

CONCEPT DRAFT

Version dated 28/04/22

The purpose of this part of the website is to illustrate what a relocated Constitution might look like

Introduction

Our Australian or 'Commonwealth' Constitution came into operation on 1 January 1901. It was created by a law (ie an 'Act of Parliament' or 'statute') approved or 'passed' by the Parliament of the United Kingdom (UK). This Act of Parliament is set out in the **left hand column** of the table that follows this Introduction.

You will see that the Act of Parliament is called the 'Commonwealth of Australia Constitution Act' (we will call it the '*Constitution Act*' for short). If you scroll a bit further down, you will come to a clause that says:

9 Constitution

The Constitution of the Commonwealth shall be as follows:—

Underneath that you will see the words:

THE CONSTITUTION.

This Constitution is divided as follows:

- Chapter I. – The Parliament
 - Part I. – General
 - Part II. – The Senate
 - Part III. – The House of Representatives
 - Part IV. – Both Houses of the Parliament
 - Part V. – Powers of the Parliament
- Chapter II. – The Executive Government
- Chapter III. – The Judicature
- Chapter IV. – Finance and Trade
- Chapter V. – The States
- Chapter VI. – New States
- Chapter VII. – Miscellaneous
- Chapter VIII. – Alteration of the Constitution
- The Schedule

In other words, our Constitution is located as *part* of (even *within*) the Constitution Act — as illustrated here:

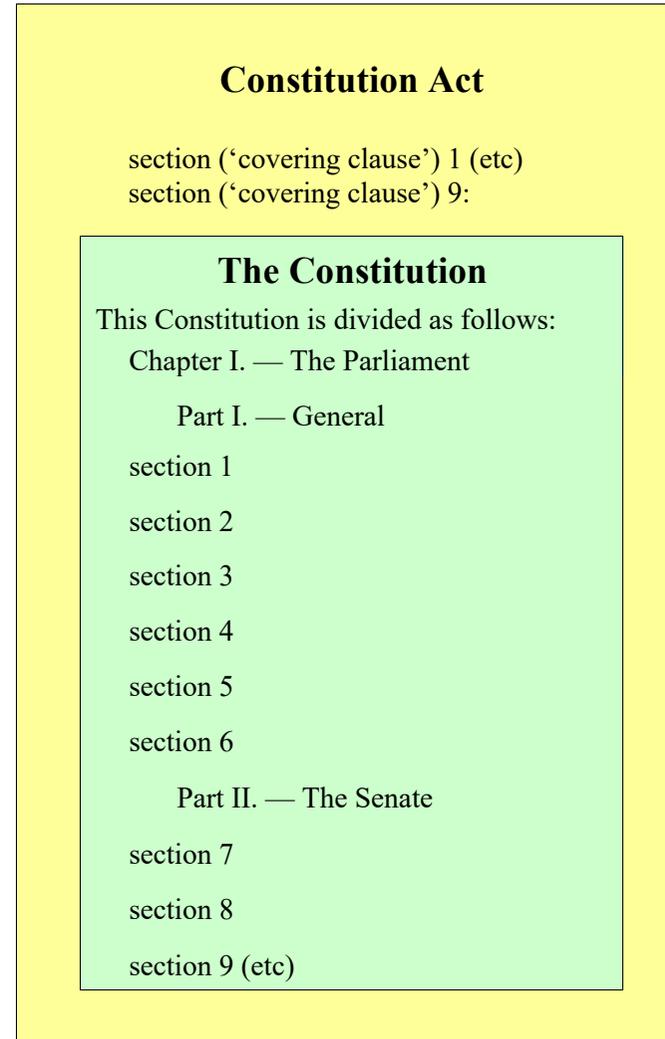
9 Constitution

The Constitution of the Commonwealth shall be as follows:—

THE CONSTITUTION.

This Constitution is divided as follows:

- Chapter I. — The Parliament
 - Part I. — General
 - Part II. — The Senate
 - Part III. — The House of Representatives
 - Part IV. — Both Houses of the Parliament
 - Part V. — Powers of the Parliament
- Chapter II. — The Executive Government
- Chapter III. — The Judicature
- Chapter IV. — Finance and Trade
- Chapter V. — The States
- Chapter VI. — New States
- Chapter VII. — Miscellaneous
- Chapter VIII. — Alteration of the Constitution
- The Schedule



What is the relocation proposal about?

Subject to approval at a national referendum, the existing Constitution could be moved or ‘relocated’ to a document known as the ‘federal instrument’ (once the relocation process was finished the instrument would be referred to as ‘the Constitution’).

Why relocate the Constitution?

The reasons for relocating the Constitution would be:

- (a) to make clear that the Constitution’s authority has an *Australian* source (we were still a British colony in 1901); and
- (b) to *simplify* the structure of the Constitution; and
- (c) to make the Constitution more *comprehensive* by making it the single source of constitutional statutory law for the Commonwealth; and
- (d) otherwise, to continue the Constitution in operation *without any significant change in its practical effect*.

These points are amplified below.

(a) to make *clear* that the Constitution’s authority has an Australian source;

This would be achieved by the provision about the Australian people’s approval in the Preamble and by the referendum *process* that would bring these changes into effect.

(b) to *simplify* the structure of the Constitution;

The structure of the Constitution is complicated because it is embedded in the Constitution Act. The result is that there are *two* groups of provisions numbered ‘1’ to ‘9’, although in a sense they are part of separate documents (see the diagram on the previous page and the table below). The first group, sections 1 to 9, are sections of the Constitution Act, not the Constitution itself. These are commonly described as ‘covering clauses’. The second group, which begins *within* section or covering clause 9 of the Act, are numbered as ‘sections’ of the Constitution.

Some of the covering clauses were only intended to have temporary effect (eg to bring the Constitution into operation), and now that they have done their job, there is no need for them to continue as part of the law. But other covering clauses (2, 5 and 6) can be described as still ‘effective’ because they have a continuing legal operation. The proposed relocated Constitution would incorporate the ‘effective’ covering clauses in a *later* part of the Constitution (see suggested Chapter 9 at the end of the table below). As a result they would be renumbered, but their legal effect would be unchanged. This change would therefore *simplify* the Constitution. It would no longer be necessary to distinguish between ‘covering clauses’ and ‘sections’.

(c) to make the Constitution more comprehensive by making it the *single* source of constitutional statutory law for the Commonwealth of Australia;

This would be done by possibly incorporating in the text of the Constitution provisions equivalent to those already applicable to Australia under the following Acts:

- the Statute of Westminster, 1931 (UK) (see section 51(xxxviiA) and section 52A in the table below); and
- the Australia Act 1986 (UK) and the Australia Act 1986 (Cth) (see sections 106 and 107 in the table below).

These Acts represent significant landmarks in the full emergence of Australia from colonial status to full independence as a sovereign nation. The intention is that the referendum measure providing for the relocation would also create provision to repeal the Acts in their application to Australia.

The Statute of Westminster 1931

As indicated, the incorporation in the Constitution of provisions from the Statute of Westminster ('the Act') that continue to be applicable to Australia would enable the Act to be repealed in its application to Australia. This would give the Constitution a more self-contained character. There appear to be only two possible provisions of the Act that might be given effect in this way. One of these is the second half — sometimes described as the 'second limb' — of section 2(2), which provides that:

the powers of the Parliament of a Dominion [defined to include the Commonwealth of Australia] shall include the power to repeal or amend any such Act [of the UK parliament], order, rule or regulation in so far as the same is part of the law of the Dominion.

