shall pass to the senior available Governor of a State for the period of the Head of State's absence, incapacity or unavailability, until the Parliament otherwise provides. No such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during that person's administration of the Government of the Commonwealth.

Amendments to this section define the default acting Head of State arrangements in the event of the Head of State's absence, incapacity or unavailability. This reflects the current practice used for the Governor-General, whereby the most senior Governor will become acting Governor-General in the Governor-General's absence or incapacity.

5. Sessions of Parliament, prorogation and dissolution

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

Summoning Parliament

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

First session

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

(ii) Dissolution of the House of Representatives

The Head of State shall, by Proclamation, dissolve the House of Representatives where a Prime Minister who holds the confidence of the House of Representatives so requests.

The Head of State may, by Proclamation, dissolve the House of Representatives

- (a) where the confidence of the House of Representatives is indeterminate for a period of no less than seven consecutive days; or
- (b) In accordance with the procedure for a simultaneous dissolution of both the House of

5. Sessions of Parliament. Prorogation and dissolution

The Head of State in Council may prorogue Parliament and appoint times for holding the sessions of the Parliament.

(i) Summoning Parliament

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

(ii) Dissolution of the House of Representatives

The Head of State shall, by Proclamation, dissolve the House of Representatives where a Prime Minister who holds the confidence of the House of Representatives so requests.

The Head of State may, by Proclamation, dissolve the House of Representatives

- (a) where the confidence of the House of Representatives is indeterminate for a period of no less than seven consecutive days; or
- (b) In accordance with the procedure for a simultaneous dissolution of both the House of Representatives and the Senate, as provided for in section 57;

and not otherwise.

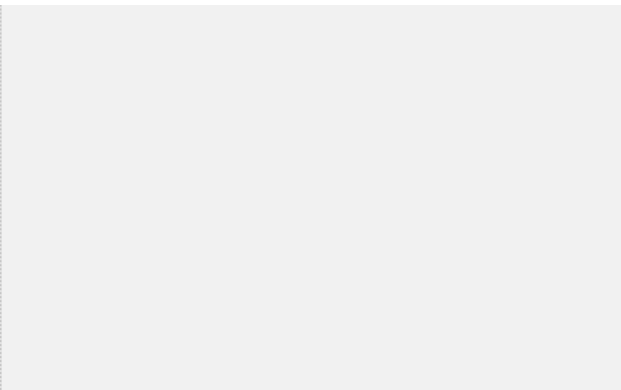
(iii) The Head of State may summon the House of Representatives for the purpose of determining the confidence of the House of Representatives. The Head of State does not act in Council or on ministerial advice when summoning the House of Representatives to determine confidence or when making a Proclamation under section 5(ii)(a) dissolving the House of Representatives.

The amendment outlines the instances in which the Parliament may be prorogued or dissolved and when the Head of State must act on advice. Please see the covering pages of this document (the paragraph titled '[Head of State's power to prorogue and dissolve](#)') for a full explanation of the amendment.

Representatives and the Senate, as provided for in section 57;

and not otherwise.

(iii) The Head of State may summon the House of Representatives for the purpose of determining the confidence of the House of Representatives. The Head of State does not act in Council or on ministerial advice when summoning the House of Representatives to determine confidence or when making a Proclamation under section 5(ii)(a) dissolving the House of Representatives.



6. Yearly session of Parliament

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

Part II – The Senate

7. The Senate

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

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

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

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

7. The Senate

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

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

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

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

The title of 'Governor-General' has been replaced with 'Head of State'.

8. Qualification of electors

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

9. Method of election of senators

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

Times and places

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

10. Application of State laws

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

11. Failure to choose senators

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

12. Issue of writs

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

13. Rotation of senators

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

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

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

13. Rotation of senators

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

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

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

This section has been amended to incorporate gender neutral language. Please see the covering paragraph titled '[Pronouns](#)' for a detailed explanation of these changes.

14. Further provision for rotation

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

15. Casual vacancies

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

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when ~~he~~the senator was so chosen, ~~he~~the senator was publicly recognized by a particular political party as being an endorsed candidate of that party and publicly represented ~~himself~~himself to be such a candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where:

1. (a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant; and
2. (b) before taking ~~his~~their seat ~~he~~the senator ceases to be a member of that party

15. Casual vacancies

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

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when the senator was so chosen, the senator was publicly recognized by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where:

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

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

(otherwise than by reason of the party having ceased to exist);

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

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

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

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

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

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

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

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

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

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

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

had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

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

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

16. Qualifications of senator

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

17. Election of President

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

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

17. Election of President

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

The President shall cease to hold office as President if the President ceases to be a senator. The President may be removed from office by a vote of the Senate, or may resign the office of President or resign their seat by writing addressed to the Head of State.

