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Chapter Two

Government

Contents

Page

There are three levels of government in Australia.

The six Australian colonies federated in 1901 to form the Commonwealth of Australia. Most of the Commonwealth Parliament's legislative powers are enumerated in section 51 of the Constitution. Areas of power not specified remain the responsibility of the States and Territories. A system of local government, established under State legislation, creates a third tier of government in Australia. In 1991, Australia had 842 elected members of Parliament, of whom 224 were Commonwealth and 618 State and Territory members.

Both the State and the Commonwealth systems of government derive from the British Westminster system, although many features of the Commonwealth Constitution (including the federal structure) are based on the United States Constitution. Generally, however, the salient features of the Westminster system have been retained. Ministers are members of Parliament, and are required to be accountable and answerable to it. In the twentieth century, Australia has been characterised by a strong party system and adversarial style of politics between the government and opposition.

This chapter outlines the basic features of the constitutional structure of the Commonwealth Parliament and Government and its electoral system, and provides details of the Ministry, and other political leaders.

The Australian Constitution is reproduced in the Year Book from time to time, the latest being the 1992 edition.

A chapter outlining Australia's prehistory to Federation was contained in the 1991 and earlier Year Books.

PARLIAMENTARY GOVERNMENT

Scheme of parliamentary government

Under the Australian Constitution the legislative power of the Commonwealth of Australia is vested in the Parliament of the Commonwealth, which consists of the Queen, the Senate and the House of Representatives. The Queen is represented throughout the Commonwealth by the Governor-General. In each Australian State there is a State Governor, who is the representative of the Queen for the State. The Governor has such powers within the State as are conferred upon him/her by the Letters Patent constituting his/her office, and he/she exercises these powers in accordance with instructions issued to him/her by the Queen, detailing the manner in which his/her duties are to be fulfilled.

No Act of the Parliament of the United Kingdom passed after the commencement of the *Australia Act 1986* extends, or is deemed to extend, to the Commonwealth of Australia or to an Australian State or Territory as part of the law of the Commonwealth, of the State or of the Territory. Further, the restrictions that formerly existed on the legislative powers of the Parliaments of the States were removed by the Act.

In the Commonwealth Parliament the Upper House is known as the Senate, and in the bicameral State Parliaments as the Legislative Council. The Legislature in all States was bicameral until 1922 when the Queensland Parliament became unicameral upon the abolition of the Upper House. In the Commonwealth Parliament the Lower House is known as the House of Representatives; in the State Parliaments of New South Wales, Victoria and Western Australia as the Legislative Assembly; and in the State Parliaments of South Australia and Tasmania as the House of Assembly. The single House of Parliament in Queensland, the Northern Territory and the Australian Capital Territory is known as the Legislative Assembly. The extent of the legislative powers of each of the seven Parliaments is defined by the Australian and State Constitutions, respectively. In those States that have a bicameral legislature, the Legislative Assembly or House of Assembly, as the case may be, is the larger House.

The members of the Parliaments of each State are elected by the people, the franchise extending to Australian citizens who are at least 18 years of age and possess certain residential qualifications. For the Commonwealth Parliament the qualifications for the franchise are identical for both Houses, extending to Australian citizens and British subjects who are on the Commonwealth Electoral Roll and who are not less than 18 years of age.

The Sovereign

On 7 February 1952 the then Governor-General of the Commonwealth of Australia, acting with advice of members of the Federal Executive Council, proclaimed Princess Elizabeth as Queen Elizabeth the Second, Queen of this Realm and of all Her other Realms and Territories, Head of the Commonwealth, Defender of the Faith, Supreme Liege Lady in and over the Commonwealth of Australia. By the *Royal Style and Titles Act 1973,* which Her Majesty assented to in Canberra on 19 October 1973, the Commonwealth Parliament assented to the adoption by Her Majesty, for use in relation to Australia and its Territories, of the Style and Titles set out in the Schedule to that Act. On the same day, also in Canberra, Her Majesty issued a Proclamation, under the Great Seal of Australia, appointing and declaring that Her Majesty's Style and Titles should henceforth be, in relation to Australia and its Territories, 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'.

