

Australian Freedom Forum  
Coorparoo, Qld  
30<sup>th</sup> March, 2004

The Secretary  
Senate Legal and Constitutional References Committee  
Parliament House  
CANBERRA ACT 2600

***Re: Submission to Senate Inquiry into an Australian Republic***

Herewith please find a submission on behalf of the Australian Freedom Forum relating to your committee's Inquiry into an Australian Republic.

The Australian Freedom Forum is a private discussion group of informed, concerned and patriotic people from many backgrounds who have been engaged in an ongoing discourse that has progressively formed a consensus on a number of matters it considers fundamental to Australian's freedoms and way of life.

The discussion group came together following the comprehensive rejection of the 1999 constitutional referendum on a proposed republican model. The members of the group were relieved at the result because they believed that the constitutional questions the referendum addressed should have been substantially more far reaching than a simplistic amendment that would ostensibly just replace the Crown with an Australian Head of State. Over the following four years some other citizens joined the discussions and a vigorous forum developed.

Because the group's participants common motivation was to ensure the preservation of Australia's democratic freedoms and found they were constantly referring to their efforts as contributing to an Australian "freedom forum" they adopted the term "Australian Freedom Forum" (AFF) to describe the group's endeavours.

One of the AFF's major topics focussed on what might be the best way for Australians to go about developing a new constitution.

Discussions have been by correspondence over the Internet and occasional conference phone calls. The participants who come from many walks of life adopted nom de plumes along similar lines to the contributors to the ongoing debate about democratic principles and forms in *The Federalist* in the early years of the history of the USA. This enabled debate to be focused purely on the issues and the merits of the arguments without the distraction of contributions being challenged simply because of the status, reputation or political affiliation of the participants concerned.

The original constitutional process towards the close of the 19<sup>th</sup> century took many years. It began to gather momentum after Andrew Clarke the Attorney General of Tasmania prepared a draft constitution that was then discussed with other state representatives, including Queensland's Sir Samuel Griffith, during the famous constitutional conference cruise on the Hawkesbury River in the Queensland Government's Yacht *Lucinda*. This draft constitution incorporated what were then widely held democratic ideals, principles and social values of the time. As amended and fine tuned during later conventions it evolved into the document that was finally accepted by a majority of voters in the six colonies that became the states of the new federation and referred to the British Colonial Office.

The AFF believed that the task of revising Australia's constitution should be as thorough and as consultative as it was with the original.

The AFF participants agreed that there should be three phases in developing a new constitution.

1. The AFF believes that the first step must be to identify, examine and understand the particular democratic ideals, principles and social values that today are widely espoused by Australia's people and which underpin its democracy. There should be public

discourse and debate amongst Australians to evolve a national consensus on a charter of those ideals, principles and values before any move is made to change even a word of the present Constitution.

2. The second step should be to prepare a draft Bill of Rights and Responsibilities of citizenship that incorporate and underscore the charter of Australian democratic ideals, principles and social values. There should again be public discourse and debate amongst Australians to evolve a national consensus on the final form of an Australian Bill of Rights and Responsibilities of citizenship.
3. The third step should be to prepare a draft for a new Constitution that embraced the contents of the charter of democratic ideals, principles and social values and incorporated the Australian Bill of Rights and Responsibilities of citizenship. There should be public discourse and debate amongst Australians to evolve a national consensus on the final form of the revised constitution.
4. The fourth step should then and only then be taken, that of submitting the finalised draft new constitution to a referendum for ratification by the Australian people.

As its contribution to the process the Australian Freedom Forum has already worked through these stages and prepared a draft Charter of Australian democratic ideals, principles and social values , a draft Bill of Rights and Responsibilities of Australian Citizenship and a draft revised Constitution that incorporates them both and applies the principles concerned to the practical issues of sovereignty and governance.

In presenting this submission the AFF offers relevant extracts from that draft constitution that address the issues raised in the terms of reference of the inquiry.

The AFF hopes that the Committee will find the submission helpful in its deliberations.

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# **SUBMISSION TO**

THE



AUSTRALIAN SENATE  
**LEGAL AND CONSTITUTIONAL**  
REFERENCES COMMITTEE

# **INQUIRY INTO AN AUSTRALIAN REPUBLIC**

BY THE



Eternal Vigilance

# **AUSTRALIAN FREEDOM FORUM**

## ISSUES TO BE CONSIDERED

In the debate over an Australian republic, there are a number of issues in relation to which there are alternate viewpoints, ideas and proposals. This section of the discussion paper addresses these issues.

### A PROCESS FOR MOVING TOWARDS AN AUSTRALIAN REPUBLIC

**Question 26** *Should there be an initial plebiscite to decide whether Australia should become a republic, without deciding on a model for that republic?*

**Question 27** *Should there be more than one plebiscite to seek views on broad models? If so, should the plebiscites be concurrent or separated?*

**Question 28** *Should voting for a plebiscite be voluntary or compulsory?*

**Question 29** *What is the best way to formulate the details of an appropriate model for a republic? A convention? A parliamentary inquiry? A Constitutional Council of experts?*

**Question 30** *What is the preferred way for a process to move towards an Australian republic?*

*The AFF believes that the process for creating and adopting a revised constitution to establish Australia as a republic should pursue the following stages:-*

1. Prepare, discuss widely and obtain consensus upon a charter of Australian democratic principles, ethical ideals and social values which any revision to the Australian constitution should reflect and embrace.
2. Following on from Stage 1, define, discuss widely and again obtain consensus upon the fundamental rights and obligations of Australian citizenship that should become an integral part of Australia's Constitution.
3. Following the resolution of Stages 1 & 2, undertake an in depth analysis of the repercussions upon the functioning of government arising from the elimination of all references to the Crown from Australia's current constitution and the concomitant elimination of the unwritten conventions associated with the Crown. Determine what effects this will have in the light of the outcomes of Stages 1 & 2. Identify what have otherwise been the strengths and shortcomings of the Australian Constitution during its first century of operation. In the light of these deliberations prepare a schedule of issues a new constitution must resolve, and at the same time, establish which existing constitutional processes and provisions have proven to be satisfactory and should remain unchanged.
4. Call for draft constitutional amendment proposals from all interested contributors, including experts on constitutional law, to address each of the key issues for constitutional change identified in Stages 1, 2 & 3.
5. Hold a series of broad based constitutional conventions in all states and territories to discuss and obtain agreement on which constitutional amendment proposals on the different issues prove to have significant public support.

6. Convene a national constitutional convention with equal representation from each state convention and obtain agreement upon which constitutional amendment proposals on all of the different issues that will be likely to have significant support from the Australian people.
7. Initiate a series of national plebiscites in which voting is optional to establish which amendment proposals on which issues should be included in a new constitution.
8. Repeat the plebiscite option as necessary until amendment proposals have been approved for all of the key issues.
9. Integrate the amendment proposals approved by the plebiscite(s) into a draft new Australian Constitution.
10. Conduct a referendum to approve the proposed new constitution.
11. Upon its approval at the referendum, enact the new constitution and implement the processes and procedures necessary for its introduction.
12. Should the referendum be defeated, restart the process beginning at Stage 5 with respect to issues under contention and proceed again until a new constitution is approved.

*The AFF proposes that a charter of principles be included in the revised Australian constitution and has produced a draft charter of Australian democratic principles, ideals and social values which it then included in its draft revised Australian constitution proposal. Particulars of these principles, ideals and values are listed in Appendix 1.*

*The AFF proposes that a Bill of Rights and Responsibilities of Australian Citizenship be included in the revised Australian and had produced a draft Bill of Rights and Obligations of Australian Citizenship which it then included in its draft revised Australian constitution proposal. Particulars of these principles, ideals and values are listed in Appendix 2.*

## **QUESTIONS REGARDING THE HEAD OF STATE**

*The AFF responds to most of these questions by quoting from the relevant Sections in its draft revised constitution that deals with the Head of State, see Appendix 3.*

*The AFF recommends that under a revised constitution the Head of State for Australia be designated the President of Australia.*

### ***Who is the current head of state?***

*Patently the head of state in Australia under its current constitution is the Crown who is represented in the Commonwealth by the Governor-General appointed by the Crown.*

*The Westminster conventions which are not written into the constitution require the Crown to act on the advice of the Prime Minister.*

### ***Powers of the head of state***

***Question 2*** *What powers should be conferred on the head of state?*

***Question 3*** *What powers (if any) should be codified beyond those currently specified in the Constitution?*

*Currently the powers of the Crown/Governor-General as listed in the current constitution include the following:*

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

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

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

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

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

*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.*

*The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.*

The Crown 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.

A proposed law reserved for the Crown'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 Crown'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 Crown's assent."

*The AFF proposes that the powers of the Head of State should be defined as follows:*  
(from the AFF's proposed revised Australia Constitution)

**Article 18     Duties and Powers of the President.**

**1.     The President of Australia shall have the power and duty to:**

- Represent the Commonwealth of Australia to other nations as the Australian Head of State;
- Formally ratify international treaties;
- Receive the heads of foreign diplomatic missions;
- Accredit and recall heads of Australian diplomatic missions;
- Confer and award Australian orders and distinctions.

**2.     Appointment of the Executive Government**

- i     The President shall commission as Prime Minister, the member of the House of Representatives who commands the confidence of the majority of members on the floor of that House.
- ii    The President shall, on the advice of the Prime Minister, appoint other members of the Parliament of Australia as members of the Commonwealth Executive Council and or other minister of the Executive Government.
- iii   The President shall, on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, accept the resignation or terminate the appointment of members of the or other ministers of the Executive Government.
- iv    The President shall have the absolute discretion to accept the resignation of the Prime Minister and thereupon withdraw the said Prime Minister's commission together with the commissions of the members of the Commonwealth Executive Council and other ministers of the Executive government.
- v     The President shall have the absolute discretion to withdraw the commissions of the Prime Minister and the members of the Commonwealth Executive Council and other ministers of the Executive Government in the event that the said Prime Minister, having lost the confidence of a majority of the members on the floor of the House of Representatives, fails to formally resign from office within forty-eight hours.
- vi    The President shall have the absolute discretion to withdraw the commissions of the Prime Minister and the members of the Commonwealth Executive Council and other ministers of the Executive Government in the event that said Prime Minister is unable to advise, when formally requested to do so by the President, that the Commonwealth Treasury can guarantee sufficient revenue from appropriations of the Parliament, to meet the costs of the Executive

Government and Public Services of the Commonwealth for the immediate future period of no less than three months.

- vii In the event of a situation whereby the Prime Minister is rendered unable to exercise office, the President shall have the power to appoint a caretaker Prime Minister, pending the House of Representatives expressing its confidence in a new Prime Minister. If the House of Representatives fails to so express such confidence, the President shall issue writs for the election of a new Parliament.
- viii In the event of a situation occurring where the Prime Minister or sufficient other members the Commonwealth Executive Council, other ministers of the Executive Government or other government members of the House of Representatives are rendered unable to exercise their office and perform their functions, so that the government is unable to continue to enjoy the confidence of the House of Representatives, the President shall have the absolute discretion of issuing writs for by-elections for the seats represented by the members concerned, or at the President's discretion, for the election of a new Parliament, and in the interim to appoint a caretaker Prime Minister and Executive Council and ministry until such elections are finalised.

