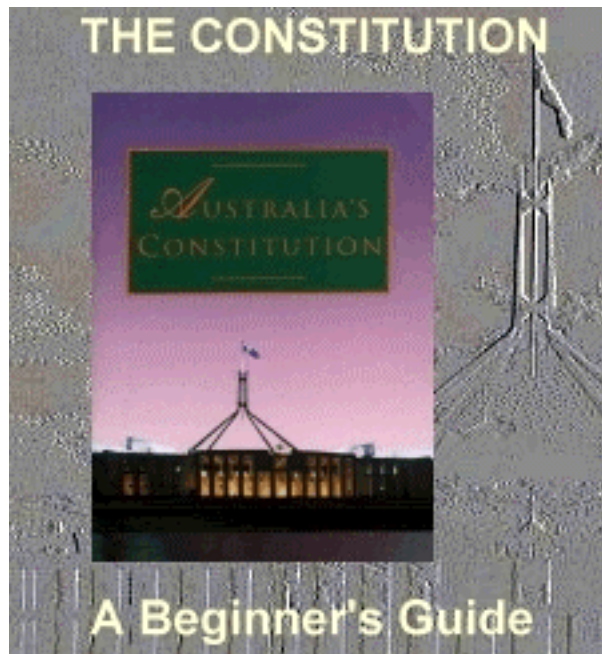


# Beginner's Guide *to the* Australian Constitution



Prepared by Nick Hobson

## INTRODUCTION

The aim of this document is to help foster an interest in the Australian constitution and other related constitutional documents. It is not intended to turn you into a Constitutional Lawyer! Our constitution is a dynamic document. Our constitution also gives us the inherent right to alter it at anytime. But in exercising our inherent right to make change we also inherit the responsibility to make sure that we understand how our constitution works so that if we choose to make change then we do so with the total understanding of what we do.

Since Federation on 1 January 1901, when our Constitution came into force, there have been 44 proposals for change put to the Australian people. Only 8 of the 44 proposals have received the necessary mandate. Up until the 1999 republic referendum, there had been no referenda put forward that proposed any change to the role and powers of the Queen of Australia or the Governor-General. With the defeat of the 1999 referenda, their positions and duties in our parliamentary system of constitutional monarchy remain unchanged. For the record, the phrase "Head of State" does not appear anywhere in our constitution.

Additionally, a set of collective questions and the corresponding set of collective answers are listed at the end of this document.

# The Commonwealth of Australia Constitution Act

## THE CONSTITUTION

An Act to constitute the Commonwealth of Australia.

[9th July 1900]

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

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

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

## An Act to constitute the Commonwealth of Australia

Our constitution came about by the Commonwealth of Australia Constitution Act being passed by the Parliament of the United Kingdom. This process was necessary as all of the six original states were self-governing colonies of the United Kingdom at the time of federation. However, the constitution itself was drafted and designed by Australians in Australia. Queen Victoria proclaimed the Act to constitute the Commonwealth of Australia on 17 September 1900.

The Act to constitute the Commonwealth of Australia consists of a preamble, 8 covering clauses, and clause 9 which details the Constitution itself. Some of the provisions in the covering clauses (Clauses 3 and 4) are now spent, that is, they are no longer applicable due to their provisions having been exhausted by time and or events. If Australia were to become a republic, other clauses - or parts of the clauses - may have to be either amended, removed or contained within the Constitution itself.

## THE CONSTITUTION (Clause 9 of the Constitution Act)

The Constitution is divided into 8 Chapters and a Schedule.



The Parliament



The Executive



The Judicature



Trade - Finance



The States



New States



Miscellaneous



Alteration

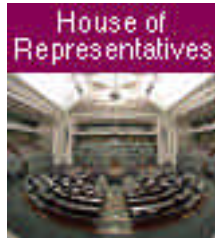
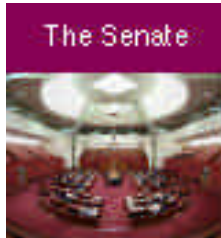
The Schedule details the oath or affirmation of allegiance that every Senator and each member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some other person authorised by him, in accordance with Section 42 of the Constitution.

# CHAPTER 1 - THE PARLIAMENT



Chapter 1 of the Constitution, which deals with The Parliament, is further divided into 5 parts:

General  
Deals with the  
composition of  
The Parliament  
The Queen, the  
Governor-General  
& the sitting of  
Parliament



## Part 1 – General

### Section 1

The legislative power of the Commonwealth is vested in the Federal Parliament, and consists of the Queen of Australia, the Senate, and the House of Representatives, and may be called "The Parliament," or "The Parliament of the Commonwealth."