The Governor-General

Powers and functions. Under the Australian Constitution, the Governor-General exercises the executive power of the Commonwealth of Australia, and certain other powers and functions conferred by the Constitution that include, among others, the powers to appoint times for holding the sessions of the Parliament, to prorogue Parliament, and to dissolve the House of Representatives; to cause writs to be issued for general elections of members of the House of Representatives; to assent in the Queen's name to a proposed law passed by both Houses of the Parliament; to choose and summon Executive Councillors, who hold office during the Governor-General's pleasure; and to appoint Ministers of State for the Commonwealth of Australia. In addition, the Governor-General, as the Queen's representative, is Commander-in-Chief of the Defence Forces.

Many Acts of the Commonwealth Parliament provide that the Governor-General may make regulations to give effect to the Acts. The Governor-General may also be authorised by statute to issue proclamations, for example, to declare an Act in force. The Governor-General has been given power by statute to legislate for certain of the Australian Territories. Under the provisions of the Constitution, as well as by the conventions of responsible government in British Commonwealth countries, the Governor-General's executive functions are exercised on the advice of Ministers of State.

Holders of office. The present Governor-General is His Excellency the Honourable William George Hayden, AC. Those persons who have held the office of Governor-General from the inception of the Commonwealth of Australia are pictured in *Year Book Australia 1988.*

Administrators. In addition to the holders of the office of Governor-General, certain persons have, from time to time, been appointed by the Queen to administer the Government of the Commonwealth of Australia. These persons are appointed in the event of the death, incapacity, removal from office or absence from Australia of the Governor-General.

Governors of the States

Powers and functions. The Queen is represented in each of the Australian States by a Governor, the office having been constituted by Letters Patent issued under the Great Seal of the United Kingdom on various dates. The Governors of the States exercise prerogative powers conferred on them by these Letters Patent, their commissions of appointment and the Governor's Instructions given to them under the Royal Sign Manual and Signet or other instrument, as specified in the Letters Patent. In addition, they have been invested with various statutory functions by State Constitutions and the Commonwealth *Australia Act 1986,* as well as under the Acts of the Parliaments of the States.

A Governor of a State assents in the Queen's name to Bills passed by the Parliament of the State. Since the enactment of the *Australia Act 1986*, an Act of Parliament of a State that has been assented to by the Governor of the State is no longer subject to disallowance by the Queen or suspension pending signification of the Queen's pleasure. The Governor administers the prerogative of mercy by the reprieve or pardon of criminal offenders within his jurisdiction, and may remit fines and penalties due to the Crown in right of the State. In the performance of his functions generally, particularly those conferred by statute, the Governor of a State acts on the advice of Ministers of State for the State.

2.1 STATE GOVERNORS, HOLDERS OF OFFICE, JANUARY 1994

New South Wales	His Excellency REAR ADMIRAL PETER ROSS SINCLAIR, AO
Victoria	His Excellency JUSTICE RICHARD McGARVIE
Queensland	Her Excellency Mrs MARY MARGUERITE LENEEN FORDE
South Australia	Her Excellency the Honourable DAME ROMA FLINDERS MITCHELL, AC, DBE
Western Australia	His Excellency the Honourable SIR FRANCIS THEODORE PAGE BURT, AC, KCMG, QC
Tasmania	His Excellency GENERAL SIR PHILLIP BENNETT, AC, KBE, DSO
Northern Territory	The Honourable JAMES HENRY MUIRHEAD, AC QC

Source: Department of the Parliamentary Library.

COMMONWEALTH GOVERNMENT

Commonwealth Parliaments and Ministries

The following table shows the number and duration of parliaments since Federation.