A provision to this effect could possibly form part of section 51 of the relocated Constitution (see suggested section 51(37A) in the table below), though its likely scope of operation would be limited.

It is envisaged that section 51(37A) could authorise what are often described as 'statute law revision' amendments of the Commonwealth statute book. In other words, clearing away obsolete or 'dead wood' provisions. Useful as 'housekeeping' is to keep the statute book tidy, the proposed relocation mostly concerns more fundamental kinds of powers. The provision has been suggested here simply because the power is implied from the second limb of section 2(2). Yet there might be situations where it could be useful.

The second possible provision of the Statute of Westminster that might be included in the relocated Constitution is section 3. This gave the Commonwealth Parliament power to make extra-territorial legislation. That is, laws applying *outside* the country. This was generally not possible for a colonial parliament. Section 3 provides:

It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

There is a question, however, whether the Commonwealth — at least since the Australia Acts were enacted in 1986 — needs a power of this kind. It already has plenary power under section 51(29) of the Constitution to make laws in relation to ‘external affairs’ (see the section in the table below). Some judges have interpreted this very broadly, extending to any ‘matter, thing or relationship outside Australia’. Bearing in mind that the extra-territorial issue had its origins in Australia’s colonial past, it could also be argued that section 3 is no longer relevant to the Commonwealth in view of its status as an independent nation. However, as the section still appears to be in force, it seems appropriate to include it as a potential provision in the table below — see suggested section 52A in the table below.

The powers in suggested sections 51(37A) and 52A are of most relevance to the Commonwealth, but it is by no means certain that the Commonwealth would be interested in seeing them added to the Constitution. In that event, they could easily be omitted without significantly affecting the relocation exercise.

The Australia Acts 1986

Curiously, we have to concern ourselves with *two* Australia Acts. The reason for this is explored in detail by Professor Twomey in her books *The Chameleon Crown*, *The Queen and Her Australian Governors*, Federation Press, 2006, and the more technical *The Australia Acts 1986, Australia’s Statutes of Independence*, Federation Press, 2010. The Australia Acts deal with terminating the so-called ‘residual links’ between Australia and the UK, which go back to the earliest colonial days in Australia. These links represent controls that the UK Government was able to exercise over the colonies that became first, self governing (mostly in the 1850s), and later part of an independent nation in the twentieth century. The fact that many Australians regarded the UK, as the ‘mother country’ for so long says something about how they saw themselves in the world. It also helps to explain why these links persisted for so long. The fact that the Commonwealth and States differed in their concerns about the links, greatly lengthened and complicated the negotiations for their severance.

The Commonwealth was primarily interested in terminating appeals to the Privy Council from State Supreme Courts exercising non-federal jurisdiction. The States, on the other hand, wanted to remove various limits on the exercise of their powers. These included the Colonial Laws Validity Act 1865 which prevented them amending the UK Merchant Shipping Act 1894 that still applied as part of the law of the States. Another concern was to remove constraints on legislating extra-

territorially. The States also wanted the right to advise the Queen directly on the appointment and removal of Governors without the involvement of the UK government or the Commonwealth government.

The Commonwealth and States also differed on the best way to deal with the issues. The Commonwealth believed that the Australian Constitution conferred sufficient power to change the law. The States, on the other hand, believed that an Act of the UK Parliament would be the simplest, clearest, most secure way to make the necessary changes. Some of the States seemed to trust the UK more than the Commonwealth. They were concerned that if the changes were made relying on Commonwealth powers, there was a risk that the Commonwealth might try to make unilateral changes later.

As a result, two Acts — one British, the other Australian — in virtually identical form, were passed and commenced at the same moment on 3 March 1986. It will be observed that a number of the Australia Acts' provisions closely parallel provisions of the Statute of Westminster. This is because provisions that were first applied to the Commonwealth were later extended to the States. But in some respects the States are freer of control than the Commonwealth (see, for example, sections 8 and 9 of the Australia Acts).

As with the Statute of Westminster, the incorporation in the Constitution of the Australia Acts' provisions — applicable to Australia — would enable those Acts to be repealed. This would also help give the Constitution a more self-contained character.

Of all the provisions in the Australia Acts, it seems that only sections 2, 6 and 7 need to be somehow reproduced in the text of the Constitution to retain the effect of those provisions as part of the law of Australia.

Summary

For a full appreciation of the scope and effect of the Constitution it is sometimes necessary to consider the operation of the Statute of Westminster and the Australia Acts. But given that only a limited number of provisions of those Acts have a continuing operation, the continued existence of those three Acts alongside the Constitution is a potential cause for complication and confusion. The incorporation of those provisions within the text of the Constitution (and the repeal of the Statute of Westminster and the Australia Acts) would greatly simplify the constitutional law of Australia. Augmenting the Constitution in this way would enable one law to replace the *four* existing laws.

It would also be appropriate to repeal the Statute of Westminster Adoption Act 1942 (Cth) as part of the same exercise.

(d) otherwise, to continue the Constitution in operation *without any significant change in its practical effect.*

The relocated Constitution would retain the Queen, as head of state, the Governor-General and all existing structures and offices. The relocation would not affect the balance of power between the Commonwealth and States. The only section not continued in existence would be section 25, an obsolete provision (see the notes below for that section). There is also an unnecessary table of provisions that would be omitted (this is also explained below in the notes for covering clause 9).

It would be possible to incorporate into the relocation changes necessary to make Australia a republic, but that is not the intention or effect of the following draft provisions.

It is envisaged that any provision relating to Australia's First Nations Peoples inserted into the Constitution before the relocation would be included in the relocated Constitution.

It is intended that *all* of the current text of the Constitution would be relocated, apart from section 25 and the table of provisions in covering clause 9.

The relocated Constitution would also confer power on Parliament to make laws to provide for consequential or transitional matters relating to the relocation (see proposed section 135 in the table below).

Such a fundamental change to the form of our fundamental national legal instrument would, of course, require careful expert assessment and extensive community consultation. The purpose of the following 'Concept draft' is simply to sketch out what that change might look like.

Text of existing Constitution

Text showing proposed changes to existing Constitution (and related notes)

'The Concept draft' — suggested text

Commonwealth of Australia Constitution Act

(63 & 64 VICTORIA, CHAPTER 12)

An Act to constitute the Commonwealth of Australia
[9th July 1900]

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

~~Commonwealth of Australia Constitution Act~~

The Constitution of the Commonwealth of Australia

~~(63 & 64 VICTORIA, CHAPTER 12)~~

~~An Act to constitute the Commonwealth of Australia
[9th July 1900]~~

Note on headings (above): The relocated Constitution would no longer be a UK Act and therefore the regnal year, chapter number, Act title (long title) and assent date of the Constitution Act would no longer be appropriate. The name or title of the instrument would become 'The Constitution of the Commonwealth of Australia'.