### **3. Communication with the Judicature**

The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, communicate at his or her absolute discretion with the Chief Justice of the High Court of Australia, or in the absence of the Chief Justice, the senior Justice available.

### **4. President's Assent to Executive Orders**

Every Executive Order of the President in Council issued in compliance with the relevant laws of the Commonwealth must be presented to the President by the Commonwealth Executive Council for the President's assent, which shall be executed by the affixing thereto of the President's signature, whereupon it shall come immediately into effect

### **5. Withholding of Assent to Executive Orders**

- i In the instance where an Executive Order presented to the President for signature deals or appears to deal with matters outside the authority of the Commonwealth Executive Council or the laws of the Commonwealth, the President shall withhold assent and return the Executive Order to the Attorney General with a message containing particulars of why assent was withheld.
- ii The Executive Order may then allowed to lapse, or if the issue of the validity of the Executive Order or its rightful jurisdiction is disputed by the Attorney General, the Executive Order may be presented to the High Court for a ruling on the Executive Order's Constitutional validity, whereupon the said ruling of the High Court will be final in the matter.
- iii Should the High Court rule the Executive Order to be Constitutional, the President shall give assent forthwith.

### **6. Summoning and Dissolving the Parliament**

- i The President shall issue writs for the election of the Parliament as advised by the Prime Minister acting as the Chief Executive Officer of the Government under this constitution, and upon the return of the writs, proclaim the names of the citizens thereby elected.
- ii The President shall formally summon all elected members of each new Parliament of Australia, and recall those Senators entitled to serve a second term who were stood down upon the dissolution of the previous Parliament, and shall open the First

Session of every newly constituted Parliament, sitting for that occasion in joint session.

- iii The President shall summon into session, prorogue and dissolve the Parliament of Australia on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, except as otherwise provided by this constitution.
- iv In the event that the Prime Minister fails to advise the calling into session of the Parliament to comply with the provisions of Article 21 Section 4 (i), the President shall have the absolute discretion to summon the Parliament to meet forthwith.
- v The President has the absolute discretion to refuse to dissolve the Parliament of Australia on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, where said Prime Minister has ceased to command the support of a majority of members of the House of Representatives.
- vii The President has the absolute discretion to dissolve the Parliament in the event either House has not reached a quorum for a period longer than three months, although its session was not adjourned and although it was repeatedly called to session during this period.
- viii The President has the absolute discretion in the event of Section 2 Sub-sections (iv) and (v) above, to seek to commission another Member of the House of Representatives as Prime Minister, provided that said person can command a majority in the House, or failing that, undertake to guarantee to pass appropriation Bills through the Parliament of Australia sufficient to meet the costs of the Executive Government and Public Services for a period of no less than three months and advise the dissolution of the Parliament of Australia involving the retirement of all members of the House of Representatives and half the number of Senators and the standing down of the remainder of Senators, or should the necessary conditions under Article 24, Section 12 (i) be applicable, advise a double dissolution of the Parliament requiring the retirement of all members of both Houses.

#### **7. President's Assent to Bills**

- i Every Bill that has been passed by both Houses of the Parliament of Australia shall be jointly presented to the President by the Speaker of the House of Representatives and the President of the Senate, for the President's assent, which shall be executed by the affixing thereto of the President's signature, whereupon it shall become law..

#### **8. Withholding of Assent on Bills**

- i In the instance where a Bill presented to the President for signature deals or appears to deal with matters outside the powers of the Parliament of Australia, the President shall withhold assent and return the Bill to the Attorney General with a message as to the particulars of the reason given.
- ii The Bill may then lapse, or if the issue of the validity of jurisdiction is disputed by the Attorney General, the Bill will be presented to the High Court for a ruling on the Bill's Constitutional validity, whereupon the said ruling of the High Court will be final in the matter.
- iii Should the High Court rule the Bill to be Constitutional, the President shall give assent forthwith.
- iv On the petition of no less than three of the States or Territory governments, the President may defer for up to six months the signing of any Bill passed by both Houses of the Parliament of Australia.

- v After the period of deferment of any Bill on which the President has withheld assent has expired, the Speaker of the House of Representatives and the President of the Senate may again jointly present the said Bill to the President for assent, whereupon the President shall give such assent.

**9. The President to proclaim laws enacted by the Parliament of Australia.**

Once a Bill being given assent, and following its proclamation by the President, such proclamation being formally made to and in the presence of the Speaker of the House of Representatives and the President of the Senate, it shall be tabled in both Houses of the Parliament and thereupon shall become law.

**10. Command of the Armed Forces of the Commonwealth**

- i The supreme command of the Armed Forces of the Commonwealth is vested in the President.
- ii The exercise of the supreme command of the Armed Forces shall be to ensure the security of Australia, its citizens and this Constitution according to law.
- iii All commissioned officers of the Australian Armed Forces shall hold their commissions from the President.

**11. Issue of Pardons and Commuting or Remission of Judicial Punishment**

The President shall have the absolute discretion to exercise the right of pardon and the power to commute or remit punishment imposed by any Commonwealth court exercising criminal jurisdiction, but such power of commutation or remission may also be conferred on other authorities by legislation of the Parliament.

**12. Communication with the Parliament and the Nation**

- i The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, communicate with either or both of the Houses of the Parliament of Australia by message or address.
- ii The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, address a message to the Nation through the public media of communication.

**13. President answerable to the people.**

- i The President is directly elected by the people and shall not be answerable to either House of the Parliament of Australia or to any court for the exercise and performance of the powers and functions of office under this Constitution or for any act done or purporting to be done in the exercise and performance of these powers and functions, provided that such act or acts do not contravene the laws of the Commonwealth or abrogate any article of this Constitution.
- ii The behaviour of the President may, however, be brought under review in either of the Houses of the Parliament of Australia for the purposes of Article 17, Section 7 of this Constitution, or by any court, tribunal or body appointed or designated by either of the Houses of the Parliament of Australia for the investigation of a charge under the said Article and Section.

**14. Exercise of the President's Powers**

- i The powers and functions conferred on the President by this Constitution shall be exercisable and performable by the President on the advice of the Prime Minister acting as Chief Executive of the Commonwealth Executive Council, save where it is provided by this Constitution that the President shall act with absolute discretion or may act after consultation with or in relation to the Commonwealth Executive Council but not necessarily upon their advice.

- i. Subject to this Constitution, additional powers and functions may be conferred on the President by legislation of the Commonwealth Parliament.

No additional power or function conferred on the President by legislation shall be exercisable or performable by the President save only on the advice of the Government.

## ***Is a separate head of state needed?***

**Question 1** *Should Australia consider moving towards having a head of state who is also the head of government?*

*The AFF considers that there is a very important role for a Head of State in Australia. The role in fact mirrors that of the Crown but with defined powers that enable the person in the role to effectively defend the people's freedoms and ensure that the government of the day always acts in accordance with the constitution.*

### **Article 17. Head of State of the Commonwealth of Australia**

There shall be an office of Head of State of the Commonwealth of Australia who shall be the President of Australia hereinafter called the "President of Australia" or "the President", who shall take precedence over all other citizens in the Commonwealth.

The President shall exercise the powers and perform the functions conferred on the office by this Constitution and shall diligently protect and preserve this Constitution and the rights and interests of its citizens described therein.

## ***Selection***

**Question 4** *Should some form of campaign assistance be available to nominees, and if so, what assistance would be reasonable?*

**Question 5** *Should/Can political parties be prevented from assisting or campaigning on behalf of nominees? If so, how?*

**Question 6** *If assistance is to be given, should this be administered by the Australian Electoral Commission or some other public body?*

**Question 7** *If the Australian head of state is to be directly elected, what method of voting should be used?*

**Question 8** *If direct election is the preferred method for election of a non-executive president, will this lead to a situation where the president becomes a rival centre of power to the Government? If so, is this acceptable or not? If not, can the office of head of state be designed so that this situation does not arise?*

*The AFF considers that the process of electing the President of Australia should follow the procedures detailed in its draft revised Australian Constitution.*

### **Article 17**

#### **3. The President shall be elected by direct vote of the people.**

- i. The incumbent President or, should the office of President be vacant, the Presidential Commission, or in the instance of the first election to this office the

person holding the office of Governor General of The Commonwealth under the preceding constitution, shall issue the writs for the election of a new President designating therein the closing date for nominations and for the date of the election itself.

- ii An election for the office of President shall be held not later than the thirtieth, and not earlier than the sixtieth day before the date of the expiration of the term of office of each President, but in the event of the death, resignation, established permanent incapacity or removal from office of the President (whether occurring before or after formal assumption of the office), an election for the office of President shall be held within sixty days after such event. The closing date for nominations shall be no later than thirty days preceding the election date.
- iii Every citizen who has the right to vote at an election for members of the Parliament of the Commonwealth shall have the right to vote at an election for President.
- iv Subject to the provisions of this Article 16, Section 3, the Parliament of the Commonwealth shall enact laws regulating elections for the office of President that shall ensure that:
  - a The provisions of this constitution are faithfully observed and that the regulation and administration of each such election is open, fair and efficiently administered.
  - b. The publication and or broadcast of a presentation or series of presentations shall be made whereby equal opportunity shall be afforded to each and every candidate through appropriate public media and means of normal public communication to enable them to comprehensively present themselves, their principles, credentials and any other such information as is necessary to inform the electors about their fitness for the role, and to debate them one with another. Such presentations shall be undertaken at the expense of the Commonwealth.
  - c The proprietors of all forms of public media shall required to ensure that their editorial reporting during an election for the President gives even-handed and impartial treatment throughout the nation to every candidate.
  - d Information depicting and identifying each candidate shall be prominently displayed at each polling place.
  - e On the day of the election no presentation or distribution of information about any candidate shall be made by any person within a kilometre of any polling booth.
  - f Following the announcement of the issuing of writs for an election for the President, and until after the declaration of the poll for that election, all candidates, their agents, sponsors and supporters and all other citizens, political parties, corporations or any other form of organisation shall be prohibited from making presentations that utilise any and all means of paid promotion or advertising in support of or against any candidates and any issues, policies and initiatives they advocate or represent, other than any such presentations provided by the Commonwealth under Article 16, Section 3, subsection iv-b.