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

18. Absence of President

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

18. Absence of President

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

This section has been amended to incorporate gender neutral language.

19. Resignation of senator

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

19. Resignation of senator

A senator may, by writing addressed to the President, or to the Head of State if there is no President or if the President is absent from the Commonwealth, resign the senator's place, which thereupon shall become vacant.

This section has been amended to incorporate gender neutral language and to replace the title of 'Governor-General' with 'Head of State'.

20. Vacancy by absence

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

20. Vacancy by absence

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

This section has been amended to incorporate gender neutral language.

21. Vacancy to be notified

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

21. Vacancy to be notified

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

The title of 'Governor-General' has been replaced with 'Head of State'.

22. Quorum

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

23. Voting in Senate

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

Part III – The House of Representatives

24. Constitution of House of Representatives

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

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

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

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

25. Provisions as to races disqualified from voting

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

26. Representatives in first Parliament

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

New South Wales twenty-three;

Victoria twenty;

Queensland eight;

South Australia six;

Tasmania five;

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

New South Wales twenty-six;

Victoria twenty-three;

Queensland nine;

South Australia seven;

Western Australia five;

Tasmania five.

27. Alteration of number of members

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

28. Duration of House of Representatives

Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the ~~Governor-General~~ Head of State, pursuant to section 5.

28. Duration of House of Representatives

Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Head of State, pursuant to section 5.

The title of ‘Governor-General’ has been replaced with ‘Head of State’. The section also clarifies that dissolution will occur in accordance with (amended) section 5.

29. Electoral divisions

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

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

30. Qualification of electors

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

31. Application of State laws

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

32. Writs for general election

The ~~Governor-General in Council~~ Head of State may cause writs to be issued for general elections ~~of members~~ of the House of Representatives ~~when the Parliament has expired~~.

If the Head of State has issued a proclamation to dissolve the House of Representatives, pursuant to section 5, the Head of State must cause writs to be issued for general elections of members of the House of Representatives.

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

32. Writs for general election

The Head of State may cause writs to be issued for general elections of the House of Representatives when the Parliament has expired.

If the Head of State has issued a proclamation to dissolve the House of Representatives, pursuant to section 5, the Head of State must cause writs to be issued for general elections of members of the House of Representatives.

The writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

The amendment replaces the title 'Governor-General' with 'Head of State' and also ensures writs for an election are issued following the expiry of the Parliamentary term or following a proclamation under section 5.

33. Writs for vacancies

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

34. Qualifications of members

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

~~(i) he must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen;~~

~~(ii) he must be a subject of the Queen, either natural born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.~~

The qualifications of a member of the House of Representatives shall be as determined from time to time by the Parliament.

33. Writs for vacancies

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

34. Qualifications of members

The qualifications of a member of the House of Representatives shall be as determined from time to time by the Parliament.

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

Original section 34 prescribed the initial qualifications of a member of the House of Representatives, prior to the Parliament determining those qualifications. As the Parliament has 'provided otherwise', the criteria specified are now superseded and can be removed.