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

Note: Generally, the language of the preamble has been followed as closely as possible, but been recast slightly (without changing its effect) to reflect the fact that the

The Constitution of the Commonwealth of Australia

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

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:</p>	<p>events it looks back to occurred more than 100 years ago. Three changes are proposed for this paragraph:</p> <ul style="list-style-type: none"> • 'and Western Australia' would be inserted after 'Tasmania'. WA was not included in the original preamble because at the time the Act was passed the colony had not held a referendum about joining the other colonies in the federation. Fortunately the Act contemplated that WA might decide to join, as indicated in covering clause 3 below and section 26 of the Constitution). The Constitution, as relocated, would remedy this omission and make the preamble more accurate; • the auxiliary verb 'have' needs to be omitted from 'have agreed' to more clearly express the past tense; • 'the Constitution hereby established' has already become 'this Constitution'; <p>And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen countries and territories:</p> <p>Note: The reference to admission into the Commonwealth of other 'Australasian Colonies and possessions of the Queen' needs to be removed; there are no longer any colonies or possessions of this kind, instead 'countries and territories' could be substituted.</p>	<p>And whereas it is expedient to provide for the admission into the Commonwealth of other countries and territories:</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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:</p>	<p>And recognising that this Constitution has been approved by the people as an Australian instrument.</p> <p>Note: If the Constitution is relocated as suggested, this new paragraph would recognise that the Constitution was now an Australian instrument rather than a UK Act of Parliament.</p>	<p>And recognising that this Constitution has been approved by the people as an Australian instrument</p>
<p>1 Short title This Act may be cited as the Commonwealth of Australia Constitution Act.</p>	<p>Accordingly, the following provisions have effect as the Constitution of the Commonwealth of Australia:</p> <p>Note: The third paragraph of the preamble (see the column to the left) is not proposed for the relocated Constitution because it sets out the formal words indicating that a statute was being made (the words of enactment). One of the purposes of the relocation is to establish clearly that the Constitution takes its authority from the approval of the Australian people (expressed at a referendum), not from a UK Act of Parliament. The final suggested paragraph (see the column to the right) is a kind of conclusion to the previous paragraph.</p> <p>Note: Covering clause 1 would not be needed in the proposed relocated Constitution. The clause gives a name or 'short title' to the Commonwealth of Australia Constitution Act passed by the UK Parliament. If the Constitution (set out in section 9 of the Act) is relocated to the suggested Australian instrument as proposed, the Act would become irrelevant. It would be repealed as part of the relocation arrangements.</p>	<p>Accordingly, the following provisions have effect as the Constitution of the Commonwealth of Australia:</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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.</p>	<p>Note: Covering clause 2 is not reproduced in the proposed relocated Constitution, but its effect would be continued by proposed section 129 (below).</p>	
<p>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.</p>	<p>Note: Covering clause 3 is not reproduced in the proposed relocated Constitution. It is a 'one-off' provision to fix a day (1 January 1901) on which the people of Australia were united in a federation. It also provided for the appointment of the first Governor-General. It has no continuing purpose and is therefore not needed in the relocated Constitution.</p>	
<p>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.</p>	<p>Note: Covering clause 4 would not be reproduced in the proposed relocated Constitution. This is another 'one-off' provision that had the effect of establishing the Commonwealth and bringing the Constitution into effect on 1 January 1901. It has no continuing purpose, but suggested section 134 (below) would deal with some continuing aspects.</p>	
<p>5 Operation of the Constitution and laws This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall</p>	<p>Note: Covering clause 5 would be continued in effect by proposed section 130 (below).</p>	

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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.

Note: Covering clause 6 would not be reproduced in the proposed relocated Constitution but definitions having the same legal effect are set out in suggested section 131 (below).

Note: Covering clause 7 would not be reproduced in the proposed relocated Constitution. In repealing the 1885 Act the clause has already done its job and there is no need to retain it. The Federal Council Act was a UK Act passed at the request of four of the Australian colonies and Fiji, but without the support of NSW. The purpose of the Act was to create a law making body rather than a government. It could pass laws applying outside a colony, which was beyond the legislative competence of the colonies.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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.</p>	<p>However, the Act only applied to the colonies who chose to adopt it, and was seen to be weak and incomplete. According to Quick and Garran, it met for the last time in January 1899.</p> <p>Note: The second paragraph of clause 7 provides for laws previously made by the Council to be repealed. Three laws have never been repealed but are either obsolete — perhaps long forgotten — or are now inapplicable. The relocation of the Constitution could be accompanied (or preceded) by the repeal of the remaining Federal Council laws by a Commonwealth Act.</p>	
<p>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.</p>	<p>Note: The Constitutional Commission, in its 1988 Final Report (see paras 3.72 to 3.95), concluded that the Colonial Boundaries Act mentioned in clause 8 should be repealed. It had never been used to alter the boundaries of the Commonwealth and because the Commonwealth had ample powers for this purpose, the Act was no longer needed (in fact, its continued existence might give rise to 'uncertainty'). It is proposed, therefore that clause 8 would not be carried over into the relocated Constitution. This would be equivalent to repealing the clause. However, the disposal of the clause would not in itself repeal the Colonial Boundaries Act. This could be provided for under suggested section 135 (below)</p>	

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>9 Constitution</p> <p>The Constitution of the Commonwealth shall be as follows:—</p> <p style="text-align: center;">THE CONSTITUTION.</p> <p>This Constitution is divided as follows:</p> <p>Chapter I. – The Parliament</p> <p style="padding-left: 2em;">Part I. – General</p> <p style="padding-left: 2em;">Part II. – The Senate</p> <p style="padding-left: 2em;">Part III. – The House of Representatives</p> <p style="padding-left: 2em;">Part IV. – Both Houses of the Parliament</p> <p style="padding-left: 2em;">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>The Schedule</p>	<p>Note: Covering clause 9 is not reproduced in the proposed relocated Constitution. The opening words of covering clause 9, which 'introduce' the constitution that follows, have a similar function to the paragraph immediately preceding section 1 of the proposed relocated Constitution.</p> <p>As regards the table of contents (set out opposite in the left hand column), modern drafting practice in Australia, recommends that these be set out <i>before</i> the text of the legislation or instrument, rather than within the substantive provisions, as here. Therefore this table of contents would not form part of the relocated Constitution. One of the reasons for the current practice is that the table, though useful, is purely for <i>information</i>. Yet its location among the substantive provisions means that it can only be changed by <i>amending the law</i>.</p>	<p>Chapter I — The Parliament</p> <p>Part I — General</p> <p>1 Legislative power</p> <p>The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the</p>
<p>Chapter I — The Parliament</p> <p>Part I — General</p> <p>1 Legislative power</p> <p>The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the</p>		<p>Chapter I — The Parliament</p> <p>Part I — General</p> <p>1 Legislative power</p> <p>The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>Queen, a Senate, and a House of Representatives, and which is hereinafter called “The Parliament”, or “The Parliament of the Commonwealth”.</p>		<p>Queen, a Senate, and a House of Representatives, and which is hereinafter called “The Parliament”, or “The Parliament of the Commonwealth”.</p>
<p>2 Governor-General</p>		<p>2 Governor-General</p>
<p>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.</p>		<p>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.</p>
<p>3 Salary of Governor-General</p>		<p>3 Salary of Governor-General</p>
<p>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.</p>		<p>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.</p>
<p>The salary of a Governor-General shall not be altered during his continuance in office.</p>		<p>The salary of a Governor-General shall not be altered during his continuance in office.</p>
<p>4 Provisions relating to Governor-General</p>		<p>4 Provisions relating to Governor-General</p>
<p>The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.</p>		<p>The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.</p>
<p>5 Sessions of Parliament. Prorogation and dissolution</p>		<p>5 Sessions of Parliament. Prorogation and dissolution</p>
<p>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.</p>		<p>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.</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)***Summoning Parliament*

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

First session

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

6 Yearly session of Parliament

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

Part II — The Senate**7 The Senate**

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

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

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, 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.