- v. Each elector may complete only one ballot in an election for the office of President. The voting shall be undertaken within the Senate Divisions of the States and Territories, by a secret, exhaustive ballot containing the names of all candidates for President, and providing for electors to indicate their first choice of candidate, and, in the event of there being more than two candidates, electors shall consider the possibility of their first choice being eliminated by reason of attracting the fewest votes and then indicate their next choice of candidate, and so on until they have indicated the priority of their choice against all candidates listed.
- a. Following the closure of the poll within each Senate Division, the votes will be tallied at each polling booth. Candidates or accredited agents of candidates may be present to scrutinise the process of opening ballot boxes and the sorting and counting of votes.
  - b. Should there be any disputed matters relating to the process of opening ballot boxes or determining valid votes appropriate procedures shall be included in the legislation regulating such elections to ensure that such disputes are equitably, efficiently and effectively resolved.
  - c. Once all votes have been tallied, the tally for each candidate will be rechecked and the results of the tally, including the actual ballot papers, shall be conveyed to the Returning Officer of the State or Territory concerned.
  - d. When the tallies of all votes from all Senate divisions within the State or Territory have been received, the total votes for each candidate from each State or Territory concerned will be tallied. The candidate with the lowest number of primary votes will then be eliminated from the poll and the ballot papers containing the votes for the eliminated candidates will again be examined and the selections for candidates designated next in the sequence of voters' choices on those ballots will then be tallied and the relevant totals added to the remaining candidates' tallies. This process will be repeated until one candidate obtains an absolute majority of the valid votes cast within each State concerned.
  - e. Within each State and Territory the candidate obtaining an absolute majority of the votes cast therein shall be deemed to have won a number of electoral votes equal to the total number of seats by which the State or Territory concerned is represented in the Commonwealth Parliament.
  - f. The number of electoral votes won by candidates from each State and Territory will then be conveyed to the Commonwealth Returning Officer and tallied, the candidate obtaining an absolute majority of the total electoral votes across the nation shall be declared elected as President and the writs returned to the incumbent President or in the absence of a President in office, to Presidential Commission, who shall proclaim the election of the new President.
  - g. Should no candidate obtain an absolute majority of electoral votes in the election for President, then within fourteen days of this determination, the two candidates who attracted the greatest number of electoral votes shall recontest a second election and the electoral votes in each State or Territory will again be tallied in similar fashion

and the candidate with an absolute majority of electoral votes will be declared elected as President and the writs returned to the incumbent President or Presidential Commission, who shall proclaim the election of the new President.

- h.* Should the electoral votes of the two remaining candidates be tied, the candidate with the highest aggregate total of the valid votes from electors in all states will be declared elected and the writs returned to the incumbent President or Presidential Commission, who shall proclaim the election of the new President.

## ***Nomination***

**Question 9** *Who should be eligible to put forward nominations for an appointed head of state? For elected head of state?*

**Question 10** *Should there be any barriers to nomination, such as nominations from political parties, or candidates being current or former members of parliament?*

**Question 11** *Should there be a maximum and/or minimum number of candidates?*

**Question 12** *Should there be a minimum number of nominators required for a nominee to become a candidate?*

*The AFF believes that the process of nominating a person to contest the election for the office of President of Australia should require substantial support from a cross section of the Australian community but at the same time remain outside the processes of direct nomination by political parties or other sectional interests. Its recommendations are inherent in the relevant section of the AFF's proposed revised Australian Constitution.*

### **Article 17**

#### **2. Nominations for President**

- i* Former or retiring Presidents who have served only one term in that office and are eligible may become candidates on their own nomination.
- ii* Candidates for election to the office of President, who are not a former or retiring President, must be nominated by:
  - a.* Not less than thirty members of the Australian Parliament or
  - b.* Not less than thirty citizens who are members of the parliaments of more than half the number of States and half the number of Territories or
  - c.* Not less than two hundred citizens from more than half the number of States and half the number of Territories or
  - d.* Not less than two thousand citizens from Australia at large:
  - e.* No citizen shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election.
- iii* Where only one nomination for the office of President is received by the closing date for nominations designated in the writs calling for the election of the President, the sole candidate so nominated shall be declared elected.

## ***Title of head of state***

**Question 13** *What should the head of state be called, Governor-General, President of the Commonwealth of Australia or some other title?*

*International usage strongly favours utilising the title "President" to describe Australia's Head of State. The AFF believes that use of the term is appropriate and has adopted it in its proposed revised Australian Constitution.*

### **Article 17. Head of State of the Commonwealth of Australia**

There shall be an office of Head of State of the Commonwealth of Australia who shall be the President of Australia hereinafter called the "President of Australia" or "the President", who shall take precedence over all other citizens in the Commonwealth.

## ***Term of office***

**Question 14** *What should be the length of a term of office for head of state?*

**Question 15** *Should a head of state be eligible for re-appointment/re-election?*

**Question 16** *Should there be a limit on the number of terms an individual may serve as head of state?*

*The AFF believes that no person should exercise the office of President for more than two terms, be they consecutive or otherwise and so provided in its proposed revised Australian Constitution.*

### **Article 17**

#### **1 Qualifications of President**

iv A person who holds, or who has held, office as President, shall be eligible for re-election to that office once, but only once.

#### **5. Term of Office**

i The President shall hold office for five years from the date of formal assumption of the office, unless before the expiration of that period the said President dies, or resigns, or becomes permanently incapacitated, or is removed from office

## ***Removal***

**Question 17** *Who or what body should have the authority to remove the head of state from office?*

**Question 18** *On what grounds should the removal from office of the head of state be justified? Should those grounds be spelt out?*

*The AFF considered the removal of the President and the results of its deliberations are covered by the relevant subsection in its proposed revised Australian Constitution.*

## Article 17

### 7. Removal of the President

- i. The President of Australia cannot be detained, exposed to criminal prosecution, or prosecuted for a misdemeanour or administrative offence.
- ii. The President may be removed from office:
  - a. by disqualification due to permanent incapacity, established by the full bench High Court at a special sitting convened for the purpose:
  - b. by the appellate jurisdiction of the full bench of the High Court High Court on other grounds of disqualification under this Constitution, or
  - c. by the verdict of the Senate, sitting in Judicial Session, following indictment for treason, bribery or other high crimes and misdemeanours as detailed in a Bill of Impeachment passed by an absolute majority of the members of the House of Representatives.
  - d. In proceedings under the previous paragraph, the President shall have the right to appear and to be legally represented before the bar of the Senate and to enjoy every right of a citizen to due process under this constitution.
  - e. Parliament shall not be prorogued or dissolved between the time a Bill of impeachment is first moved in the House of Representatives and the Senate either passes or defeats the said Bill as provided in the preceding paragraph.

## *Casual vacancy*

**Question 19** *How should a casual vacancy be filled?*

*The AFF's position on casual vacancies in the office of is indicated by the relevant subsection in its proposed revised Australian Constitution.*

## Article 19. Absence or Incapacity of the President

### 1. Delegation of President's Powers during absence or incapacity

In the event of the President's absence, temporary incapacity, or failure to exercise and perform the powers and functions of office or any of them, or at any time at which the office of President may become vacant in the event of the President's death, resignation, removal from office or permanent incapacity established as provided by Article 16 section 1 (vi) hereof, the powers and functions conferred on the President by or under this Constitution and the law shall be exercised and performed by a Presidential Commission constituted as provided in Section 2 of this Article.

In the event of the said absence being permanent the first duty of the Presidential Commission shall be to issue writs for the election of a new President.

**2. Presidential Commission**

- i The Presidential Commission shall consist of the following citizens, namely, the Chief Justice of the High Court, the Speaker of the House of Representatives and the President of the Senate.
- ii The next Senior Judge of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the said Chief Justice is unable to act.
- iii The Deputy Speaker of The House of Representatives shall act as a member of the Commission in the place of the Speaker on any occasion on which the office of Speaker is vacant or on which the said Speaker is unable to act.
- iv The Deputy President of the Senate shall act as a member of the Commission in the place of the President of the Senate on any occasion on which the office of President of the Senate is vacant or on which the said President of the Senate is unable to act.
- v. The Presidential Commission shall act by unanimous agreement.
- vi The Commonwealth Executive Council may by a majority of its members make such provision for the exercise and performance of the powers and functions conferred on the President by or under this Constitution, in any contingency which is not provided for by the foregoing provisions of this Article.
- vii In the event of the failure of the President to exercise or perform any power or function which the President is by or under this Constitution required to exercise or perform within a specified time, the said power or function shall be exercised or performed under this Article, as soon as may be after the expiration of the time so specified.

## ***Eligibility/ disqualification***

**Question 20** *What should the eligibility requirements be for the head of state?*

*The AFF's position on what qualifies or disqualifies a person in nominating for the office of President is indicated by the relevant subsection in its proposed revised Australian Constitution:*

### **Section 17**

#### **1 Qualifications of President**

- i Citizens eligible for election to the office of President must be Australian citizen, must have reached the age of thirty-five years and at the time of nomination for election to the office must not be, nor have been for a prior minimum period of four years, a member of any political party and must have resided within Australia for the preceding ten years.

**Question 21** *On what grounds should a person be disqualified from becoming of head of state?*

## Section 17

### 1 Qualifications of President

- ii. Citizens eligible for election to the office of President must not:
  - a. be attainted of treason:
  - b. have been convicted, be under sentence, or subject to be sentenced, for any offence punishable under the criminal law of the Commonwealth or of a State or Territory by imprisonment for one year or longer:
  - c. be an undischarged bankrupt or insolvent:
  - d. hold any office of profit under the Commonwealth, or any pension payable out of any of the revenues of the Commonwealth:
  - e. have 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:
  - f. be under treatment from any mental health practitioner or facility or for any life-threatening condition or disease.
- iii. Members of any Commonwealth, State or Territory Parliament shall be required to have vacated their seats for a minimum period of four years prior to accepting nomination for election as President.
- iv. A person who holds, or who has held, office as President, shall be eligible for re-election to that office once, but only once.

## ***Relationship of head of state with executive, parliament and judiciary***

**Question 22** *Should the head of state have power to appoint and remove federal judges?*

**Question 23** *Should the head of state have the prerogative of mercy?*

**Question 24** *Should the head of state be free to seek constitutional advice from the judiciary and if so, under what circumstances?*

*The AFF's proposed revised Australian Constitution provides for Federal Judges to be appointed by the President in Council, that is by an executive order initiated by the Commonwealth Executive Council and assented to by the President.*

## Article 18

### 11 Issue of Pardons and Commuting or Remission of Judicial Punishment

The President shall have the absolute discretion to exercise the right of pardon and the power to commute or remit punishment imposed by any Commonwealth court exercising criminal jurisdiction, but such power of

commutation or remission may also be conferred on other authorities by legislation of the Parliament.

**3. Communication with the Judicature**

The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, communicate at his or her absolute discretion with the Chief Justice of the High Court of Australia, or in the absence of the Chief Justice, the senior Justice available.