<p>35. Election of Speaker</p> <p>The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.</p> <p>The Speaker shall cease to hold his office if hethe Speaker ceases to be a member. HeThe Speaker may be removed from office by a vote of the House, or he may resign histhe Speaker's office or histhe Speaker's seat in the House of Representatives by writing addressed to the Governor-GeneralHead of State.</p>	<p>35. Election of Speaker</p> <p>The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.</p> <p>The Speaker shall cease to hold office if the Speaker ceases to be a member. The Speaker may be removed from office by a vote of the House, or may resign the Speaker's office or the Speaker's seat in the House of Representatives by writing addressed to the Head of State.</p>	<p>This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.</p>
<p>36. Absence of Speaker</p> <p>Before or during any absence of the Speaker, the House of Representatives may choose a member to perform histhe Speaker's duties in histhe Speaker's absence.</p>	<p>36. Absence of Speaker</p> <p>Before or during any absence of the Speaker, the House of Representatives may choose a member to perform the Speaker's duties in the Speaker's absence.</p>	<p>This section has been amended to incorporate gender neutral language.</p>
<p>37. Resignation of member</p> <p>A member may by writing addressed to the Speaker, or to the Governor-GeneralHead of State if there is no Speaker or if the Speaker is absent from the Commonwealth, resign histhe member's place, which thereupon shall become vacant.</p>	<p>37. Resignation of member</p> <p>A member may by writing addressed to the Speaker, or to the Head of State if there is no Speaker or if the Speaker is absent from the Commonwealth, resign the member's place, which thereupon shall become vacant.</p>	<p>This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.</p>
<p>38. Vacancy by absence</p> <p>The place of a member shall become vacant if for two consecutive months of any session of the Parliament hethe member, without the permission of the House, fails to attend the House.</p>	<p>38. Vacancy by absence</p> <p>The place of a member shall become vacant if for two consecutive months of any session of the Parliament the member, without the permission of the House, fails to attend the House.</p>	<p>This section has been amended to incorporate gender neutral language.</p>

39. Quorum

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

40. Voting in House of Representatives

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

40. Voting in House of Representatives

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

This section has been amended to incorporate gender neutral language.

Part IV—Both Houses of the Parliament

41. Right of electors of States

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

42. Oath or affirmation of allegiance

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

42. Oath or affirmation of allegiance

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

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

See Schedule 1 regarding the Head of State's oath/affirmation

43. Member of one House ineligible for other

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

44. Disqualification

Any person who:

- (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or
- (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or
- (iii) is an undischarged bankrupt or insolvent; or
- (iv) holds any office of profit under the ~~Crown~~ Commonwealth, or any pension payable ~~during the pleasure of the Crown~~ out of any of the revenues of the Commonwealth; or
- (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;

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

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

44. Disqualification

Any person who:

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

But subsection (iv) does not apply to the office of Minister of State for the Commonwealth, or any 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 military forces of the Commonwealth whose services are not wholly employed by the Commonwealth.

This section has been amended to preserve the effect of section 44, while replacing references to 'the Crown' with 'the Commonwealth' and removing references to the Queen.

of the military forces of the Commonwealth whose services are not wholly employed by the Commonwealth.

45. Vacancy on happening of disqualification

If a senator or member of the House of Representatives:

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

~~his~~the senator or member's place shall thereupon become vacant.

46. Penalty for sitting when disqualified

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

45. Vacancy on happening of disqualification

If a senator or member of the House of Representatives:

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

the senator's or member's place shall thereupon become vacant.

46. Penalty for sitting when disqualified

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

This section has been amended to incorporate gender neutral language.

This section has been amended to incorporate gender neutral language.

47. Disputed elections

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

The determination of any question respecting the qualification of the Head of State or disputing the election of the Head of State shall be as provided for from time to time by the Parliament.

47. Disputed elections

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

The determination of any question respecting the qualification of the Head of State or disputing the election of the Head of State shall be as provided for from time to time by the Parliament.

The relevant House of Parliament is currently responsible for determining the process for resolving disputed elections. The Parliament as a whole will be responsible for resolving disputed elections for Head of State.

48. Allowance to members

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

48. Allowance to members

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

This section has been amended to incorporate gender neutral language.

49. Privileges etc. of Houses

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

50. Rules and orders

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

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

Part V – Powers of the Parliament

51. Legislative powers of the Parliament

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

- (i) trade and commerce with other countries, and among the States;
- (ii) taxation; but so as not to discriminate between States or parts of States;
- (i) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth;
- (iv) borrowing money on the public credit of the Commonwealth;
- (v) postal, telegraphic, telephonic, and other like services;
- (vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth;
- (vii) lighthouses, lightships, beacons and buoys;
- (viii) astronomical and meteorological observations;
- (ix) quarantine;
- (x) fisheries in Australian waters beyond territorial limits;
- (xi) census and statistics;
- (xii) currency, coinage, and legal tender;
- (xiii) banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money;
- (xiv) insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
- (xv) weights and measures;
- (xvi) bills of exchange and promissory notes;
- (xvii) bankruptcy and insolvency;
- (xviii) copyrights, patents of inventions and designs, and trade marks;
- (xix) naturalization and aliens;
- (xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
- (xxi) marriage;
- (xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;