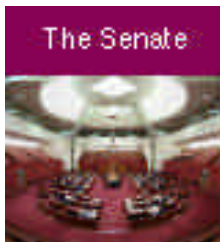


### Section 2

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



## Part 2 - The Senate

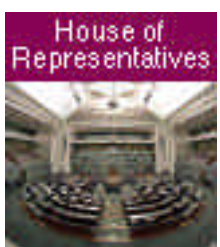


The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. Senators are chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. The Senate 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. Senators are 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. The number of senators for each State was increased from 10 to 12 by the Representation Act 1983.

It should be noted here that Section 122 of the constitution empowers the Parliament to make laws for the representation of territories in either House of Parliament to the extent and on terms which it thinks fit. Accordingly, both the Northern Territory and the ACT have each been allocated 2 senators making a total of 76 Senators.

Section 13 requires that the Senators for each State be divided into two classes to meet the rotation requirement so that only half the Senate is elected at each election. The latter does not apply following a dissolution when the entire Senate would require election. 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 3 - The House of Representatives

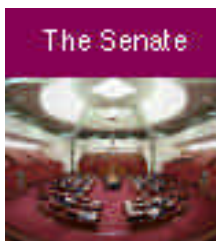


The House of Representatives is composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of Senators. The House of Representatives is composed of members directly chosen by the people of the Commonwealth,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

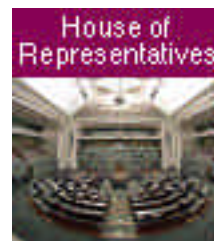
The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall be determined in accordance with Section 24 of the Constitution.

The Parliament may make laws for increasing or diminishing the number of members of the 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.

## Part 4 - Both Houses of Parliament



This part deals with the rights of electors of States, the requirement for members of both Houses to subscribe an oath or affirmation of allegiance and the disqualification of members including Section 43 which disallows a member of either House of Parliament of being chosen or of sitting as a member of the other House. Other sections of this part cover



vacancies on disqualification, penalties, disputed elections, allowances, privileges and rules and orders.

## Part 5 - Powers of The Parliament



Section 51 details, subject to the Constitution, the legislative powers of The Parliament to make laws for the peace, order, and good government of the Commonwealth and covers, amongst other things, Trade & Commerce, Taxation, Naval & Military defence of the Commonwealth, quarantine, census, currency, naturalisation & aliens and marriage. Exclusive powers of the Parliament are covered in Section 52, while Section 53 details powers of the Houses in respect of legislation. Appropriation Bills, Tax Bills and

the Recommendation of money votes are covered in Sections 54 through 56 while disagreement between the Houses is covered in Section 57.

Sections 58 through 60 deal with the assenting of laws. When a proposed law passed by both House of Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to the Constitution, that he assents in the Queen's name, or he withholds assent, or that he reserves the law for the Queen's pleasure. The Queen may disallow any law within one year from the Governor-General's assent.

## CHAPTER 2 - THE EXECUTIVE GOVERNMENT



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 the Constitution, and the laws of the Commonwealth. Additionally, a Federal Executive Council advises the Governor-General in the government of the Commonwealth.

The members of the Council are chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure. It should be noted that the swearing of Executive Councillors is not required to follow the format of The Schedule. Provisions of the 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. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

No Minister of State shall hold office for a longer period than 3 months unless he or she becomes a senator or a member of the House of Representatives. It should also be noted that the term "Prime Minister" is not mentioned anywhere in the Constitution and is simply the first, or the leader, of the Ministers for State. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

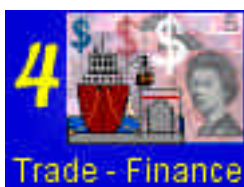
## CHAPTER 3 - THE JUDICATURE



The judicial power of the Commonwealth is vested in a Federal Supreme Court which is called the High Court of Australia. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes. 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 High Court shall have jurisdiction, with such exceptions and subject to the regulations as the Parliament prescribes, to hear and determine appeals from all judgements, decrees, orders, and sentences as outlined in Section 73.

The trial on indictment of any offence against any law of the Commonwealth shall be by jury.

## CHAPTER 4 - FINANCE AND TRADE



The Finance and Trade chapter includes provisions for the Consolidated Revenue Fund and expenditure charged thereon and that no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law. Numerous other aspects regarding the States, audit, etc. are outlined in sections 84 through 105A inclusive and also includes the requirement that 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.