## ***Position of the states***

**Question 25** *What is the best way to deal with the position of the states in a federal Australian republic?*

*The AFF considers that the States of the Commonwealth should enjoy their own distinct sovereignty apart from those powers granted to the Commonwealth by the Australian Constitution. Therefore the issue of amending their constitutions to amend the power of the Crown and by delegation from the Crown the office of State Governors remains the province of the states themselves. The AFF believes that should the role of the crown be replaced in the Australian Constitution, similar situations with respect to the states would soon follow. It would be of assistance if the Commonwealth government were to take the initiative of developing a range of constitutional forms which could be used as guides by the states in resolving this question.*

## **APPENDIX 1**

### **Article 14 The Rule of Law**

- 1 Australian citizenship shall be founded on freedom of the individual person under the rule of law.
- 2 Freedom under the rule of law shall consist in the right of the people to do everything which injures no one else in any way; hence the exercise of the natural rights of each person shall have no limits, except those which assure to all other people in the nation the enjoyment of the same rights. Such limits shall be determined by law.
- 3 The Law shall be the expression of the democratically expressed general will of the Australian people. All citizens shall participate in its foundation through their representation in the Parliament of the Commonwealth and other jurisdictions within the Commonwealth. The Law shall be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, shall be equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents, or except where they contravene this Constitution, or laws enacted under its provisions.
- 4 Laws shall prohibit such actions as are inimical to or hurtful to society and its members. Nothing shall be prevented which is not forbidden by law, and no one shall be forced to do anything not provided for by law.
- 5 Every citizen and other person resident in Australia shall be held to be responsible and accountable for having knowledge of, and for understanding, the laws enacted by all levels of government jurisdiction within the Commonwealth, and for honouring and observing them in all respects without exception.

### **Article 15. Principles for the guidance of Government**

The principles set forth in this Article are here intended for the further guidance of legislators in the framing of laws enacted by the Parliament of the Commonwealth and other jurisdictions within the Commonwealth.

1. In principle the role of Government under this Constitution shall be to:
  - a. Guarantee, preserve and protect the rights, freedoms, security and dignity of all Australian citizens and equitably advance their continuing, individual wellbeing by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.
  - b. Enact laws against, and take positive executive measures thereunder to appropriately sanction, those who infringe upon or abrogate the constitutional or statutory rights of other citizens or who abjure their own legal obligations in respecting and upholding the rule of law.
  - c. Observe the principle that an excess of law weakens the rule of law.
  - d. Prudently manage and conduct the nation's economic affairs in the interests of and on behalf of the individual, ongoing and equitable benefit of all Australian citizens.
  - e. Ensure that the ownership and control of the material resources of the community is so distributed as best to subserve the common good.
  - f. So manage the nation's economic and educational affairs that citizens can enter into vocations by which they may earn an adequate livelihood that enables them to provide for themselves and their dependents an existence worthy of human dignity.

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- g. So manage the nation's economic and social affairs that parents of families shall not be obliged to neglect their duties towards the rearing of their children due to economic necessity.
  - h. Ensure that the operation of free market competition is maintained so as to ensure competitive efficiency in the production and distribution of goods and delivery of services and at the same time does not result in the concentration of ownership or control of essential commodities or services to the detriment of the common good.
  - i. Ensure that both private and public enterprise is so conducted as to protect the public against unjust exploitation.
  - j. Ensure that the constant and predominant aim in whatever measures that pertain to the control of credit should be the welfare of citizens as a whole.
  - k. Favour and, where necessary for the common good, supplement private initiative in industry and commerce.
  - l. Strive to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to augment or contribute to supporting the infirm and impaired, the disadvantaged parents of minor children, orphans and the aged.
  - m. Ensure that the strength and health of both men and women workers, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter vocations inappropriate to their age, sex, strength or morality.
  - n. Ensure that all laws enacted will equitably work to the benefit of all Australian citizens and to the detriment of none.
  - o. Ensure that all laws are fairly, competently and efficiently administered.
  - p. Ensure that elected officials and employees of government scrupulously maintain and make available for appropriate scrutiny comprehensive, accurate and truthful records of their deliberations, decisions, activities and outcomes.
  - q. Ensure that all holders of public office, and through them all government employees, are held fully, separately and openly accountable to the Australian people through the Australian Parliament for their right conduct and their performance of the responsibilities of office.
  - r. Openly account to the Australian people through the Australian Parliament for the responsible expenditure of all public monies.
  - s. Enable citizens to enjoy ready and affordable access to all information pertaining to themselves that is acquired and stored by either government, commercial or private organisations and provide the means for such information to be amended in the event of inaccuracies.
4. In principle Government should enact only laws that comply with absolute moral and humanitarian values and that also serve to uphold traditional Australian social values that include but are not limited to:
- a. *"Being fair dinkum"* - acting truthfully and honestly towards other people,
  - b. *"Living and letting live"* - behaving tolerantly towards and avoiding interference with or persecution or undue criticism of other people, whatever their ethnicity, culture or religious belief ,
  - c. *"Giving everyone a fair go"* - treating everyone equitably,

- d. *"Ensuring everybody gets a fair crack of the whip"* - providing for equal opportunity and equitable outcomes,
  - e. *"Helping those down on their luck"* - showing compassion and concern for the validly disadvantaged,
  - f. *"Standing up for the underdog"* - protecting the weak and vulnerable,
  - g. *"Looking out for your mates"* - working for the common good,
  - h. *"Making sure everyone pulls their weight"* - contributing to the best of one's talents and ability and discouraging slackers and bludgers,
  - i. *"Keeping one's nose clean"* - observing the rule of law and keeping the peace,
  - j. *"Showing some guts"* - displaying courage and steadfastness in adversity or danger,
  - k. *"Not being a skite"* - behaving modestly in success,
  - l. *"Not getting up one's self"* - acting humbly in prosperity,
  - m. *"Abiding by the golden rule"* - Respecting the lawful rights of others and expecting others to do the same in return,
  - n. Honouring the spirit represented by the greeting:- *"G'day mate"* - behaving towards everyone else with friendliness, respect, courtesy and goodwill.
5. In principle Government should require of all Australian citizens that they cooperate and conscientiously work together in respect of:
- a. Recognising their equal responsibility when exercising their own individual rights to in no way deny, infringe upon or abrogate the rights and or affront the lawful sensibilities or values of other citizens.
  - b. Accepting they have an equal duty to fully and conscientiously discharge their constitutional and statutory obligations as Australian citizens.
6. In principle Government should constantly recognise and maintain that the family formed by the marriage of a man and a woman constitutes the primary, fundamental and preferred unit of Australian society for the nurturing and rearing of children and provision of basic social care, and in so doing should:
- a. Protect citizens' rights to establish families, to conceive and bear or to adopt children and to raise them within the law in accordance with their own cultures and beliefs.
  - b. Require and assist parents to properly care for their children and raise them to respect Australian democratic ideals, principles and social values and to observe the rule of law.
  - c. Show particular concern for the individual well being of Australian children, their rights to responsible and moral guardianship and parenting and their material and emotional care and protection.
  - d. Give special recognition to the needs of both the nuclear and extended families in the management of the economic and social affairs of the nation.
7. In principle Government should uphold the concept of equality before the law and in so doing:
- a. Actively foster amongst Australian citizens the understanding and full exercise of their fundamental rights and the active performance of their obligations and ensure that they should not be prevented nor impeded in any way in so doing

- b. Ensure that pre-eminent rights or privileges should not be acquired or assumed, or that decisions of Government ministers, departments or agencies, the enactments of Parliament or the outcomes of elections or referenda be permitted to be swayed through the direct or indirect application of overt or covert corrupt or criminal influence, or through the expenditure of any quantum of wealth by any persons, corporate or government bodies, organisations or other entities.
- c. Ensure that properly qualified candidates for public office and both the proponents and opponents of referenda questions be assured of an equal weight of exposure in all forms of communications media to enable them to equitably and truthfully present and openly debate their qualifications, principles, ideas and policies.

**APPENDIX 2.**

**CHAPTER II**

**RIGHTS AND OBLIGATIONS OF CITIZENS**

**Article 16 Rights and Obligations of Citizenship**

The expression in this Constitution, of certain rights, shall not be construed to deny, inhibit or diminish other rights that may be enjoyed by the Australian people.

**1. Rights of Citizenship**

- i The Commonwealth acknowledges and shall in its laws to the fullest extent possible, respect, defend from unjust attack and, in the case of injustice done, vindicate the personal rights of Australian citizens to life, peace and liberty, the safety and security of their individual persons, their well being and their freedom from discrimination and oppression.
- ii The Commonwealth acknowledges the right to life of unborn children and, with due regard to the equal right to life of the mother, shall in its laws respect, and, as far as practicable, by its laws defend and vindicate that right.
  - o. The Parliament of the Commonwealth shall legislate to define the point at which a human embryo shall have developed so as to be deemed to possess the right to life as a human person and become subject to protection of the provisions of this constitution and the law.
- iii No person shall be a chattel. No person, other than one convicted of and under sentence for an offence, shall be a bonded servant.
- iv All adult citizens shall have the right to vote in elections for public office and membership of the Parliament of Australia and in referenda on proposed amendments to this constitution or ratification of questions of sovereignty.
- v Any person who was a citizen of Australia immediately prior to the coming into operation of this Constitution shall continue thereafter to be a citizen of Australia.
- vi All Citizens shall be obligated to comply with all duties and responsibilities of citizenship under this constitution and as determined by law.
- vii Australian citizenship shall be extended as of right to children born to and of Australian citizens. The Parliament of the Commonwealth shall make laws determining the circumstances and conditions under which persons may apply for and obtain Australian citizenship.
- viii All persons seeking to obtain Australian citizenship shall be obliged to pledge and undertake to sever all participation in, adherence to or involvement with any activity pursuant to the internal affairs of other nations and to affirm or swear their allegiance to Australia, and shall in so doing shall relinquish and foreswear such allegiance to any and every other nation.
- ix No person conforming to the requirements of Article 15, Section 1, paragraphs (vi) & (vii) shall be excluded from Australian nationality and citizenship by reason of their sex, ethnicity or religion.
- x The renunciation of foreign citizenship by an Australian Citizen in accordance with Australian law shall be recognised throughout the jurisdiction of Australia, notwithstanding a contrary provision in the laws of any other country.
- xi The Parliament of the Commonwealth shall make laws determining the

circumstances and conditions under which emigrants may voluntarily renounce their Australian Citizenship and in so doing may make such allowance for the laws of other countries as it thinks fit.

- xii No citizen, other than a convicted criminal, shall be deprived of citizenship, and no citizen shall be deprived of citizenship so as to render such person stateless.
- xiii Australian citizens shall, during a stay abroad, have the right to protection by the Commonwealth.
- xiv No Australian citizen may be expelled from the territory of the Commonwealth or forbidden to return to it.
- xv No court in Australia may impose the death penalty on any Australian citizen.

## **2. Freedom of Movement**

- i. Every Australian citizen shall have the right to freedom of movement and residence within the territory of the Commonwealth.
- ii. Every Australian citizen not currently subject to arraignment for trial or serving a sentence following conviction under the law shall have the right to leave the territory of the Commonwealth, and to return.