-
- (xxiii) invalid and old-age pensions;
 - (xxiiiA) the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances;
 - (xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
 - (xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
 - (xxvi) the people of any race for whom it is deemed necessary to make special laws;
 - (xxvii) immigration and emigration;
 - (xxviii) the influx of criminals;
 - (xxix) external affairs;
 - (xxx) the relations of the Commonwealth with the islands of the Pacific;
 - (xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
 - (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
 - (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
 - (xxxiv) railway construction and extension in any State with the consent of that State;
 - (xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
 - (xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides;
 - (xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
 - (xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
 - (xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. Exclusive powers of the Parliament

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

- (i) the seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- (ii) matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;

other matters declared by this Constitution to be within the exclusive power of the Parliament.

53. Powers of the Houses in respect of legislation

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

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

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

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

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

54. Appropriation Bills

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

55. Tax Bill

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

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

56. Recommendation of money votes

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

56. Recommendation of money votes

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

The title of 'Governor-General' has been replaced with 'Head of State'.

57. Disagreement between the Houses

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

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

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members

57. Disagreement between the Houses

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

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

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be

The title of 'Governor-General' has been replaced with 'Head of State', removes reference to the Queen and clarifies that a double dissolution is only to occur on the advice of the Prime Minister.

<p>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-GeneralHead of State for assent for the Queen's assent.</p>	<p>taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Head of State for assent.</p>	
<p>58. Royal Assent to Bills</p> <p>When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.</p> <p><i>Recommendations by Governor-General</i></p> <p>The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.</p> <p>A proposed law passed by both Houses of the Parliament shall be taken to have received assent on the expiration of the seventh day following its passage unless the Head of State grants assent earlier.</p>	<p>58. Assent to Bills</p> <p>A proposed law passed by both Houses of the Parliament shall be taken to have received assent on the expiration of the seventh day following its passage unless the Head of State grants assent earlier.</p>	<p>Please see the covering note titled 'Head of State's assent to bills' for a full explanation of this amendment.</p> <p>The amendment ensures that the discretion currently afforded to the Governor-General to veto or amend legislation is not conferred on the Head of State. The ability to reserve a bill for assent (for up to two years) is also removed.</p>
<p>59. Disallowance by the Queen</p> <p>The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.</p>	<p>59. Recommendations by Head of State</p> <p>The Head of State in Council may return to the House in which it originated any proposed law so presented for assent, and may transmit therewith any amendments which the Head of State in Council may recommend, and the Houses may deal with the recommendation.</p>	<p>A proposed law may be returned to a House in which it originated with recommended amendments if the Head of State <i>in Council</i> recommends (the Head of State would only be able to act on advice). This provision has been retained to ensure legislative errors can be corrected if they are found immediately following the passage of the legislation.</p> <p>The ARM believes the Head of State should not have the discretion to veto laws passed by the Parliament, as the Queen is empowered to do at present.</p>

60. Signification of Queen's pleasure on Bills reserved

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

[60 Deleted]

Proposed laws will not be reserved for the Head of State's assent, so this section is to be removed.

Chapter II—The Executive Government

61. Executive power

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

61. Executive power

The executive power of the Commonwealth is vested in, and is exercisable by, the Head of State, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

The title of 'Governor-General' has been replaced with 'Head of State' and reference to the Queen has been removed.

62. Federal Executive Council

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

62. Federal Executive Council

There shall be a Federal Executive Council to advise the Head of State in the government of the Commonwealth, and the members of the Council shall be chosen with the advice of the Prime Minister and summoned by the Head of State and sworn as Executive Councillors.

The title of 'Governor-General' has been replaced with 'Head of State'.

63. Provisions referring to ~~Governor-General~~the Head of State

Unless otherwise expressly provided, the provisions of this Constitution referring to the ~~Governor-General~~Head of State in Council shall be construed as referring to the ~~Governor-General~~Head of State acting upon ministerial advice or with the advice of the Federal Executive Council.

64. Ministers of State

The ~~Governor-General~~Head of State with the advice of the Prime Minister may appoint officers to administer such departments of State of the Commonwealth as the ~~Governor-General~~Head of State in Council may establish.