Summoning Parliament

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

First session

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

6 Yearly session of Parliament

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

Part II — The Senate**7 The Senate**

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

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

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, 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.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>8 Qualification of electors</p>		<p>8 Qualification of electors</p>
<p>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.</p>		<p>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.</p>
<p>9 Method of election of senators</p>		<p>9 Method of election of senators</p>
<p>The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.</p>		<p>The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.</p>
<p><i>Times and places</i></p>		<p><i>Times and places</i></p>
<p>The Parliament of a State may make laws for determining the times and places of elections of senators for the State.</p>		<p>The Parliament of a State may make laws for determining the times and places of elections of senators for the State.</p>
<p>10 Application of State laws</p>		<p>10 Application of State laws</p>
<p>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.</p>		<p>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.</p>
<p>11 Failure to choose senators</p>		<p>11 Failure to choose senators</p>
<p>The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.</p>		<p>The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.</p>
<p>12 Issue of writs</p>		<p>12 Issue of writs</p>
<p>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.</p>		<p>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.</p>
<p>13 Rotation of senators</p>		<p>13 Rotation of senators</p>
<p>As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution</p>		<p>As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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

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

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

14 Further provision for rotation

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

15 Casual vacancies

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

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

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

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

14 Further provision for rotation

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

15 Casual vacancies

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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

Where:

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

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

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

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

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

Where:

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

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

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

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

after that commencement.

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

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

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

- (a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight – until the expiration or dissolution of the first House of

after that commencement.

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

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

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

- (a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight – until the expiration or dissolution of the first House of

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

Representatives to expire or be dissolved after that law came into operation; or

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

16 Qualifications of senator

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

17 Election of President

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

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

18 Absence of President

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

19 Resignation of senator

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

20 Vacancy by absence

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

Representatives to expire or be dissolved after that law came into operation; or

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

16 Qualifications of senator

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

17 Election of President

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

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

18 Absence of President

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

19 Resignation of senator

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

20 Vacancy by absence

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****21 Vacancy to be notified**

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

22 Quorum

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

23 Voting in Senate

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

Part III — The House of Representatives**24 Constitution of House of Representatives**

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

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

- (i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;

21 Vacancy to be notified

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

22 Quorum

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

23 Voting in Senate

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

Part III — The House of Representatives**24 Constitution of House of Representatives**

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

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

- (i) a quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>(ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.</p> <p>But notwithstanding anything in this section, five members at least shall be chosen in each Original State.</p>	<p>Note: Section 25 of the Constitution would <i>not</i> be relocated. It is an obsolete provision that reflects values and beliefs that most would now find abhorrent.</p> <p>Most Australians would be surprised (and perhaps embarrassed) to know that such a provision still exists in the Constitution. It is obsolete (all the State laws in question have long since been repealed), but even the theoretical possibility of such a situation should not be allowed to continue. The 1983 Alteration of the Constitution (never enacted) proposed its omission as did the 1976 Hobart Convention saying that the section 'with all its implications' ought to be repealed.</p> <p>In fact a reading of section 25 <i>in context</i> shows that the section has the effect of 'punishing' a State that disqualifies people from voting on racist grounds. It does so by limiting its representation in the House of Representatives. Even so, section 25 should be omitted merely for appearing to countenance the possibility of such a discriminatory State law.</p> <p>Another why reason section 25 should not be</p>	<p>(ii) the number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.</p> <p>But notwithstanding anything in this section, five members at least shall be chosen in each Original State.</p>
<p>25 Provisions as to races disqualified from voting</p> <p>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.</p>		

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>26 Representatives in first Parliament</p> <p>Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:</p> <p>New South Wales twenty-three; Victoria twenty; Queensland eight; South Australia six; Tasmania five;</p> <p>Provided that if Western Australia is an Original State, the numbers shall be as follows:</p> <p>New South Wales twenty- six; Victoria twenty-three; Queensland nine; South Australia seven; Western Australia five; Tasmania five.</p> <p>27 Alteration of number of members</p> <p>Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.</p> <p>28 Duration of House of Representatives</p> <p>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.</p> <p>29 Electoral divisions</p> <p>Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for</p>	<p>relocated is that the approval of relocation would be taken to be an endorsement by the citizens of this country of a racist provision (which in practical terms would even include any individuals who voted <i>against</i> the referendum).</p>	<p>26 Representatives in first Parliament</p> <p>Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:</p> <p>New South Wales twenty-three; Victoria twenty; Queensland eight; South Australia six; Tasmania five;</p> <p>Provided that if Western Australia is an Original State, the numbers shall be as follows:</p> <p>New South Wales twenty- six; Victoria twenty-three; Queensland nine; South Australia seven; Western Australia five; Tasmania five.</p> <p>27 Alteration of number of members</p> <p>Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.</p> <p>28 Duration of House of Representatives</p> <p>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.</p> <p>29 Electoral divisions</p> <p>Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws for</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

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

30 Qualification of electors

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

31 Application of State laws

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

32 Writs for general election

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

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

33 Writs for vacancies

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

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.

s31 Application of State laws

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

32 Writs for general election

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

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

33 Writs for vacancies

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****34 Qualifications of members**

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

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

35 Election of Speaker

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

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

36 Absence of Speaker

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

37 Resignation of member

A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth,

34 Qualifications of members

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

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

35 Election of Speaker

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

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

36 Absence of Speaker

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

37 Resignation of member

A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth,

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
resign his place, which thereupon shall become vacant.		resign his place, which thereupon shall become vacant.
38 Vacancy by absence		38 Vacancy by absence
The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.		The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.
39 Quorum		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.		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		40 Voting in House of Representatives
Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.		Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.
Part IV — Both Houses of the Parliament		Part IV — Both Houses of the Parliament
41 Right of electors of States		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.		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		42 Oath or affirmation of allegiance
Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.		Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>43 Member of one House ineligible for other</p>		<p>43 Member of one House ineligible for other</p>
<p>A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.</p>		<p>A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.</p>
<p>44 Disqualification</p>		<p>44 Disqualification</p>
<p>Any person who:</p>		<p>Any person who:</p>
<ul style="list-style-type: none"> (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or (iii) is an undischarged bankrupt or insolvent; or (iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons; 		<ul style="list-style-type: none"> (i) is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; or (ii) is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer; or (iii) is an undischarged bankrupt or insolvent; or (iv) holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth; or (v) has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;
<p>shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives. But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.</p>		<p>shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives. But subsection (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>45 Vacancy on happening of disqualification</p> <p>If a senator or member of the House of Representatives:</p> <ul style="list-style-type: none"> (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; <p>his place shall thereupon become vacant.</p>		<p>45 Vacancy on happening of disqualification</p> <p>If a senator or member of the House of Representatives:</p> <ul style="list-style-type: none"> (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; <p>his place shall thereupon become vacant.</p>
<p>46 Penalty for sitting when disqualified</p> <p>Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.</p>		<p>46 Penalty for sitting when disqualified</p> <p>Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.</p>
<p>47 Disputed elections</p> <p>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.</p>		<p>47 Disputed elections</p> <p>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.</p>
<p>48 Allowance to members</p> <p>Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.</p>		<p>48 Allowance to members</p> <p>Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.</p>
<p>49 Privileges etc. of Houses</p> <p>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</p>		<p>49 Privileges etc. of Houses</p> <p>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</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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.</p>		<p>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.</p>
<p>50 Rules and orders</p>		<p>50 Rules and orders</p>
<p>Each House of the Parliament may make rules and orders with respect to:</p>		<p>Each House of the Parliament may make rules and orders with respect to:</p>
<ul style="list-style-type: none"> (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. 		<ul style="list-style-type: none"> (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.
<p>Part V — Powers of the Parliament</p>	<p>Note: In reading the paragraphs set out below in section 51 (as with all paragraphs), please note that each must be read <i>with</i> the introductory words of the section ('The Parliament shall (etc) . . .').</p>	<p>Part V — Powers of the Parliament</p>
<p>51 Legislative powers of the Parliament</p>		<p>51 Legislative powers of the Parliament</p>
<p>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:</p>		<p>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:</p>
<ul style="list-style-type: none"> (i) trade and commerce with other countries, and among the States; (ii) taxation; but so as not to discriminate between States or parts of States; (iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth; (iv) borrowing money on the public credit of the Commonwealth; (v) postal, telegraphic, telephonic, and other like services; (vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth; (vii) lighthouses, lightships, beacons and buoys; (viii) astronomical and meteorological 		<ul style="list-style-type: none"> (i) trade and commerce with other countries, and among the States; (ii) taxation; but so as not to discriminate between States or parts of States; (iii) bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth; (iv) borrowing money on the public credit of the Commonwealth; (v) postal, telegraphic, telephonic, and other like services; (vi) the naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth; (vii) lighthouses, lightships, beacons and buoys; (viii) astronomical and meteorological