## **3. Obligations of Citizenship**

- i. All adult citizens shall have the obligation to exercise their franchise in elections to the Parliament of Australia and any other public office under this constitution and at all Commonwealth referenda.
- ii. All citizens shall be obligated to show fidelity and loyalty to the Australian nation, to behave tolerantly towards and respect the rights of all other citizens, to honour and observe the rule of law, to keep the peace and to contribute diligently and equitably to the common wealth of the nation.
- iii. All citizens shall be obligated to fulfil their duties of citizenship as determined by this constitution and by law.
- iv. Nothing in this Constitution confers a right to trespass, destroy or damage property, defraud, deceive, defame, breach contracts, prejudice trials, obstruct lawful activities, incite violence or crimes against any person or organisation or their property, or endanger the security of the Commonwealth.

## **4. Freedom of Religion**

- i. All citizens shall have the right to freedom of right conscience and of adherence to a religion or to none; this right shall include freedom to change their religious affiliation, and freedom, either alone or in community with others and in public or private, to manifest their religious beliefs in teaching, practice, worship and observance, provided such manifestation exhibits tolerance towards the religious beliefs and does not infringe upon the rights and freedoms of other citizens or as determined by law, threaten state security, public order, health, morals or disturb the public order.
- ii. A religion for the purpose of this Article shall be a religious denomination incorporated as such under the laws of the Commonwealth. Such religions shall have the right to manage their own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
- iii. Legislation providing revenue support for schools shall not discriminate between schools under the management of different religions, nor be such as to affect prejudicially the right of any child to attend a school receiving public funding.
- iv. The property of any religion or any educational institution owned or operated by said religion shall not be diverted save for necessary works of public utility and on payment of just compensation.

- v. Notwithstanding this Section, all citizens shall be required to observe their civil injunctions, obligations, duties and responsibilities as established by law.

## **5. Freedom of Speech**

- i. All citizens shall have the right to be vigilant in defence of their rights and liberty. Every citizen shall have the right to freely speak, write, print, broadcast or otherwise disseminate and communicate their ideas and opinions.
- ii. All citizens communicating and disseminating their ideas and opinions, and any public media by which they are distributed, shall be held directly responsible and accountable for any incitation to other citizens to contravene any provision of this constitution or any law of the Commonwealth Parliament or the dissemination of any calumny, libel, false information, innuendo, slur, smear, denigration, defamation, vilification, obloquy, or any and all abuses of this freedom, or to defy or undermine standards of public decency and morality as defined by law.
- iii. The Parliament shall make laws whereby the rights to operate and exercise the media of public communication shall be contingent upon all dissemination thereby of editorial reports or commentaries of topics, issues or views to which this Section may relate, expressed by any person, group of citizens, public or private organisation or agency, being balanced by equally weighted accounts representative of such other citizens, group of citizens, public or private organisations or agencies as are therein mentioned or affected, of their relevant responses, rebuttals, divergent reports or commentaries on such coverage that they may seek to have expressed.
- iv. The Commonwealth Parliament shall make no law constraining or abridging the right of freedom of speech, of publication and free communication or rebuttal of ideas and opinions in so far that they do not contravene any provision of, or laws enacted under, this constitution.
- v. So that the right of freedom of speech shall not be compromised the Parliament shall make laws to ensure that no public, corporate or private interests shall exercise any form of national monopoly in the ownership, control and direction of any of the media of public communication.
- vi. An informed public opinion being a matter of grave import to the common good, the Parliament shall make laws to ensure that the media of public communication, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the lawful authority of government.
- vii. The Parliament shall make laws restricting the publication or utterance of seditious or indecent matter or of material that constitutes a blasphemous affront to the adherents of an incorporated religion.
- viii. Preventive censorship of the media of public communication insofar as it complies with Article 15, Section 5, Paragraphs (ii) & (vii) shall be forbidden.

## **6. Rights and Obligations Regarding Tax & Public Spending**

- i. Australian Citizens shall have an obligation to make a common contribution of taxation to meet the costs of the Parliament, the Executive Government and Judiciary of the Commonwealth, and the implementation and administration of the duties of government and laws within the Commonwealth.
- ii. Citizens shall have the right, through their representatives in the Parliament of the Commonwealth, to decide as to the necessity for and the level of the public contribution to taxation; to grant this freely; to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of each

form of taxation levied.

- iii. The burden of taxation contributions shall be determined only by laws enacted by the Parliament of the Commonwealth and such burden shall be equitably distributed among citizens in proportion to their means, and among such other legal entities that are empowered by the laws of the Commonwealth to own assets and generate income, proportionally to the wealth they generate. Such laws shall conform to the principles of taxation set out in Section 37 of this constitution and shall be formulated, applied and administered so as not to constrain the nation's economic or social integrity.
- iv. Australia citizens have the right for tax laws to be fully transparent in their scope, intent and impact. All laws enacted by the Parliament of the Commonwealth for the purpose of the levying and collecting contributions of taxation shall specifically relate only to the raising of taxation revenue and shall not be applied in any way to the refund, expenditure or redistribution of that revenue or to apply or remove any social or economic benefit or encourage or dissuade any other activity whatsoever.
- v. All citizens shall have the right, to be exercised on their behalf by their representatives in the Parliament of the Commonwealth, to demand an accounting from the Executive Government as to the details of revenues gathered from taxation or from any other source and of their disbursement.
- vi. All citizens shall have the right, through their representatives in the Parliament of the Commonwealth, to require an accounting from the incumbents of all ministerial and public offices, of government employees, or of any agents of such, as to their administration and the performance of their responsibilities.

## **7. Rights to Security**

- i. All citizens shall have the right to the protection of a publicly funded police service to uphold and defend the rule of law. Such a force shall be established by the Parliament of the Commonwealth for the good of all citizens with respect to areas and matters of Commonwealth jurisdiction and such a force shall conform in every respect to the provisions of this constitution. Such forces shall also be established by the Parliaments of the States and Territories of the Commonwealth for the good of all their citizens with respect to areas and matters within the jurisdiction of the said states and territories and such forces shall observe in every respect the rights of citizens provided under this constitution.
- ii. Citizens shall have the right to have the external security of their nation protected by publicly funded armed forces. Such forces shall be established by the Parliament of the Commonwealth for the good of all citizens and not for the direct advantage of those to whom they are entrusted. The Executive Government shall be accountable to the Parliament of the Commonwealth for the maintenance, full readiness, disposition, deployment and operation of such forces.
- iii. Citizens shall have the right to have both the internal and external security of their nation further protected by a publicly funded, vigilant intelligence service. The Executive Government shall be accountable to the Parliament of the Commonwealth for the establishment, maintenance and operations of such a service.

## **8. Rights to Property**

- i. Every citizen shall have the right to own property in any form, alone or in association with others, nor shall anyone be arbitrarily deprived of such property.
  - a. The right to bequeath or to succeed to the ownership of property is guaranteed by this constitution.

- p. The passage of any law abrogating the right of private ownership of property is explicitly prohibited.
- q. Property may be forfeited in respect of cases of penalties imposed for breaches of the law, and only by virtue of the final judgment of a court.
- ii. The Parliament of the Commonwealth shall make no law whereby members of the armed forces may be quartered in any dwelling place in time of peace without the consent of the owner, nor in time of war, except in a manner to be prescribed by laws enacted by the Parliament of the Commonwealth and for no period beyond the date on which such a state of war is concluded.
- iii. Possession of property imposes duties, its use should also serve the public interest. No citizens shall be deprived of their private property by any government except where public necessity, determined according to law, shall clearly demand it, and then only on condition that the owner shall have been previously advised, and indemnified to the full market value of said property and for all other losses, expenses and inconveniences reasonably incurred in consequence of the acquisition.
- iv. If as a result of any decision of a government a reduction is caused in the value of an owner-occupied residential property, the reduction shall be treated as a compulsory acquisition for the purposes of the preceding Sub-section.

## **9. Right to Privacy**

- i All citizens shall have the right to privacy.
  - a. The dwelling place of every citizen is inviolable and shall not be forcibly entered save in accordance with law.
  - b. No citizens shall be subjected to arbitrary invasion of, intrusion upon or interference with their personal privacy, family dispositions, correspondence or other forms of communication, nor to attacks upon their honour and reputation. Every person shall have the right to the protection of the law against such interference or attack. The scope and extent of what is defined as personal privacy shall be prescribed by law.
  - c. No citizens may be obliged to disclose information concerning their person nor may public authorities acquire, collect or make accessible information on citizens except as prescribed by law.
  - d. All citizens shall have a right of access to documents and collected data containing information concerning themselves.
  - e. Every citizen shall have the right to demand and ensure the correction of incomplete, inaccurate or untrue information concerning themselves, or the deletion of formation acquired by means contrary to the law.
  - f. No person shall be subjected to search or seizure of said person's dwelling place, personal effects, documents or other forms of communication except in accordance with a warrant, issued upon probable cause supported by affirmation, and specifying the scope of the search and the persons or things to be seized; and if no actual cause is found, the person or persons affected by the search shall be recompensed for all losses, expenses and inconveniences reasonably incurred in consequence thereof.
  - g. No warrants for unreasonable searches of dwelling places and personal effects, interception of or eavesdropping upon any forms of private communications, or seizures of persons, property or records shall be issued by any judicial jurisdiction, except upon probable cause being shown therein, supported by oath or affirmation, and describing in particular the place or effects to be searched, and the persons or things to be seized.

- h. Limitation of any of the rights of citizens to privacy may only be prescribed by law.

**10. Rights to due process.**

ii. All citizens have the right of due process

- a. No person shall be accused, arrested, or imprisoned except in cases and according to the forms prescribed by law.
- b. No person shall solicit, transmit, execute, or cause to be executed, any arbitrary order. But any citizen summoned or arrested in virtue of the law shall submit without delay and resistance shall constitute an offence.
- c. If the arrest of any person shall be deemed indispensable, no persons shall be detained without the right to inform their next of kin, nominated person or legal counsel.
- d. No person, other than one convicted and under sentence of imprisonment for an offence, shall be detained without the right to immediate and continuous access to independent legal counsel.
- e. No person shall be detained before being immediately informed of the rights granted in this Section.
- f. All persons who are detained shall be informed, immediately and in a manner comprehensible to them, of the reasons for their detention. Such persons shall, in every case within 48 hours of detention, be arraigned before a court of law for consideration of the case. Unless the said court makes a determination for continued detention or conditional release, such detained persons shall be set free.
- g. In the event of a person being detained in custody harshness not essential to the securing of the individual's person shall be avoided, nor shall any person held in custody be subjected to any form of torture or to cruel, inhuman or degrading treatment or punishment. But in the case of a person resisting by force the securing of said individual's person, such force as is necessary to overcome such resistance and to protect the safety of those effecting the securing of said person, shall be exerted in accordance with the law.
- h. The law may provide for the refusal by a court of law of bail to a person charged with a serious offence where it is reasonably considered necessary to prevent said person absconding or the commission of a serious offence by that person.
- i. No citizen shall be detained unlawfully. Upon complaint being made by or on behalf of any person to a court of law alleging that such person is being unlawfully detained, the said Court shall forthwith inquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the said Court on a named day and to certify in writing the grounds of said person's detention, and the said Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody the detainee is held an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that the said person is being detained in accordance with the law.
- j. Every person charged with a crime before a court of law shall be presumed innocent until proven guilty beyond reasonable doubt according to law, shall be informed in detail of the nature and cause of the accusation, shall be entitled to the assistance of counsel not inferior to that of the prosecution, and shall have power to summon and examine witnesses through the defending counsel.