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

Ministers to sit in Parliament

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

65. Number of Ministers

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

63. Provisions referring to the Head of State

Unless otherwise expressly provided, the provisions of this Constitution referring to the Head of State shall be construed as referring to the Head of State acting upon ministerial advice or with the advice of the Federal Executive Council.

64. Ministers of State

The Head of State with the advice of the Prime Minister may appoint officers to administer such departments of State of the Commonwealth as the Head of State in Council may establish.

Such officers shall be members of the Federal Executive Council, and shall be the Ministers of State for the Commonwealth.

Ministers to sit in Parliament

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

65. Number of Ministers

Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Head of State on the advice of the Prime Minister directs.

This amendment would ensure that unless otherwise stated, the Head of State will not be empowered to exercise personal discretion (shall act on advice).

In practice, the Prime Minister appoints Ministers to their respective portfolios and may be removed by the Prime Minister. The amendment reflects this practice, by specifying that the Head of State acts on the advice of the Prime Minister when appointing and removing Ministers.

This section has also been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

The title of 'Governor-General' has been replaced with 'Head of State' and again specifies that this power is exercised on advice.

66. Salaries of Ministers

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

67. Appointment of civil servants

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

68. Command of naval and military forces

The command in chief of the naval and military forces of the Commonwealth is vested in the ~~Governor-General as the Queen's representative~~Head of State acting on ministerial advice.

66. Salaries of Ministers

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

67. Appointment of civil servants

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

68. Command of naval and military forces

The command in chief of the naval and military forces of the Commonwealth is vested in the Head of State acting on ministerial advice.

Reference to the Queen has been replaced with 'Head of State'.

The title of 'Governor-General' has been replaced with 'Head of State'.

It is recognised that (at present) the Governor-General should act on advice when acting as Commander in Chief of Australia's military forces. This amendment removes the current ambiguity present in the Constitution by clarifying this as a power exercised on advice.

69. Transfer of certain departments on establishment of the Commonwealth

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

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

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

70. Certain powers of Governors to vest in ~~Governor-General~~ the Head of State

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~~ the Governor's Executive Council, or in any authority of a Colony, shall vest in the ~~Governor-General~~ Head of State, or in the ~~Governor-General~~ Head of State in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

69. Transfer of certain departments on establishment of the Commonwealth.

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

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

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

70. Certain powers of Governors to vest in the Head of State

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 the Governor's Executive Council, or in any authority of a Colony, shall vest in the Head of State, or in the Head of State in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

'On establishment of the Commonwealth' has been added to reflect the fact that the transfer of departments by proclamation of the then Governor-General was a historical event, taking place specifically at the establishment of the Commonwealth in 1901.

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

[New provision 70A]

70A Office of Prime Minister

- (i) The Head of State shall appoint a person to be known as the Prime Minister to be the Head of the Government of the Commonwealth.
- (ii) Following a general election, or when there is otherwise a vacancy in the office of Prime Minister, the Head of State shall appoint as Prime Minister the person whom the Head of State believes most likely to be able to form a Government which will command the confidence of the House of Representatives.
- (iii) The Prime Minister shall not hold office for a longer period than three months unless the Prime Minister is or becomes a member of the House of Representatives.
- (iv) The Prime Minister shall hold office, subject to this Constitution, until the Prime Minister dies, resigns, or the Head of State terminates the Prime Minister's appointment. The Head of State does not act in Council or on ministerial advice when terminating a Prime Minister's appointment.
- (v) The Head of State shall not terminate the appointment of a Prime Minister who holds the confidence of the House of Representatives.

At present, the office of Prime Minister is not defined or explicitly provided for in the Australian Constitution. This amendment introduces a definition of the role and enshrines the accepted conventions for appointing a Prime Minister.

Please see the covering note '[Appointment and removal of the Prime Minister](#)' for further information.

Chapter III—The Judicature

71. Judicial power and Courts

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

72. Judges' appointment, tenure and remuneration

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

1. (i) shall be appointed by the ~~Governor-General~~ Head of State in Council;
2. (ii) shall not be removed except by the ~~Governor-General~~ Head of State in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;
3. (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~~the Justice attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if ~~he~~that person has attained that age.

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

72. Judges' appointment, tenure, and remuneration

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

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

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

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

This section has been amended to incorporate gender neutral language and to replace the title of Governor-General with 'Head of State'.

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~~the office of Justice by writing under his hand delivered to the ~~Governor-General~~Head of State.