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
observations;		observations;
(ix) quarantine;		(ix) quarantine;
(x) fisheries in Australian waters beyond territorial limits;		(x) fisheries in Australian waters beyond territorial limits;
(xi) census and statistics;		(xi) census and statistics;
(xii) currency, coinage, and legal tender;		(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;		(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;		(xiv) insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned;
(xv) weights and measures;		(xv) weights and measures;
(xvi) bills of exchange and promissory notes;		(xvi) bills of exchange and promissory notes;
(xvii) bankruptcy and insolvency;		(xvii) bankruptcy and insolvency;
(xviii) copyrights, patents of inventions and designs, and trade marks;		(xviii) copyrights, patents of inventions and designs, and trade marks;
(xix) naturalization and aliens;		(xix) naturalization and aliens;
(xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;		(xx) foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;
(xxi) marriage;		(xxi) marriage;
(xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;		(xxii) divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants;
(xxiii) invalid and old-age pensions;		(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;		(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		(xxiv) the service and execution throughout the Commonwealth of the civil and criminal

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
process and the judgments of the courts of the States;		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;		(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;		(xxvi) the people of any race for whom it is deemed necessary to make special laws;
(xxvii) immigration and emigration;		(xxvii) immigration and emigration;
(xxviii) the influx of criminals;		(xxviii) the influx of criminals;
(xxix) external affairs;		(xxix) external affairs;
(xxx) the relations of the Commonwealth with the islands of the Pacific;		(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;		(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;		(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;		(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;		(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;		(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;		(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;		(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;

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
	[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:]	
	(xxxviiA) the amendment or repeal of any Act of Parliament of the United Kingdom, or any order, rule or regulation made under any such Act in so far as the same is part of the law of Commonwealth (but not as part of the law of a State);	(xxxviiA) the amendment or repeal of any Act of Parliament of the United Kingdom, or any order, rule or regulation made under any such Act in so far as the same is part of the law of Commonwealth (but not as part of the law of a State);
	Note: See notes on the Statute of Westminster in the Introduction at the beginning of this table. The provision above is a possible addition, but its inclusion would depend on the attitude of the Commonwealth and States.	
(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;		(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.		(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		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:		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:

Text of existing Constitution (continued)

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

53 Powers of the Houses in respect of legislation

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

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

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

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any

Text showing proposed changes to existing Constitution (and related notes) (continued)

Note: Section 3 of Statute of Westminster, 1931 gave the Commonwealth Parliament power to make extra-territorial legislation (see the **Introduction**). This is another possible provision the need for it would depend on the attitude of the Commonwealth.

'The Concept draft' — suggested text (continued)

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

52A Power of Parliament to legislate extra-territorially

It is hereby declared and enacted that the Parliament has full power to make laws having extra-territorial operation.

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

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>of such omissions or amendments, with or without modifications.</p> <p>Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.</p>		<p>of such omissions or amendments, with or without modifications.</p> <p>Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.</p>
<p>54 Appropriation Bills</p> <p>The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.</p>		<p>54 Appropriation Bills</p> <p>The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.</p>
<p>55 Tax Bill</p> <p>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.</p> <p>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.</p>		<p>55 Tax Bill</p> <p>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.</p> <p>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.</p>
<p>56 Recommendation of money votes</p> <p>A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.</p>		<p>56 Recommendation of money votes</p> <p>A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.</p>
<p>57 Disagreement between the Houses</p> <p>If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the</p>		<p>57 Disagreement between the Houses</p> <p>If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the</p>

Text of existing Constitution (*continued*)**Text showing proposed changes to existing Constitution (and related notes) (*continued*)****'The Concept draft' — suggested text (*continued*)**

House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

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

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

58 Royal assent to Bills

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

Recommendations by Governor-General

The Governor-General may return to the House in which it originated any proposed law so presented to

House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

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

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

58 Royal assent to Bills

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

Recommendations by Governor-General

The Governor-General may return to the House in which it originated any proposed law so presented to

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59 Disallowance by the Queen

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

60 Signification of Queen's pleasure on Bills reserved

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

Chapter II — The Executive Government**61 Executive power**

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

62 Federal Executive Council

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

him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

59 Disallowance by the Queen

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

60 Signification of Queen's pleasure on Bills reserved

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

Chapter II — The Executive Government**61 Executive power**

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

62 Federal Executive Council

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

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>63 Provisions referring to Governor-General The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.</p>		<p>63 Provisions referring to Governor-General The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.</p>
<p>64 Ministers of State The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.</p>		<p>64 Ministers of State The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.</p>
<p><i>Ministers to sit in Parliament</i> After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.</p>		<p><i>Ministers to sit in Parliament</i> After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.</p>
<p>65 Number of Ministers Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.</p>		<p>65 Number of Ministers Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.</p>
<p>66 Salaries of Ministers There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.</p>		<p>66 Salaries of Ministers There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.</p>
<p>67 Appointment of civil servants Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in</p>		<p>67 Appointment of civil servants Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>Council or by a law of the Commonwealth to some other authority.</p>		<p>Council or by a law of the Commonwealth to some other authority.</p>
<p>68 Command of naval and military forces</p>		<p>68 Command of naval and military forces</p>
<p>The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.</p>		<p>The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.</p>
<p>69 Transfer of certain departments</p>		<p>69 Transfer of certain departments</p>
<p>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:</p>		<p>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:</p>
<p>Posts, telegraphs, and telephones;</p>		<p>Posts, telegraphs, and telephones;</p>
<p>Naval and military defence;</p>		<p>Naval and military defence;</p>
<p>Lighthouses, lightships, beacons, and buoys;</p>		<p>Lighthouses, lightships, beacons, and buoys;</p>
<p>Quarantine.</p>		<p>Quarantine.</p>
<p>But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.</p>		<p>But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.</p>
<p>70 Certain powers of Governors to vest in Governor-General</p>		<p>70 Certain powers of Governors to vest in Governor-General</p>
<p>In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.</p>		<p>In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.</p>
<p>Chapter III — The Judicature</p>		<p>Chapter III — The Judicature</p>
<p>71 Judicial power and Courts</p>		<p>71 Judicial power and Courts</p>
<p>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</p>		<p>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</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

72 Judges' appointment, tenure and remuneration

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

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

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

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

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

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

courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

72 Judges' appointment, tenure and remuneration

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

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

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

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

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

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

office of a Justice under an appointment made before the repeal or amendment.

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

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

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

73 Appellate jurisdiction of High Court

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

- (i) of any Justice or Justices exercising 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

office of a Justice under an appointment made before the repeal or amendment.