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- k. No person shall be convicted on uncorroborated evidence or offered any inducement to plead guilty, and no reward or inducement shall be offered in exchange for evidence against any person.
- l. All citizens accused under the law shall without undue delay have the right to a fair and public hearing of their case, before a competent, impartial and independent court of law.
- m. In every criminal prosecution, the accused shall enjoy the right to a speedy and public trial, in the jurisdiction of, and by an impartial jury of twelve citizens who are lay citizens from the Commonwealth, State or Territory jurisdiction wherein the crime occurred, who shall be free to judge both law and fact and who shall not convict the accused except by a unanimous verdict.
- n. The Parliament may make laws providing for exceptions to the public nature of hearings to be made for reasons of morality, state security, public order or protection of the private life of an innocent party to said hearing, or other important private interest. Judgments shall be announced publicly.
- o. Only a person who has committed an act prohibited by a law in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.
- p. No offence shall be created, and no penalty increased, by an ex post facto law.
- q. There shall be no statute of limitation regarding war crimes and crimes against humanity.
- r. No person, except in cases arising in the armed forces while in actual service in time of war or public danger as prescribed by laws of the Parliament of the Commonwealth applicable to such periods specifically; shall be held to answer for a crime for which a term of imprisonment may be imposed if found guilty, unless upon the preferring of formal charges in a court of law.
- s. Punishments may include suspension of a citizen's rights under this constitution but any Commonwealth, State or Territory law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated prior to the commission of the offence.
- t. No persons shall be compelled to act as witnesses against themselves in any criminal proceedings.
- u. No person shall be deprived of liberty, constitutional rights or property without due process of law.
- v. Whenever an accused person is acquitted in a criminal trial, the verdict shall be pronounced as "not guilty".
- w. Every accused person who is acquitted in a trial or appeal, discharged in a committal hearing, cleared by an inquest or commission of inquiry or made the subject of a no-bill or nolle prosequi shall be recompensed for all losses, expenses and inconveniences reasonably incurred in consequence of being accused.
- x. No person shall be put in legal jeopardy more than once for the same offence.
- y. No person who has fully served a sentence for an offence shall again be placed in jeopardy in respect of the same conduct.
- z. Any person who is subjected to a mistrial twice in respect of the same accusation shall be acquitted thereof.

## **11. Rights of Assembly and Association**

- i.** All citizens shall have the right to free, peaceable and unarmed assembly, but only in so far as not to infringe upon the rights of all other citizens to also freely and peaceably assemble or to conveniently enjoy the use of public facilities, thoroughfares, places and spaces.
  - a.** Neither the Parliament of the Commonwealth nor the Parliaments of any State or Territory shall make any law abridging the right of citizens to peaceful association or peaceful assembly where there is no infringement of other citizens' rights of free and safe passage in the use of public facilities, thoroughfares and spaces, nor constraining their right to petition the government within such jurisdictions for a redress of grievances.
  - b.** The Parliament may pass laws to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the environs of Parliament or other government buildings, installations and facilities.
- ii.** All citizens shall have the right to form and to join a political party, organisation, professional association, society, trade union of employees or industrial union of employers or any other organisation for the advancement, defence or protection of their mutual and lawful interests.
- iii.** No citizen shall be coerced or otherwise compelled into belonging to any organisation of any kind.
- iv.** All citizens shall have the right to form and to belong to an incorporated political party. Parliament shall make laws ensuring that all political parties are incorporated, that they are founded upon the equality of Australian citizens, that their purpose be limited to the formulation and pursuit of political influence upon public policy, that they operate on the principle of voluntary participation, that they employ only democratic means in their internal governance and the furtherance of their objectives, and that their finances and their administration shall be open to public scrutiny.
- v.** Parliament shall make laws whereby incorporated self-governance may be created within a profession in which the public reposes confidence, and any such self-governance shall concern itself with the proper practice of such professions in accordance with, and for the purpose of protecting, the public interest.

## **12. Economic Rights**

- i.** All citizens shall have the right to work to achieve an adequate means of livelihood, to free choice of employment, to favourable, just and safe conditions of work, to freedom from disparagement, discrimination or exploitation in their workplaces and to protection against unjust dismissal from employment.
- ii.** All employed citizens shall have the right to be paid wages at a rate of payment that represents just compensation capable of ensuring for them and their families an existence worthy of human dignity.
- iii.** All employed citizens undertaking work of equal endeavour or value shall have the right to be recompensed at an equal rate of pay.
- iv.** All employed citizens shall have the right to rest and leisure, including the reasonable limitation of day to day and week to week working hours, and the granting of periodic public holidays.
- v.** All citizens who are required to perform any non-trivial amount of work for any purposes as demanded by a government, either absolutely or as a legal or de facto condition of pursuing their livelihoods, shall be entitled to at least the minimum

remuneration and conditions to which they would be entitled if they were required to perform the same hours of work as ordinary employees of that government.

**13. Social Rights**

- i. Every person shall have the right freely to participate in the cultural life of the community, to enjoy the arts and recreational activities and to share in the benefits of scientific advancements.
- ii. Every person shall have the right to the protection of the material value resulting from any scientific, intellectual, literary or artistic production conceived or created by such person.
- iii. Every person shall have the right to access government assistance programs for which they are eligible according to law.

**14. Rights of Families**

- i. The natural, fundamental and primary unit of society within the Commonwealth shall be the family formed by the formally contracted union of a man and a woman. The term "marriage" shall be legally applied only to such formal unions. The Parliament of the Commonwealth shall make laws defining and regulating marriages between male and female citizens, the begetting or adoption of children and the rights of children of such marriages, without any limitation due to religious beliefs or cultural or racial origins.
  - a. Married spouses shall be entitled to equal rights as to marriage, during marriage and at its dissolution.
  - b. Marriage shall be entered into only with the free and full consent of both intending spouses.
- ii. Parents shall have the right and duty to rear their children in accordance with their own convictions, but shall ensure that in doing so they respect and observe their children's constitutional rights and ensure that said children are not subjected to any form of treatment or punishment contrary to the law.
- iii. Limitation or deprivation of parental rights may be effected only in the instances specified by law and only on the basis of a final court judgment.
- iv. The previous subsection notwithstanding, citizens shall have the right to lawfully engage in cohabitation household arrangements outside marriage whether such citizens are of the same or of different sexes. Any terms used to describe such cohabitation household arrangements shall preclude the use of the term "marriage". The Commonwealth Parliament shall make laws regarding the rights and obligations of such citizens, whether their cohabitation household arrangements be formalised by contract, or otherwise, ensuring that the participants shall be entitled to equal rights at the inception, during and at the dissolution of said cohabitation; and regarding the rights of any dependent children who may form part of the households of such arrangements.
- v. All children shall enjoy an equal right to social and moral protection. In exceptional cases, where the parents are deceased, absent or for any reasons fail in their duty towards the proper rearing their children, appropriate means shall be made available to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

**15. Rights to Education**

- i. Every citizen shall have the right to a basic education.

- a The Parliament shall ensure that free, compulsory and secular primary and junior secondary education shall be made available to all according to a minimum standard of educational curricula. Such curricula shall also be required to provide for an understanding of and respect for the rule of law, citizens' civic obligations, responsibilities, rights and fundamental freedoms so as to foster mutual understanding, tolerance and cooperation amongst all sections of Australian society.
  - b The Parliament shall ensure that senior secondary, vocational, technical, professional and higher education shall be made equitably accessible to all on the basis of merit.
  - c The religious teachings of an incorporated religious denomination may be taught in schools, but other persons' freedom of religion and conscience shall not be infringed thereby.
- ii. It is the inalienable right and duty of parents, according to their means, to provide for the intellectual, physical, social, moral and religious education of their children.
- a. The Parliament, as guardian of the common good, may pass laws requiring in view of actual conditions that children receive a certain minimum intellectual, physical, social and moral education.
  - b. Subject to the provisions of this Section, parents shall be free to provide this education in private or in government established schools and the manner and content of any further education they deem should be given to their children.
  - c. Parents shall not be obliged to send their children in violation of their conscience and lawful preference to government-established schools, or to any particular type of schools designated by governments.
  - d. In exceptional cases, where the parents for whatever reasons fail in their duty towards educating their children, appropriate means shall be made available to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

**15. Rights to Livelihood**

- iii. All citizens shall have the right to pursue a vocational livelihood sufficient to sustain a standard of living adequate for the reasonable dignity, health and well-being of themselves and of their families, including food, clothing, housing and necessary social services.
- a The Parliament of the Commonwealth shall legislate to ensure that all citizens shall have the right to appropriate assistance in the event of the loss of livelihood due to circumstances beyond their control, of having to undertake the role of unsupported parental care of children of school age or under, or of sickness, disability, widowhood or old age.

**17. Rights to Health**

- iv. All citizens have the right to live in an environment that is protected to the fullest extent possible from hazards or threats to their health.
- a The Parliament of the Commonwealth shall legislate to ensure that all citizens are protected from actions that pose hazards or threats to their health and lives.
- v. All citizens suffering illness, physical impairment or trauma shall have the right to access public remedial care appropriate to their needs and circumstances but shall not be subjected to treatment, medication, medical procedures or limb or organ removal contrary to their expressed wishes.
- vi. No citizens shall be subjected to scientific experimentation, including medical experimentation, without their voluntary consent.

## APPENDIX 3.

### CHAPTER III

## THE HEAD OF STATE.

*This constitution establishes Australia as a Republic with an Australian citizen elected to the position as Head of State with the title of President of Australia.  
The President's primary role is to defend and protect the constitution and the rights and interests of the people.  
The separately elected executive government shall perform its functions and exercise its constitutional powers in the name of the President of Australia.*

### Article 17. Head of State of the Commonwealth of Australia

There shall be an office of Head of State of the Commonwealth of Australia who shall be the President of Australia hereinafter called the "President of Australia" or "the President", who shall take precedence over all other citizens in the Commonwealth.

The President shall exercise the powers and perform the functions conferred on the office by this Constitution and shall diligently protect and preserve this Constitution and the rights and interests of its citizens described therein.