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

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

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 the office of Justice by writing under the Justice's hand delivered to the Head of State.

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

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

73. Appellate jurisdiction of High Court

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

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

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

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

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

~~74. Appeal to Queen in Council~~

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

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

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

[74. Deleted]

Section 74 should be deleted in its entirety. This provision, which provided for appeals in some circumstances from Australian courts to the Privy Council (the 'Queen in Council') has become obsolete following various Australian Acts (which s 74 also expressly permitted the Parliament to pass). It has no relevance today.

75. Original jurisdiction of High Court

In all matters:

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

the High Court shall have original jurisdiction.

76. Additional original jurisdiction

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

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

77. Power to define jurisdiction

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

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

78. Proceedings against Commonwealth or State

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

79. Number of judges

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

80. Trial by jury

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

Chapter IV—Finance and Trade**81. Consolidated Revenue Fund**

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

82. Expenditure charged thereon

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

83. Money to be appropriated by law

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

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

84. Transfer of officers

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

Any such officer who is not retained in the service of the Commonwealth shall, unless ~~hethat~~ officer 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 ~~hsthat~~ office.

Any such officer who is retained in the service of the Commonwealth shall preserve all ~~hstheir~~ 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 ~~hsthe~~ officer's service with the Commonwealth were a continuation of ~~hsthe~~ officer's service with the State. Such pension or retiring allowance shall be paid to ~~him~~the officer by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which ~~hsthe~~ officer's term of service with the State bears to ~~hsthe~~ officer's whole term of service, and for the purpose of the calculation ~~hsthe~~ officer's salary shall be taken to be that paid to ~~him~~the officer 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 ~~hethat~~ officer had been an officer of a department transferred to the

84. Transfer of officers

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

Any such officer who is not retained in the service of the Commonwealth shall, unless that officer 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 that office.

Any such officer who is retained in the service of the Commonwealth shall preserve all their 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 the officer's service with the Commonwealth were a continuation of the officer's service with the State. Such pension or retiring allowance shall be paid to the officer by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which the officer's term of service with the State bears to the officer's whole term of service, and for the purpose of the calculation the officer's salary shall be taken to be that paid to the officer 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 that officer had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

This section has been amended to incorporate gender neutral language.

Commonwealth and were retained in the service of the Commonwealth.		
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85. Transfer of property of State

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

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

86. [Customs, excise, and bounties]

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

87. [Revenue from customs and excise duties]

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

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

88. Uniform duties of customs

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

89. Payment to States before uniform duties

Until the imposition of uniform duties of customs:

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

90. Exclusive power over customs, excise, and bounties

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

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

91. Exceptions as to bounties

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

92. Trade within the Commonwealth to be free

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

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

93. Payment to States for five years after uniform tariffs

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

- (i) the duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State;
- (ii) subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

94. Distribution of surplus

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

95. Customs duties of Western Australia

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

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

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

96. Financial assistance to States

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

97. Audit

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

98. Trade and commerce includes navigation and State railways

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

99. Commonwealth not to give preference

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

100. Nor abridge right to use water

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

101. Inter-State Commission

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

102. Parliament may forbid preferences by State

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

<p>103. Commissioners' appointment, tenure, and remuneration</p> <p>The members of the Inter-State Commission:</p> <ul style="list-style-type: none"> (i) shall be appointed by the Governor-GeneralHead of State in Council; (ii) shall hold office for seven years, but may be removed within that time by the Governor-GeneralHead of State in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity; (iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office. 	<p>103. Commissioners' appointment, tenure, and remuneration</p> <p>The members of the Inter-State Commission:</p> <ul style="list-style-type: none"> (i) shall be appointed by the Head of State in Council; (ii) shall hold office for seven years, but may be removed within that time by the Head of State in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity; (iii) shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office. 	<p>The title of 'Governor-General' has been replaced with 'Head of State'.</p>
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104. Saving of certain rates

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

105. Taking over public debts of States

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

105A. Agreements with respect to State debts

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

Chapter V—The States

106. Saving of Constitutions

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

107. Saving of power of State Parliaments

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

108. Saving of State laws

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

109. Inconsistency of laws

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

110. Provisions referring to Governor

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

111. States may surrender territory

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

112. States may levy charges for inspection laws

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

113. Intoxicating liquids

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

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

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

115. States not to coin money

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

116. Commonwealth not to legislate in respect of religion

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

117. Rights of residents in States

~~A subject of the Queen~~No person, 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~~that person if ~~he~~that person were ~~a subject of the Queen~~ resident in such other State.