## CHAPTER 5 - THE STATES



Chapter 5 deals with the many aspects of State matters including the very important section 106 which, subject to the Commonwealth Constitution, saves each State constitution until altered in accordance with the requirement of the Constitution of each State. Other matters include the rights of residents in States and the protection of States by the Commonwealth from invasion and, on the application of Executive Government of the State, against domestic violence.

## CHAPTER 6 - NEW STATES



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

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

## CHAPTER 7 – MISCELLANEOUS



Chapter 7 originally contained sections 125 through 127. Section 127 which read "In the reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted" was repealed by the Constitution Alteration (Aboriginal) 1967 referendum. Section 125 which deals with the seat of Government of the Commonwealth is now spent. Section 126 gives the Queen the power to authorize the Governor-General to appoint deputies.

**Note:** The Letters Patent relating to the Office of Governor-General should be read in conjunction with this section.

## CHAPTER 8 - ALTERATION TO THE CONSTITUTION



Section 128 is the only section in Chapter 8. Although it is the last item in the Constitution it is probably the most important as it outlines the method by which the Constitution may be changed. Once a law to amend the Constitution has been passed by both Houses it is then to be put to the electors in each State and Territory qualified to vote for the election of the House of Representatives. And if in a majority of 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.

However, other aspects relating to State matters, e.g. altering the limits of a State or perhaps the role of the Crown in State Constitutions, detailed in the penultimate paragraph of Section 128 may require that a majority of the electors voting in that State also approve the proposed law.

## THE SCHEDULE

### OATH

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

### AFFIRMATION

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

**NOTE :** The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.

## OTHER ACTS RELATING TO THE CONSTITUTION

Two Acts of Parliament that relate to the Australian Constitution are:

### WESTMINSTER ADOPTION ACT 1942

An Act to remove Doubts as to the Validity of certain Commonwealth Legislation, to obviate Delays occurring in its Passage, and to effect certain related purposes, by adopting certain Sections of the Statute of Westminster, 1931, as from the Commencement of the War between His Majesty the King and Germany.

### AUSTRALIA ACT 1986

An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation.

## Other Aspects relating to a Republic

Should Australia become a republic will there be a need to change either the Statute of Westminster and/or the Australia Act?

### WESTMINSTER ADOPTION ACT 1942

The Constitution may have to be altered, in accordance with Section 128, to confer on the Commonwealth Parliament (a) power to repeal or amend Section 8 of the Statute of Westminster to the extent necessary for the purpose of repealing or amending the preamble or covering clauses of the Constitution Act in the terms approved at a referendum under Section 128, and (b) power to enact such repeals or amendments accordingly (to come into force immediately after commencement of the repeal or amendment in (a))

### AUSTRALIA ACT 1986

Section 7 of the Australia Act 1986 makes provisions for the Powers and Functions of Her Majesty and Governors in respect of States. Clearly, and for the States to become republics in their own right, Section 7 would have to be repealed or amended in accordance with Section 15 of the Australia Act 1986. That is, repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all of the States or by the conferring of a power on the Parliament of the Commonwealth by any alteration to the Constitution of the Commonwealth made in accordance with Section 128 of the Constitution of the Commonwealth.

## Collective Questions

1. When did the Australian Constitution come into force?
2. How many proposals for change to the Australian Constitution have been put to the Australian people so far?
3. How many of the proposals for change to the constitution have been agreed to by the Australian people.
4. Have there been any changes to the position or role of the Queen and or the Governor-General in the constitution in any of the changes made by the Australian people?
5. Is the phrase "Head of State" mentioned in the Australian constitution?
6. Where can I get my own copy of the Australian Constitution?
7. Was the Act to constitute the Commonwealth of Australia passed by the Australian Parliament or by the Parliament of the United Kingdom?
8. Who proclaimed the Act to Constitute the Commonwealth of Australia?
9. When was the Act to constitute the Commonwealth of Australia proclaimed?
10. What are the parts that make up the Act to constitute the Commonwealth of Australia?
11. Are all of the provisions in the covering clauses still applicable?
12. How many chapters are there in the constitution?
13. What are the specific areas covered by these chapters?
14. The constitution also includes The Schedule. What is The Schedule and what is its requirement as detailed in Section 42 of the Constitution.
15. How many parts make up Chapter 1 of the constitution?
16. What are the specific areas covered by these parts of Chapter one (1)?
17. The Legislative Power of the Commonwealth is vested in The Parliament of the Commonwealth. What does the Parliament of the Commonwealth consist of?