*The qualifying age reflects the idea that the role requires someone with a measure of life experience and proven acquired competency. This age is similar to that specified in a number of other nations' constitutions.*

*Five year terms are long enough to give stability but short enough to permit flexibility in changing times. They also extend beyond the term of any one Parliament to ensure continuity of oversight by the President of the executive government of the day.*

*A person will be limited to a maximum of two terms as President whether such terms are successive or not.*

#### 1 Qualifications of President

- i Citizens eligible for election to the office of President must be Australian citizen, must have reached the age of thirty-five years and at the time of nomination for election to the office must not be, nor have been for a prior minimum period of four years, a member of any political party and must have resided within Australia for the preceding ten years.
- ii. Citizens eligible for election to the office of President must not:
  - g. be attainted of treason:
  - h. have been convicted, be under sentence, or subject to be sentenced, for any offence punishable under the criminal law of the Commonwealth or of a State or Territory by imprisonment for one year or longer:
  - i. be an undischarged bankrupt or insolvent:
  - j. hold any office of profit under the Commonwealth, or any pension payable out of any of the revenues of the Commonwealth:
  - k. have 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:

1. be under treatment from any mental health practitioner or facility or for any life-threatening condition or disease.
- iii Members of any Commonwealth, State or Territory Parliament shall be required to have vacated their seats for a minimum period of four years prior to accepting nomination for election as President.
- iv A person who holds, or who has held, office as President, shall be eligible for re-election to that office once, but only once.

*The requirements covering the nomination of citizens for the position of President are intended to ensure that candidates are politically non-partisan and that they have a wide acceptance within the Australian community.*

## **2. Nominations for President**

- i Former or retiring Presidents who have served only one term in that office and are eligible may become candidates on their own nomination.
- ii Candidates for election to the office of President, who are not a former or retiring President, must be nominated by:
  - f. Not less than thirty members of the Australian Parliament or
  - g. Not less than thirty citizens who are members of the parliaments of more than half the number of States and half the number of Territories or
  - h. Not less than two hundred citizens from more than half the number of States and half the number of Territories or
  - i. Not less than two thousand citizens from Australia at large:
  - j. No citizen shall be entitled to subscribe to the nomination of more than one candidate in respect of the same election.
- iii Where only one nomination for the office of President is received by the closing date for nominations designated in the writs calling for the election of the President, the sole candidate so nominated shall be declared elected.

*The AFF believes that The President should be elected directly by the Australian people as the office is primarily responsible for ensuring that their rights under the constitution are protected.*

*The AFF considers it vital that there be a level playing field for candidates in all elections. Candidates for all offices should enjoy an equal opportunity to present their case for election without being disadvantaged by any other candidate having access to very large amounts of funding that enables them to substantially influence and skew election outcomes.*

*The distribution of information by and about candidates shall be implemented evenly for all candidates and funded by the government. All media will be required to give even handed editorial space and weight of coverage to contesting candidates.*

*The Presidential voting system seeks to obtain a result based upon the successful candidate obtaining a majority support that reflects as closely as possible the federal majority principle of a majority across the nation and a majority in a majority of states. It seeks to ensure that a majority in the two major states of NSW and Victoria alone cannot dominate the national choice, and that at least a majority in one of the smaller states needs to be in favour as well.*

## **3. The President shall be elected by direct vote of the people.**

- i The incumbent President or, should the office of President be vacant, the Presidential Commission, or in the instance of the first election to this office the

person holding the office of Governor General of The Commonwealth under the preceding constitution, shall issue the writs for the election of a new President designating therein the closing date for nominations and for the date of the election itself.

- ii An election for the office of President shall be held not later than the thirtieth, and not earlier than the sixtieth day before the date of the expiration of the term of office of each President, but in the event of the death, resignation, established permanent incapacity or removal from office of the President (whether occurring before or after formal assumption of the office), an election for the office of President shall be held within sixty days after such event. The closing date for nominations shall be no later than thirty days preceding the election date.
- iii Every citizen who has the right to vote at an election for members of the Parliament of the Commonwealth shall have the right to vote at an election for President.
- iv Subject to the provisions of this Article 16, Section 3, the Parliament of the Commonwealth shall enact laws regulating elections for the office of President that shall ensure that:
  - a The provisions of this constitution are faithfully observed and that the regulation and administration of each such election is open, fair and efficiently administered.
  - b. The publication and or broadcast of a presentation or series of presentations shall be made whereby equal opportunity shall be afforded to each and every candidate through appropriate public media and means of normal public communication to enable them to comprehensively present themselves, their principles, credentials and any other such information as is necessary to inform the electors about their fitness for the role, and to debate them one with another. Such presentations shall be undertaken at the expense of the Commonwealth.
  - c The proprietors of all forms of public media shall ensure that their editorial reporting during an election for the President gives even-handed and impartial treatment throughout the nation to every candidate.
  - d Information depicting and identifying each candidate shall be prominently displayed at each polling place.
  - e On the day of the election no presentation or distribution of information about any candidate shall be made by any person within a kilometre of any polling booth.
  - f Following the announcement of the issuing of writs for an election for the President, and until after the declaration of the poll for that election, all candidates, their agents, sponsors and supporters and all other citizens, political parties, corporations or any other form of organisation shall be prohibited from making presentations that utilise any and all means of paid promotion or advertising in support of or against any candidates and any issues, policies and initiatives they advocate or represent, other than any such presentations provided by the Commonwealth under Article 16, Section 3, subsection iv-b.
- v. Each elector may complete only one ballot in an election for the office of President. The voting shall be undertaken within the Senate Divisions of the

States and Territories, by a secret, exhaustive ballot containing the names of all candidates for President, and providing for electors to indicate their first choice of candidate, and, in the event of there being more than two candidates, electors shall consider the possibility of their first choice being eliminated by reason of attracting the fewest votes and then indicate their next choice of candidate, and so on until they have indicated the priority of their choice against all candidates listed.

- i. Following the closure of the poll within each Senate Division, the votes will be tallied at each polling booth. Candidates or accredited agents of candidates may be present to scrutinise the process of opening ballot boxes and the sorting and counting of votes.
- j. Should there be any disputed matters relating to the process of opening ballot boxes or determining valid votes appropriate procedures shall be included in the legislation regulating such elections to ensure that such disputes are equitably, efficiently and effectively resolved.
- k. Once all votes have been tallied, the tally for each candidate will be rechecked and the results of the tally, including the actual ballot papers, shall be conveyed to the Returning Officer of the State or Territory concerned.
- l. When the tallies of all votes from all Senate divisions within the State or Territory have been received, the total votes for each candidate from each State or Territory concerned will be tallied. The candidate with the lowest number of primary votes will then be eliminated from the poll and the ballot papers containing the votes for the eliminated candidates will again be examined and the selections for candidates designated next in the sequence of voters' choices on those ballots will then be tallied and the relevant totals added to the remaining candidates' tallies. This process will be repeated until one candidate obtains an absolute majority of the valid votes cast within each State concerned.
- m. Within each State and Territory the candidate obtaining an absolute majority of the votes cast therein shall be deemed to have won a number of electoral votes equal to the total number of seats by which the State or Territory concerned is represented in the Commonwealth Parliament.
- n. The number of electoral votes won by candidates from each State and Territory will then be conveyed to the Commonwealth Returning Officer and tallied, the candidate obtaining an absolute majority of the total electoral votes across the nation shall be declared elected as President and the writs returned to the incumbent President or in the absence of a President in office, to Presidential Commission, who shall proclaim the election of the new President.
- o. Should no candidate obtain an absolute majority of electoral votes in the election for President, then within fourteen days of this determination, the two candidates who attracted the greatest number of electoral votes shall recontest a second election and the electoral votes in each State or Territory will again be tallied in similar fashion and the candidate with an absolute majority of electoral votes will be declared elected as President and the writs returned to the incumbent President or Presidential Commission, who shall proclaim the election

of the new President.

- p. Should the electoral votes of the two remaining candidates be tied, the candidate with the highest aggregate total of the valid votes from electors in all states will be declared elected and the writs returned to the incumbent President or Presidential Commission, who shall proclaim the election of the new President.

#### **4. Assumption of Office**

- i The first President shall assume office as soon as possible after being elected, and every subsequent President shall assume office on the day following the expiration of the term of office of the preceding President or as soon as may be thereafter or, in the event of the predecessor's removal from office, death, resignation, or permanent incapacity established as provided by Article 16, Section (1v) hereof, as soon as possible after the election.
- ii Each President-elect shall assume office by taking and subscribing publicly, in the presence of the members of both Houses of the Parliament and the Judges of the High Court, the declaration :-  
"I do solemnly and sincerely swear by Almighty God (or affirm, avow and declare) that I will defend and maintain the Constitution of Australia and uphold its laws, that I will fulfil my duties as President of Australia faithfully and conscientiously in accordance with the Constitution and the law, and that I will dedicate my efforts and abilities to the service and welfare of the people of Australia."

If the President-elect refuses to take the oath or takes it with reservations, the said President-elect shall be considered not to have been elected and the office declared vacant.

#### **5. Term of Office**

- i The President shall hold office for five years from the date of formal assumption of the office, unless before the expiration of that period the said President dies, or resigns, or becomes permanently incapacitated, or is removed from office.

#### **6. Leaving Australian Territory**

The President of Australia while in office shall leave the territory of the Commonwealth only with the express consent of the Commonwealth Executive Council.

#### **8. Removal of the President**

- iii. The President of Australia cannot be detained, exposed to criminal prosecution, or prosecuted for a misdemeanour or administrative offence.
- iv. The President may be removed from office:
  - f. by disqualification due to permanent incapacity, established by the full bench High Court at a special sitting convened for the purpose:
  - g. by the appellate jurisdiction of the full bench of the High Court High Court on other grounds of disqualification under this Constitution, or
  - h. by the verdict of the Senate, sitting in Judicial Session, following indictment for treason, bribery or other high crimes and misdemeanours as detailed in a Bill of Impeachment passed by an absolute majority of the members of the House of Representatives.
- i. In proceedings under the previous paragraph, the President shall have

the right to appear and to be legally represented before the bar of the Senate and to enjoy every right of a citizen to due process under this constitution.

- j. Parliament shall not be prorogued or dissolved between the time a Bill of impeachment is first moved in the House of Representatives and the Senate either passes or defeats the said Bill as provided in the preceding paragraph.

## **8. Residence and Remuneration of the President**

- i The President shall have an official residence in or near the City of Canberra in the Australian Capital Territory.
- ii The President shall receive such emoluments and allowances as may be determined by legislation of the Parliament.
- iii The emoluments and allowances of the President shall not be diminished during the said President's term of office.

*The President is the personal symbol of Australian Sovereignty.*

*The President acts in the name of the people and on behalf of the people.*

*While executive orders are initiated by the Executive Government and the Laws of the Commonwealth are enacted by the Parliament of Australia, they assume the power of law only when formally assented to by the President.*

*While the President does not initiate executive orders and laws, he or she ensures that they are always undertaken according to the strict letter of the constitution and that the rights of the people under the constitution are at all times preserved and protected.*

*The President has the power to dismiss any government that fails to act in accordance with the constitution.*

*The President is the watchdog of people's liberty.*

## **Article 18 Duties and Powers of the President.**

### **1. The President of Australia shall have the power and duty to:**

- Represent the Commonwealth of Australia to other nations as the Australian Head of State;
- Formally ratify international treaties;
- Receive the heads of foreign diplomatic missions;
- Accredit and recall heads of Australian diplomatic missions;
- Confer and award Australian orders and distinctions.