117. Rights of residents in States

No person, resident in any State, shall be subject in any other State to any disability or discrimination which would not be equally applicable to that person if that person were resident in such other State.

We propose removing the term ‘subject of the Queen’ currently in section 117 of the Constitution. This provision prohibits state laws that discriminate specifically on the basis of residence in another state. While the 1999 Constitution (Establishment of Republic) Bill substituted ‘Australian citizen’ for ‘subject of the Queen’, this would narrow the scope of s 117 beyond that intended by the current wording. Our view is that section 117 should not permit discrimination against any Australian resident purely on the ground of their residency in another state.

This section has also been amended to incorporate gender neutral language.

118. Recognition of laws etc. of States

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

119. Protection of States from invasion and violence

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

120. Custody of offenders against laws of the Commonwealth

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

Chapter VI—New States

121. New States may be admitted or established

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

122. Government of territories

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

123. Alteration of limits of States

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

124. Formation of new States

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

Chapter VII—Miscellaneous

125. Seat of Government

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

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

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

<p>126. Power to Her Majesty to authorise Governor-General of Head of State to appoint deputies</p> <p>The QueenHead of State may with the advice of the Prime Minister authorise the Governor-General to appoint any person, or any persons jointly or severally, to be histhe Head of State's deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-GeneralHead of State such powers and functions of the Governor-GeneralHead of State as hethe Head of State 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-GeneralHead of State himself of any power or function of the Head of State.</p>	<p>126. Power of Head of State to appoint deputies</p> <p>The Head of State may with the advice of the Prime Minister appoint any person, or any persons jointly or severally, to be the Head of State's deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Head of State such powers and functions of the Head of State as the Head of State thinks fit to assign to such deputy or deputies, but the appointment of such deputy or deputies shall not affect the exercise by the Head of State of any power or function of the Head of State.</p>	<p>The titles of 'Governor-General' and Queen have been replaced with 'Head of State'. The amendment also clarifies these powers are to be exercised on the advice of the Prime Minister.</p>
<p>127. <i>[section 127 was repealed by the Constitution Alteration (Aboriginals) 1967 Act]</i></p>		

Chapter VIII—Alteration of the Constitution

128. Mode of altering the Constitution

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

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

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

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

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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 Head of State in 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 qualified to vote for the election of the House of Representatives.

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

Section 128 currently provides the Governor-General with the discretion to refuse assent to a proposed constitutional change endorsed by the Australian people at a referendum. The proposed amendment would require the Head of State to assent to the change.

The amendment also provides that the Head of State will act on advice prior to the question being put to electors and replaces references to ‘Governor-General’ with ‘Head of State’.

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~~Head of State who shall ~~for the Queen's~~ assent to it.

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

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

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 Head of State who shall assent to it.

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

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

Chapter IX—Election and removal of Head of State

129. Eligibility to be Head of State

A person is eligible to be Head of State if the person is:

- (a) an Australian citizen and qualified to be elected to the House of Representatives in accordance with section 34 of this Constitution;
- (b) not disqualified from sitting as a member of the House of Representatives in accordance with section 44 of this Constitution;
- (c) not a member of the House of Representatives or the Senate or a candidate standing for election to the House of Representatives or the Senate, if writs for elections to the House of Representatives or Senate have been issued;
- (d) not a member of any State or Territory parliament, or a candidate standing for election to any State or Territory parliament, if writs for elections to any State or Territory parliament have been issued; and
- (e) not a person previously elected as Head of State for more than one term.

New sections 129-133 specify the eligibility criteria, nomination process, election, removal and remuneration provisions for the Head of State.

A summary of these provisions can be [found in the covering outline of the ARM policy on page \(ii\)](#).

130. Nomination for election as Head of State

The Parliament of the Commonwealth of Australia may nominate up to three eligible persons to stand as candidates to be elected as the Head of State.

The Parliament of each State or Territory which is represented in the Senate or the House of Representatives in the Parliament of the Commonwealth, may nominate one eligible person to stand as a candidate to be Head of State.

The Parliament of the Commonwealth and the Parliaments of each nominating State or Territory may, subject to this Constitution, adopt such procedures as they see fit to select eligible persons nominated to stand as candidates to be Head of State, provided that the nominations are made at least 60 days prior to the next date for election for Head of State.