18. Who represents the Queen in the Commonwealth of Australia?
19. Who appoints the Queen's representative in the Commonwealth of Australia?
20. What powers and functions does the Queen's representative in Australia exercise?
21. What is the composition of the Senate and how is it chosen?
22. What is the term of a Senator?
23. How many Senators are there for each State?
24. Is there any representation in the Senate for any of the Australian Territories?
25. Section 13 of the Constitution makes special provisions for Senators in respect of terms. What is that provision?
26. When the "yes" and "no" votes in the senate are equal does the question pass in the negative or in the positive?
27. How is the membership of the House of Representatives composed?
28. How many members are there in the House of Representatives?
29. How are the members of the House of Representatives allocated from each State?
30. Does the Speaker always vote or does he only have a casting vote when the numbers are equal?
31. Is a senator able of being chosen or of sitting as a member of the House of Representatives?
32. What section deals with the powers of The Parliament?
33. What happens to a proposed law after it has been passed by both House of Parliament?
34. Can the Queen disallow any law after the Governor General has assented to it?
35. Who is vested with the executive power of the Commonwealth?
36. Who exercises the executive power of the Commonwealth?
37. Who advises the Governor-General in the government of the Commonwealth?

38. Does a Minister of State have to be a senator or a member of the House of Representatives?
39. Who is command in chief of the naval and military forces?
40. What is the name of the court in which the judicial power of the Commonwealth is vested?
41. May a Justice of the High Court continuing his term of appointment on attaining the age of 70?
42. Can money be drawn from the Treasury without appropriation made by law?
43. Is the Commonwealth required to protect a State from invasion?
44. May the Parliament admit to the Commonwealth or establish new States?
45. May a new State be formed by the union of two or more States?
46. Can the Governor-General appoint deputies?
47. What document should be read in conjunction with Section 126?
48. In amending the Constitution is it only required to obtain a majority of voters throughout Australia to approve the proposed law?
49. If the referendum question pertains to certain State matters, i.e. altering the limits of a State, do a majority of electors in that State have to approve the proposed law?
50. What are the names of the Act or Acts that related to the Constitution of the Commonwealth?
51. How may the Australia Act and the Statute of Westminster Act be amended or repealed?

## Collective Answers

1. 1st January 1901
2. 44
3. 8
4. No
5. No
6. The Australian Government Publishing Service
7. The Parliament of the United Kingdom
8. Queen Victoria
9. 17 September 1900
10. The Preamble, 8 Covering Clauses and Clause 9 which details the Constitution.
11. No
12. 8
13. The Parliament, The Executive Government, The Judicature, Finance & Trade, The States, New States, Miscellaneous and Alteration of the Constitution.
14. The Schedule details the oath and affirmation of allegiance that each senator and each member of the House of Representatives must subscribe to before taking their seat in Parliament.
15. 5
16. General, The Senate, The House of Representatives, Both Houses of the Parliament and the Powers of the Parliament
17. The Queen, a Senate and a House of Representatives
18. The Governor-General
19. The Queen
20. Subject to the Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign him
21. The Senate is composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate

22. 6 years
23. 12
24. Yes
25. Senators are divided into 2 classes to meet the rotation requirement so that only half the Senate is elected at each election
26. In the negative
27. The House of Representatives is composed of members directly chosen by the people of the Commonwealth
28. The number of members in the House of Representatives shall be, as nearly as practicable, twice the number of Senators
29. The number of members chosen in the several States shall be in proportion to the respective numbers of their people
30. The Speaker does not vote unless the votes are equal and then he shall have the casting vote
31. No
32. Section 51
33. It is presented to the Governor-General for the Queen's assent
34. Yes (within one year)
35. The Queen
36. The Governor-General as The Queen's Representative
37. The Federal Executive Council
38. Yes
39. The Governor-General as the Queen's Representative
40. The High Court of Australia
41. No
42. No
43. Yes
44. Yes

45. Yes

46. Yes

47. The Letters Patent relating to the Office of Governor General

48. No; there must also be a majority of voters in a majority of States

49. Yes

50. The Statute of Westminster Adoption Act 1942 and the Australia Act 1986

51. They may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States or by the conferring of a power on the Parliament of the Commonwealth by any alteration to the Constitution of the Commonwealth made in accordance with Section 128 of the Constitution of the Commonwealth.

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