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

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

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

73 Appellate jurisdiction of High Court

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

- (i) of any Justice or Justices exercising 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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

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

74 Appeal to Queen in Council

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

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

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

75 Original jurisdiction of High Court

In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

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

74 Appeal to Queen in Council

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

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

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

75 Original jurisdiction of High Court

In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>(iv) between States, or between residents of different States, or between a State and a resident of another State;</p> <p>(v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;</p>		<p>(iv) between States, or between residents of different States, or between a State and a resident of another State;</p> <p>(v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;</p>
<p>the High Court shall have original jurisdiction.</p>		<p>the High Court shall have original jurisdiction.</p>
<p>76 Additional original jurisdiction</p>		<p>76 Additional original jurisdiction</p>
<p>The Parliament may make laws conferring original jurisdiction on the High Court in any matter:</p>		<p>The Parliament may make laws conferring original jurisdiction on the High Court in any matter:</p>
<p>(i) arising under this Constitution, or involving its interpretation;</p> <p>(ii) arising under any laws made by the Parliament;</p> <p>(iii) of Admiralty and maritime jurisdiction;</p> <p>(iv) relating to the same subject-matter claimed under the laws of different States.</p>		<p>(i) arising under this Constitution, or involving its interpretation;</p> <p>(ii) arising under any laws made by the Parliament;</p> <p>(iii) of Admiralty and maritime jurisdiction;</p> <p>(iv) relating to the same subject-matter claimed under the laws of different States.</p>
<p>77 Power to define jurisdiction</p>		<p>77 Power to define jurisdiction</p>
<p>With respect to any of the matters mentioned in the last two sections the Parliament may make laws:</p>		<p>With respect to any of the matters mentioned in the last two sections the Parliament may make laws:</p>
<p>(i) defining the jurisdiction of any federal court other than the High Court;</p> <p>(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;</p> <p>(iii) investing any court of a State with federal jurisdiction.</p>		<p>(i) defining the jurisdiction of any federal court other than the High Court;</p> <p>(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;</p> <p>(iii) investing any court of a State with federal jurisdiction.</p>
<p>78 Proceedings against Commonwealth or State</p>		<p>78 Proceedings against Commonwealth or State</p>
<p>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.</p>		<p>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.</p>
<p>79 Number of judges</p>		<p>79 Number of judges</p>
<p>The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.</p>		<p>The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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.

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.

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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

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

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

85 Transfer of property of State

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

- (i) all property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary;

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

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

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

85 Transfer of property of State

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

- (i) all property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary;

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

- (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.

- (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.

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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.

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.

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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.

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.

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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.

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.

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

103 Commissioners' appointment, tenure, and remuneration

The members of the Inter-State Commission:

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

104 Saving of certain rates

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

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; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

103 Commissioners' appointment, tenure, and remuneration

The members of the Inter-State Commission:

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

104 Saving of certain rates

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

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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.

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.

Text of existing Constitution (continued)

- (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 VI — 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.

Text showing proposed changes to existing Constitution (and related notes) (continued)

Note: It is proposed that section 106 would be replaced with new provisions as explained below. The heading would be broadened to reflect the change in content.

Suggested section 106(1) is not expressed to confer any specific powers on States, but has the effect of recognising — ‘grandfathering’ — the powers conferred on the States by the Australia Acts. Section 106(1) would have this effect because those powers would have been part of the Constitution of each State as in force immediately before the relocation day. In a sense those provisions have had the effect of removing the ‘colonial’ status of the States.

Suggested section 106(2) has the effect of incorporating the provisions of section 7 of the Australia Acts. That section concerns what might be regarded as ‘internal’ operations of State governments rather than rights and powers likely to affect third parties, it does not seem necessary to reproduce its provisions in the Constitution. In effect, the rules laid down by section 7 would continue to operate as if set out in section 106(2).

‘The Concept draft’ — suggested text (continued)

- (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 VI — The States**106 Saving of State Constitutions etc.**

- (1) Subject to this Constitution, the Constitution of each State of the Commonwealth, until altered in accordance with its Constitution, shall continue:
- (a) as in force immediately before the relocation; or
 - (b) in the case of a State admitted or established after the relocation — as in force at its admission or establishment.
- (2) This section shall be taken to set out and continue in force the law that applied on and from 3 March 1986 until the relocation in respect of the Governor in each State, including provisions relating to:
- (a) the appointment and termination of the appointment of the Governor; and
 - (b) the exercise of the Queen’s powers and functions and the Governor’s powers and functions; and
 - (c) the tendering of advice to the Queen.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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.</p>	<p>Notes The heading to section 107 has been changed to reflect the fact that State powers have been augmented by the Australia Acts.</p> <p>Suggested subsections 107 (1) to (4) of the proposed section reproduce the effect of sections 2, 5 and 6, and subsections 16(2) and (3) of the Australia Acts. The effect of section 5 is preserved because paragraphs (1)(a) and (b) (corresponding to section 2 of the Australia Acts) are expressed to be 'Subject to this Constitution' (other aspects of section 5 are preserved in different ways).</p>	<p>107 Powers of State Parliaments</p> <p>(1) Subject to this Constitution, it is hereby declared and enacted that the legislative powers of the Parliament of each State include:</p> <ul style="list-style-type: none"> (a) full power to make laws for the peace, order and good government of the State that have extra-territorial operation; and (b) all legislative powers that the Parliament of the United Kingdom might have exercised before 3 March 1986 for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity to engage in relations with countries outside Australia. <p>(2) Notwithstanding subsection (1), a law made by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whenever made.</p> <p>(3) In subsection (2), the expression <i>a law made by that Parliament</i> includes, in relation to the State of Western Australia, the Constitution Act 1889 of that State.</p> <p>(4) A reference in this section to the <i>Parliament of a State</i> includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)****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

Subsection (5) of the suggested section 107 is intended to avoid a possible argument that a law made by a State under this section — forming part of the Constitution — would be a law 'arising under this Constitution' within the meaning of section 76(i) of the Constitution.

Subsection (6) is intended to pick up the 'residue' of existing section 107 by preserving any power other than a legislative power.

that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

(5) For the avoidance of doubt, it is hereby declared that a law mentioned in subsection (1) does not arise under this Constitution.

(6) Subject to this section, every power of a State Parliament, shall continue:

- (a) as in force immediately before the relocation; or
- (b) in the case of a State admitted or established after the relocation — as in force at its admission or establishment.

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

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
for the time being of the State, or other chief executive officer or administrator of the government of the State.		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		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.		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		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.		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		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.		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		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.		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		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.		A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>116 Commonwealth not to legislate in respect of religion</p>		<p>116 Commonwealth not to legislate in respect of religion</p>
<p>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.</p>		<p>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.</p>
<p>117 Rights of residents in States</p>		<p>117 Rights of residents in States</p>
<p>A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.</p>		<p>A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.</p>
<p>118 Recognition of laws etc. of States</p>		<p>118 Recognition of laws c. of States</p>
<p>Full faith and credit shall be given, through-out the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.</p>		<p>Full faith and credit shall be given, through-out the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.</p>
<p>119 Protection of States from invasion and violence</p>		<p>119 Protection of States from invasion and violence</p>
<p>The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.</p>		<p>The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.</p>
<p>120 Custody of offenders against laws of the Commonwealth</p>		<p>120 Custody of offenders against laws of the Commonwealth</p>
<p>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.</p>		<p>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.</p>
<p>Chapter VI — New States</p>		<p>Chapter VI — New States</p>
<p>121 New States may be admitted or established</p>		<p>121 New States may be admitted or established</p>
<p>The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and</p>		<p>The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>conditions, including the extent of representation in either House of the Parliament, as it thinks fit.</p>		<p>conditions, including the extent of representation in either House of the Parliament, as it thinks fit.</p>
<p>122 Government of territories</p>		<p>122 Government of territories</p>
<p>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.</p>		<p>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.</p>
<p>123 Alteration of limits of States</p>		<p>123 Alteration of limits of States</p>
<p>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.</p>		<p>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.</p>
<p>124 Formation of new States</p>		<p>124 Formation of new States</p>
<p>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.</p>		<p>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.</p>
<p>Chapter VII — Miscellaneous</p>		<p>Chapter VII — Miscellaneous</p>
<p>125 Seat of Government</p>		<p>125 Seat of Government</p>
<p>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.</p>		<p>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.</p>