For the purposes of this section, a State or Territory is represented in the House of Representatives, if there is at least one electoral division in the House of Representatives, the boundaries of which are wholly and exclusively within that State or Territory.

131. Elections for Head of State

A Head of State shall be elected by the people of the Commonwealth from among the people nominated for election pursuant to section 130.

In the event that only one person is nominated for election for Head of State, an election to confirm or reject the appointment of the nominee shall nevertheless be held.

The Parliament of the Commonwealth may make laws consistent with this Constitution about the method of election of the Head of State.

The first election for Head of State shall occur in the month that is the fourth month after the commencement of this Chapter of the Constitution.

The election for Head of State shall thereafter occur every five years in the month in which the fifth anniversary of the previous election for Head of State falls.

Subject to section 132, a person elected Head of State holds office for a term of five years.

Before assuming office, the Head of State shall take an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

132. Ceasing to be Head of State

A person ceases to be Head of State if:

- (a) the Head of State resigns in writing to the Prime Minister or if there is no Prime Minister, to the President of the Senate; or
- (b) a motion is passed by both Houses of the Parliament in the same session for removal of the Head of State on the ground of proved misbehaviour or incapacity; or
- (c) the Head of State ceases to be eligible to be Head of State in accordance with section 129.

If a person ceases to be Head of State, and there are more than four months of that person's term as Head of State remaining, then an election for Head of State shall occur in the month that is the fourth month after the date upon which that person ceased to be Head of State. Subject to this section, the person thereby elected Head of State holds office for a term of five years.

133. Remuneration of the Head of State

The Head of State shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during the Head of State's continuance in office.

This amendment replicates the salary provisions for the Governor-General contained in section 3 of the current Constitution.

Schedule 1

Schedule 1

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~~ loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold. 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~~. Affirm that I will be loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold.

(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.)

OATH

I, *A.B.*, do swear that I will be loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold.
SO HELP ME GOD!

AFFIRMATION

I, *A.B.*, do affirm that I will be loyal to the Commonwealth of Australia and the Australian people whose Constitution and laws I shall uphold.

All elected members of Parliament and the Head of State would be required to swear an oath/affirmation to the Australian people, rather than the Queen and her successors. It is up to each elected member to choose between taking the oath or affirmation (as is the case now).

	<p>Schedule 2 Transitional provisions for the establishment of the republic</p>	
	<p>1. The Governor-General</p> <p>The office of Governor-General ceases to exist at the commencement of [insert Act name].</p>	<p>Transitional and savings provisions are needed to ensure that offices and laws in operation prior to the coming into force of a Constitution amended for an Australian republic will continue without rupture until they are specifically changed. Our proposed provisions largely follow those found in the Constitution Alteration (Establishment of Republic) Bill 1999.</p>
	<p>2. Parliament may make laws during transitional period</p> <p>During the period between the abolition of the office of the Governor-General and the commencement of the term of the inaugural Head of State, the Parliament may pass such legislation as is required to give effect to [insert Act name] provided that such legislation is appropriate and adapted to the means of giving effect to the provisions of [insert Act name].</p>	

3. Savings

The alterations of this Constitution made by [insert Act name] do not affect:

- (i) the validity or continued effect, after the office of Governor-General ceases to exist, of anything done before that time under this Constitution or under the law in force in the Commonwealth or under the exercise of the prerogative powers; or
- (ii) the continuity of the Parliament and its proceedings after the office of Governor-General ceases to exist; 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 when the office of Governor-General ceases to exist; 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 office of Governor-General ceases to exist; or
- (v) the continuity of courts and their jurisdiction and proceedings after the office of Governor-General ceases to exist.

After the office of Governor-General ceases to exist, anything done before that time for the purposes of a provision of this Constitution by the Governor-General, or by the Governor-General in Council, has effect as if it had been done by the Head of State, or by the Head of State in Council, as the case requires.

4. The States

A State that has not altered its laws to sever its links with the Crown by the time the office of Governor-General ceases to exist retains its links with the Crown until it has so altered its laws.

States' links with the Crown would not be automatically extinguished by changes to the Federal Constitution. Australia can become a republic without the states severing those links. Changes at a state level would take place through the usual democratic processes in each state.