### **2. Appointment of the Executive Government**

- i The President shall commission as Prime Minister, the member of the House of Representatives who commands the confidence of the majority of members on the floor of that House.
- ii The President shall, on the advice of the Prime Minister, appoint other members of the Parliament of Australia as members of the Commonwealth Executive Council and or other minister of the Executive Government.
- iii The President shall, on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, accept the resignation or terminate the appointment of members of the or other ministers of the Executive Government.

- iv The President shall have the absolute discretion to accept the resignation of the Prime Minister and thereupon withdraw the said Prime Minister's commission together with the commissions of the members of the Commonwealth Executive Council and other ministers of the Executive government.
- v The President shall have the absolute discretion to withdraw the commissions of the Prime Minister and the members of the Commonwealth Executive Council and other ministers of the Executive Government in the event that the said Prime Minister, having lost the confidence of a majority of the members on the floor of the House of Representatives, fails to formally resign from office within forty-eight hours.
- vi The President shall have the absolute discretion to withdraw the commissions of the Prime Minister and the members of the Commonwealth Executive Council and other ministers of the Executive Government in the event that said Prime Minister is unable to advise, when formally requested to do so by the President, that the Commonwealth Treasury can guarantee sufficient revenue from appropriations of the Parliament, to meet the costs of the Executive Government and Public Services of the Commonwealth for the immediate future period of no less than three months.
- vii In the event of a situation whereby the Prime Minister is rendered unable to exercise office, the President shall have the power to appoint a caretaker Prime Minister, pending the House of Representatives expressing its confidence in a new Prime Minister. If the House of Representatives fails to so express such confidence, the President shall issue writs for the election of a new Parliament.
- viii In the event of a situation occurring where the Prime Minister or sufficient other members the Commonwealth Executive Council, other ministers of the Executive Government or other government members of the House of Representatives are rendered unable to exercise their office and perform their functions, so that the government is unable to continue to enjoy the confidence of the House of Representatives, the President shall have the absolute discretion of issuing writs for by-elections for the seats represented by the members concerned, or at the President's discretion, for the election of a new Parliament, and in the interim to appoint a caretaker Prime Minister and Executive Council and ministry until such elections are finalised.

### **3. Communication with the Judicature**

The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, communicate at his or her absolute discretion with the Chief Justice of the High Court of Australia, or in the absence of the Chief Justice, the senior Justice available.

### **4. President's Assent to Executive Orders**

Every Executive Order of the President in Council issued in compliance with the relevant laws of the Commonwealth must be presented to the President by the Commonwealth Executive Council for the President's assent, which shall be executed by the affixing thereto of the President's signature, whereupon it shall come immediately into effect

### **5. Withholding of Assent to Executive Orders**

- i In the instance where an Executive Order presented to the President for signature deals or appears to deal with matters outside the authority of the Commonwealth Executive Council or the laws of the Commonwealth, the President shall withhold assent and return the Executive Order to the Attorney General with a message containing particulars of why assent was withheld.

- ii The Executive Order may then allowed to lapse, or if the issue of the validity of the Executive Order or its rightful jurisdiction is disputed by the Attorney General, the Executive Order may be presented to the High Court for a ruling on the Executive Order's Constitutional validity, whereupon the said ruling of the High Court will be final in the matter.
- iii Should the High Court rule the Executive Order to be Constitutional, the President shall give assent forthwith.

## **6. Summoning and Dissolving the Parliament**

- i The President shall issue writs for the election of the Parliament as advised by the Prime Minister acting as the Chief Executive Officer of the Government under this constitution, and upon the return of the writs, proclaim the names of the citizens thereby elected.
- ii The President shall formally summon all elected members of each new Parliament of Australia, and recall those Senators entitled to serve a second term who were stood down upon the dissolution of the previous Parliament, and shall open the First Session of every newly constituted Parliament, sitting for that occasion in joint session.
- iii The President shall summon into session, prorogue and dissolve the Parliament of Australia on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, except as otherwise provided by this constitution.
- iv In the event that the Prime Minister fails to advise the calling into session of the Parliament to comply with the provisions of Article 21 Section 4 (i), the President shall have the absolute discretion to summon the Parliament to meet forthwith.
- v The President has the absolute discretion to refuse to dissolve the Parliament of Australia on the advice of the Prime Minister acting as the Chief Executive Officer of the Government, where said Prime Minister has ceased to command the support of a majority of members of the House of Representatives.
- vii The President has the absolute discretion to dissolve the Parliament in the event either House has not reached a quorum for a period longer than three months, although its session was not adjourned and although it was repeatedly called to session during this period.
- viii The President has the absolute discretion in the event of Section 2 Sub-sections (iv) and (v) above, to seek to commission another Member of the House of Representatives as Prime Minister, provided that said person can command a majority in the House, or failing that, undertake to guarantee to pass appropriation Bills through the Parliament of Australia sufficient to meet the costs of the Executive Government and Public Services for a period of no less than three months and advise the dissolution of the Parliament of Australia involving the retirement of all members of the House of Representatives and half the number of Senators and the standing down of the remainder of Senators, or should the necessary conditions under Article 24, Section 12 (i) be applicable, advise a double dissolution of the Parliament requiring the retirement of all members of both Houses.

## **7. President's Assent to Bills**

- i Every Bill that has been passed by both Houses of the Parliament of Australia shall be jointly presented to the President by the Speaker of the House of Representatives and the President of the Senate, for the President's assent, which shall be executed by the affixing thereto of the President's signature, whereupon it shall become law..

**8. Withholding of Assent on Bills**

- i In the instance where a Bill presented to the President for signature deals or appears to deal with matters outside the powers of the Parliament of Australia, the President shall withhold assent and return the Bill to the Attorney General with a message as to the particulars of the reason given.
- ii The Bill may then lapse, or if the issue of the validity of jurisdiction is disputed by the Attorney General, the Bill will be presented to the High Court for a ruling on the Bill's Constitutional validity, whereupon the said ruling of the High Court will be final in the matter.
- iii Should the High Court rule the Bill to be Constitutional, the President shall give assent forthwith.
- iv On the petition of no less than three of the States or Territory governments, the President may defer for up to six months the signing of any Bill passed by both Houses of the Parliament of Australia.
- v After the period of deferment of any Bill on which the President has withheld assent has expired, the Speaker of the House of Representatives and the President of the Senate may again jointly present the said Bill to the President for assent, whereupon the President shall give such assent.

**9. The President to proclaim laws enacted by the Parliament of Australia.**

Once a Bill being given assent, and following its proclamation by the President, such proclamation being formally made to and in the presence of the Speaker of the House of Representatives and the President of the Senate, it shall be tabled in both Houses of the Parliament and thereupon shall become law.

**10. Command of the Armed Forces of the Commonwealth**

- i The supreme command of the Armed Forces of the Commonwealth is vested in the President.
- ii The exercise of the supreme command of the Armed Forces shall be to ensure the security of Australia, its citizens and this Constitution according to law.
- iii All commissioned officers of the Australian Armed Forces shall hold their commissions from the President.

**11. Issue of Pardons and Commuting or Remission of Judicial Punishment**

The President shall have the absolute discretion to exercise the right of pardon and the power to commute or remit punishment imposed by any Commonwealth court exercising criminal jurisdiction, but such power of commutation or remission may also be conferred on other authorities by legislation of the Parliament.

**12. Communication with the Parliament and the Nation**

- i The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, communicate with either or both of the Houses of the Parliament of Australia by message or address.
- ii The President may, after due consultation with the Commonwealth Executive Council but not necessarily upon their advice, address a message to the Nation through the public media of communication.

**13. President answerable to the people.**

- i The President is directly elected by the people and shall not be answerable to either House of the Parliament of Australia or to any court for the exercise and performance of the powers and functions of office under this Constitution or for any act done or purporting to be done in the exercise and performance of

these powers and functions, provided that such act or acts do not contravene the laws of the Commonwealth or abrogate any article of this Constitution.

- ii The behaviour of the President may, however, be brought under review in either of the Houses of the Parliament of Australia for the purposes of Article 17, Section 7 of this Constitution, or by any court, tribunal or body appointed or designated by either of the Houses of the Parliament of Australia for the investigation of a charge under the said Article and Section.

#### **14. Exercise of the President's Powers**

- i The powers and functions conferred on the President by this Constitution shall be exercisable and performable by the President on the advice of the Prime Minister acting as Chief Executive of the Commonwealth Executive Council, save where it is provided by this Constitution that the President shall act with absolute discretion or may act after consultation with or in relation to the Commonwealth Executive Council but not necessarily upon their advice.
- iii. Subject to this Constitution, additional powers and functions may be conferred on the President by legislation of the Commonwealth Parliament.
- iv. No additional power or function conferred on the President by legislation shall be exercisable or performable by the President save only on the advice of the Government.

#### **Article 19. Absence or Incapacity of the President**

##### **1. Delegation of President's Powers during absence or incapacity**

In the event of the President's absence, temporary incapacity, or failure to exercise and perform the powers and functions of office or any of them, or at any time at which the office of President may become vacant in the event of the President's death, resignation, removal from office or permanent incapacity established as provided by Article 16 section 1 (vi) hereof, the powers and functions conferred on the President by or under this Constitution and the law shall be exercised and performed by a Presidential Commission constituted as provided in Section 2 of this Article.

In the event of the said absence being permanent the first duty of the Presidential Commission shall be to issue writs for the election of a new President.

##### **2. Presidential Commission**

- i The Presidential Commission shall consist of the following citizens, namely, the Chief Justice of the High Court, the Speaker of the House of Representatives and the President of the Senate.
- ii The next Senior Judge of the High Court shall act as a member of the Commission in the place of the Chief Justice on any occasion on which the office of Chief Justice is vacant or on which the said Chief Justice is unable to act.
- iii The Deputy Speaker of The House of Representatives shall act as a member of the Commission in the place of the Speaker on any occasion on which the office of Speaker is vacant or on which the said Speaker is unable to act.
- iv The Deputy President of the Senate shall act as a member of the Commission in the place of the President of the Senate on any occasion on which the office of President of the Senate is vacant or on which the said President of the Senate is unable to act.
- v. The Presidential Commission shall act by unanimous agreement.

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- vi The Commonwealth Executive Council may by a majority of its members make such provision for the exercise and performance of the powers and functions conferred on the President by or under this Constitution, in any contingency which is not provided for by the foregoing provisions of this Article.
- vii In the event of the failure of the President to exercise or perform any power or function which the President is by or under this Constitution required to exercise or perform within a specified time, the said power or function shall be exercised or performed under this Article, as soon as may be after the expiration of the time so specified.