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
<p>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.</p> <p>The Parliament shall sit at Melbourne until it meet at the seat of Government.</p>		<p>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.</p> <p>The Parliament shall sit at Melbourne until it meet at the seat of Government.</p>
<p>126 Power to Her Majesty to authorise Governor-General to appoint deputies</p> <p>The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.</p>		<p>126 Power to Her Majesty to authorise Governor-General to appoint deputies</p> <p>The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.</p>
<p>Chapter VIII — Alteration of the Constitution</p> <p>128 Mode of altering the Constitution</p> <p>This Constitution shall not be altered except in the following manner:</p> <p>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.</p> <p>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</p>		<p>Chapter VIII — Alteration of the Constitution</p> <p>128 Mode of altering the Constitution</p> <p>This Constitution shall not be altered except in the following manner:</p> <p>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.</p> <p>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</p>

Text of existing Constitution (continued)**Text showing proposed changes to existing Constitution (and related notes) (continued)****'The Concept draft' — suggested text (continued)**

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

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

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

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

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

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

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

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

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

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

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)**Chapter IX — Relocation**

Note: Chapter IX is a new group of provisions intended to deal with various aspects of the relocation. These provisions would not change the practical effect of the Constitution. While the definitions in section 131 might be referred to from time to time, it is thought that the other provisions would eventually remain 'in the background'.

Note: One of the aims of the relocation is to *simplify* the structure of the Constitution by incorporating within it the effect of its covering clauses. This would overcome the present confusing situation where there are two groups of provisions numbered '1' to '9' (see the Introduction). The covering clauses that still have legal effect (2, 5 and 6) would be replaced by equivalent sections in the Constitution (see below). As these would appear at the end of the Constitution, there is no need to renumber any existing sections. Because of the thousands of references to existing sections in judgements, laws, instruments etc, a change in number could cause confusion. (Of course, existing references to the covering clauses would no longer be accurate.)

Chapter IX —Relocation

Part I —Some matters formerly provided for in the Constitution Act

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)**129 ~~2 Aet~~ Constitution to extend to the Queen's successors**

The provisions of this ~~Aet~~ **Constitution** referring to the Queen shall extend to Her Majesty's heirs and successors, in the sovereignty of ~~the United Kingdom~~ **Australia**.

Note: **Section 129** has been adapted from covering clause 2. Since 1973, the formal title of the Queen in relation to Australia has been:

Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories Queen, Head of the Commonwealth.

Bearing in mind the passing of the Statute of Westminster, 1931 (UK) and the Australia Acts 1986, and that the relocation is intended to reflect current arrangements, it seems appropriate to reflect the Monarch's status as 'Queen of Australia'. The Constitutional Commission recommended that 'Australia' be substituted for 'United Kingdom'. This was also the recommendation of the 1976 Constitutional Convention.

129 Constitution to extend to the Queen's successors

The provisions of this Constitution referring to the Queen shall extend to Her Majesty's heirs and successors, in the sovereignty of Australia.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)**130 5 Operation of the this Constitution and laws**

This ~~Act~~ **Constitution**, and all laws made by the Parliament of the Commonwealth under the ~~Constitution~~ **it**, 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.~~

Note: **Section 130** has been adapted from covering clause 5. Because this provision would form part of a relocated Constitution, the reference to 'Act' must become a reference to 'Constitution'. However, this would not change the effect of the provision. Section 130 would provide, in effect, that the Constitution and laws made under the Constitution (ie constitutionally) have supremacy over the laws of the states.

The High Court has decided that at least since the Australia Acts that Britain is now a foreign country. As a result of this decision, it is no longer appropriate to make special provision in Australian law for British ships. The application of Commonwealth laws to the ships of other countries (including Britain) would ordinarily be a matter governed by a branch of the law known as private international law. Australian law might also apply to the ships of other countries as a result of specific treaties.

130 Operation of this Constitution and laws

This Constitution, and all laws made by the Parliament under it, 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.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

131 ¶ Definitions

The Commonwealth shall mean the Commonwealth of Australia as established under this Act **the Constitution Act and continued in existence by this Constitution.**

Original States shall mean ~~such~~ **the States as are that were** parts of the Commonwealth at its establishment.

The States shall mean ~~such of the colonies of New South Wales, New Zealand, Victoria, South Australia, Queensland, Tasmania, Victoria and 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~~ **any countries** or territories as **that** may be admitted into or established by the Commonwealth as States; and each of ~~such~~ **those** parts of the Commonwealth shall be called "a State".

Note: Section 131 has been adapted from covering clause 6 of the Constitution Act. Generally, the language of the three existing definitions has been modernised as far as possible and brought into line with modern drafting practice without changing meanings. The words 'In this Constitution:' at the

131 Definitions

In this Constitution:

Commonwealth means the Commonwealth of Australia established under the Constitution Act and continued in existence by this Constitution.

Constitution Act means the Commonwealth of Australia Constitution Act (63 & 64 Victoria, Chapter 12) of the United Kingdom Parliament.

Original States means the States that were part of the Commonwealth at its establishment.

relocation means the relocation provided for under the *Constitution Alteration (Relocation) 20XX*.

States means New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia, and any countries or territories that may be admitted into or established by the Commonwealth as States; and each of those parts of the Commonwealth shall be called a *State*.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

beginning have been added to reflect common drafting practice. The definition **Constitution Act** is new. It appears in the heading to Part 1 and in the definition of **Commonwealth**. The definition **relocation** is also new. It is intended to avoid uncertainty about the meaning of the term. Definitions (including the suggested new definitions) have no substantive (legal) effect but enable the language of other provisions to be shortened and simplified. The definition of **States** would incorporate a number of changes: these would include omitting the reference to 'New Zealand' (it obviously never became a state and took no part in the federation movement after 1891 apart from some representations at the end). On the other hand 'colonies' would be replaced by 'any countries' which, of course, would encompass 'New Zealand'. The reference to the northern territory of South Australia would be omitted because it is now the self governing Northern Territory of Australia.

Note: **Section 132** is a suggested new provision whose purpose is to confirm the 'identity' and status of provisions that would appear (or not) in the relocated Constitution. This is important because the Constitution is to be relocated to an Australian instrument without affecting its identity, continuity or continued effect. As the notes for section 133(2) (below) indicate, the interpretation of

Part II — Constitutional identity and continuity

132 Character of Constitution

(1) Subject to this section, this Constitution as relocated shall be taken to be identical with, and to continue the effect of, the Constitution Act and Constitution as in force immediately before the relocation.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

the Constitution has been affected by its character as a 'statute'. Because the relocated Constitution would be an instrument rather than an Act of Parliament or 'statute', the intention of this section is to equate changes in the relocated text with constitutional alterations under section 128 of the Constitution. These provisions are intended to help ensure that the relocated Constitution is interpreted and administered as if it were still contained in the UK Act.

Subsection (2): it is suggested that the name or title of the relocated Constitution would be 'The Constitution of the Commonwealth of Australia' (see the beginning of this table).

Subsection (3): identifies various provisions of the Constitution Act — the so-called 'covering clauses' (previously discussed in the table above) that are *not* intended to be relocated. This subsection provides that they are to be treated as if repealed immediately after the relocation.

Subsection (4): sections 106 and 107 (set out in the right hand column of the table above) would be new provisions reproducing the effect of the Australia Acts (see the Introduction) and would replace the corresponding sections 106 and 107 in force before the relocation

Subsection (5): As previously explained in the table (above), Chapter IX is intended to bring together a number of provisions specifically related to the 'mechanics' or technical aspects of the proposed relocation.

(2) The name or title of this Constitution shall be taken to have been added immediately after the relocation.

(3) Sections 1, 3, 4, 7 and 8 of the Constitution Act, the table of provisions and preceding words in section 9 of that Act and section 25 of the Constitution, shall be taken to have been repealed immediately after the relocation.

(4) Sections 106 and 107 shall be taken to have been respectively substituted immediately after the relocation for sections 106 and 107 of the Constitution as in force immediately before the relocation.

(5) Chapter IX (including Part I to the extent of its heading) shall be taken to have been added immediately after the relocation.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

Subsection (6) sections 2, 5 and 6 of the Constitution Act (known as 'covering clauses') would become sections 129, 130 and 131 of the relocated Constitution. This subsection would explain their new location and treat changes in their form as if they had been amended.

Subsection (7) would cover provisions such as the Preamble and the form in the Schedule to the Constitution, as well as any other provision that may have been overlooked. To the extent that those provisions incorporate textual changes as part of their relocation, it deems those changes to have been amendments that took effect immediately after the relocation.

Subsection (8) would identify as a 'repeal' any omission in the relocated Constitution as compared with the Constitution before relocation.

Subsection (9) equates various kinds of amendment mentioned in the section with constitutional alterations under section 128 of the Constitution. This is an implication of the fact that the Constitution would now form part of an instrument.

Note: Proposed **section 133** is a new provision intended to make provision for interpretation of the Constitution following its relocation. Consistently with the aim of seeing the relocated instrument as identical with the Constitution when it formed part of a

(6) Sections 2, 5 and 6 of the Constitution Act shall be taken:

- (a) to have been respectively relocated as sections 129, 130 and 131; and
- (b) to have been amended to the form in which each of them stood immediately after the relocation.

(7) To the extent that the text of any other provision of this Constitution, in the form in which it stood immediately after the relocation (its *relocated form*), differs from its form immediately before the relocation, it shall be taken to have been amended to its relocated form immediately after the relocation.

(8) Where a provision of this Constitution as in force immediately before the relocation does not appear immediately after the relocation, it shall be taken to have been repealed at that time.

(9) In this section, a reference to an amendment (whether or not the words 'added', 'inserted', 'repealed' or 'substituted' are used) is a reference to an amendment effected by an alteration under section 128.

133 Interpretation

(1) It is the intention of this section that the relocation of this Constitution should not of itself affect its interpretation.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

UK Act of Parliament, subsection (1) seeks to remove the fact of the relocation as an element to be considered in the interpretation process.

Subsection (2) seeks, in different ways, to assimilate the provisions of the Australian instrument with the provisions of an Act of Parliament passed in 1900. The fact that the existing Constitution forms part of a UK statute has *in itself* affected its operation. For more than a century judges and lawyers have treated and interpreted the Constitution as a *statute*. And in its search for the meaning of a word in the Constitution, the High Court has, in accordance with standard principles of interpretation, sought from time to time to find the meaning that the word had in 1900 when the Constitution Act was passed. This is the background to paragraph (2)(a). As a statute, though a special kind of statute, the question has been raised from time to time about the potential application of the general interpretation Acts that guide the interpretation of statutes. Without dictating any method of interpretation, paragraph (2)(b) would permit resort to 'the general principles and rules applicable to the interpretation of statutes' which would include the Acts Interpretation Act 1901 of the Commonwealth. Paragraph (2)(b) would make this easier.

Subsection (3) represents another aspect of paragraph (2)(a). Mention was made of the fact that the High Court has, from time to time, sought the meaning that a word had in 1900 when the Constitution Act was passed. But

- (2) In the interpretation of this Constitution:
- (a) this Constitution shall be taken to be a statute passed in 1900; and
 - (b) regard may be had to the general principles and rules applicable to the interpretation of statutes as if the Constitution were an Act of the Parliament of the Commonwealth.

- (3) Paragraph (2)(a) does not prevent a provision added to the Constitution after 1 January 1901 being taken to be a statute passed in the year that it was added.

Text of existing Constitution (*continued*)Text showing proposed changes to existing Constitution (and related notes) (*continued*)'The Concept draft' — suggested text (*continued*)

not all of the provisions of the Constitution were enacted in 1900, for example, section 105A became part of the Constitution in 1929 as the result of an amendment. Similarly, section 15 was substituted in 1977 and sections 72 and 128 had words added in the same year. Section 133(3) would make it clear, in appropriate cases, that the Court might have regard to the meaning a word had in the year it was added to the Constitution.

Note: Because a number of constitutional provisions use 'the establishment of the Commonwealth' as a reference point for their operation, section 134(a) specifies the date of that establishment for convenience. Section 134(b) would make it clear that the continued existence of the Commonwealth is not affected by the relocation.

Note: **Subsection (1)** reflects the fact that changes in the law are often accompanied by 'savings' and 'transitional' provisions to help adjust for circumstances existing immediately before the law changed. Some obvious things would include providing that a person holding an office (eg Governor-General) under the existing Constitution is taken to hold the same office under the Constitution as relocated.

Note: Mention has already made of the importance of the identity (or 'sameness') of the relocated Constitution with the Constitution contained in the UK Act. **Subsection (2)** seeks to reinforce that

Part III — Miscellaneous**134 Declaration and enactment about the Constitution and the Commonwealth**

It is hereby declared and enacted:

- (a) that this Constitution took effect on 1 January 1901 and
- (b) that the Commonwealth of Australia was established on that day and shall be taken to be continued in existence.

135 Parliament may make laws about relocation

(1) Subject to this Constitution, the Parliament may make laws with respect to savings and transitional aspects **of** the relocation.

(2) Neither subsection (1) nor any law under that subsection is to be taken as implying a lack of identity with, or a break in the continuity or continued effect of, the Constitution Act (or the Constitution it contains) as in force immediately before the relocation.

Text of existing Constitution (<i>continued</i>)	Text showing proposed changes to existing Constitution (and related notes) (<i>continued</i>)	'The Concept draft' — suggested text (<i>continued</i>)
Schedule	Schedule	Schedule
Oath	Oath	Oath
I, <i>A.B.</i> , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.	I, <i>A.B.</i> , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.	I, <i>A.B.</i> , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.
SO HELP ME GOD!	SO HELP ME GOD!	SO HELP ME GOD!
Affirmation	Affirmation	Affirmation
I, <i>A.B.</i> , 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.	I, <i>A.B.</i> , 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.	I, <i>A.B.</i> , do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.
Note: The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.	Note: The name of the King or Queen of the United Kingdom of Great Britain and Ireland Australia for the time being is to be substituted from time to time.	Note: The name of the King or Queen of Australia for the time being is to be substituted from time to time.
	Note: See the note to proposed section 129.	