2.2 COMMONWEALTH PARLIAMENTS

Number of Parliament	*Date of opening*	*Date of dissolution*
First	9 May 1901	23 November 1903
Second	2 March 1904	5 November 1906
Third	20 February 1907	19 February 1910
Fourth	1 July 1910	23 April 1913
Fifth	9 July 1913	(a)30 July 1914
Sixth	8 October 1914	26 March 1917
Seventh	14 June 1917	3 November 1919
Eighth	26 February 1920	6 November 1922
Ninth	28 February 1923	3 October 1925
Tenth	13 January 1926	9 October 1928
Eleventh	6 February 1929	16 September 1929
Twelfth	20 November 1929	27 November 1931
Thirteenth	17 February 1932	7 August 1934
Fourteenth	23 October 1934	21 September 1937
Fifteenth	30 November 1937	27 August 1940
Sixteenth	20 November 1940	7 July 1943
Seventeenth	23 September 1943	16 August 1946
Eighteenth	6 November 1946	31 October 1949
Nineteenth	22 February 1950	(a)19 March 1951
Twentieth	12 June 1951	21 April 1954
Twenty-first	4 August 1954	4 November 1955
Twenty-second	15 February 1956	14 October 1958
Twenty-third	17 February 1959	2 November 1961
Twenty-fourth	20 February 1962	1 November 1963
Twenty-fifth	25 February 1964	31 October 1966
Twenty-sixth	21 February 1967	29 September 1969
Twenty-seventh	25 November 1969	2 November 1972
Twenty-eighth	27 February 1973	(a)11 April 1974
Twenty-ninth	9 July 1974	(a)11 November 1975
Thirtieth	17 February 1976	8 November 1977
Thirty-first	21 February 1978	19 September 1980
Thirty-second	25 November 1980	(a)4 February 1983
Thirty-third	21 April 1983	26 October 1984
Thirty-fourth	21 February 1985	(a)5 June 1987
Thirty-fifth	14 September 1987	19 February 1990
Thirty-sixth	8 May 1990	8 February 1993
Thirty-seventh	4 May 1993	

(a) A dissolution of both the Senate and the House of Representatives was granted by the Governor-General under section 57 of the Constitution.

Source: Department of the Parliamentary Library.

The following list shows the name of each Commonwealth Government Ministry to hold office since 1 January 1901 and the dates of its term of office.

2.3 COMMONWEALTH GOVERNMENT MINISTRIES, 1901 TO 1991

(i)	BARTON MINISTRY	1 January 1901 to 24 September 1903
(ii)	DEAKIN MINISTRY	24 September 1903 to 27 April 1904
(iii)	WATSON MINISTRY	27 April 1904 to 17 August 1904
(iv)	REID–McLEAN MINISTRY	18 August 1904 to 5 July 1905
(v)	DEAKIN MINISTRY	5 July 1905 to 13 November 1908
(vi)	FISHER MINISTRY	13 November 1908 to 2 June 1909
(vii)	DEAKIN MINISTRY	2 June 1909 to 29 April 1910
(viii)	FISHER MINISTRY	29 April 1910 to 24 June 1913
(ix)	COOK MINISTRY	24 June 1913 to 17 September 1914
(x)	FISHER MINISTRY	17 September 1914 to 27 October 1915
(xi)	HUGHES MINISTRY	27 October 1915 to 14 November 1916
(xii)	HUGHES MINISTRY	14 November 1916 to 17 February 1917
(xiii)	HUGHES MINISTRY	17 February 1917 to 8 January 1918
(xiv)	HUGHES MINISTRY	10 January 1918 to 9 February 1923
(xv)	BRUCE–PAGE MINISTRY	9 February 1923 to 22 October 1929
(xvi)	SCULLIN MINISTRY	22 October 1929 to 6 January 1932
(xvii)	LYONS MINISTRY	6 January 1932 to 7 November 1938
(xviii)	LYONS MINISTRY	7 November 1938 to 7 April 1939
(xix)	PAGE MINISTRY	7 April 1939 to 26 April 1939
(xx)	MENZIES MINISTRY	26 April 1939 to 14 March 1940
(xxi)	MENZIES MINISTRY	14 March 1940 to 28 October 1940
(xxii)	MENZIES MINISTRY	28 October 1940 to 29 August 1941
(xxiii)	FADDEN MINISTRY	29 August 1941 to 7 October 1941
(xxiv)	CURTIN MINISTRY	7 October 1941 to 21 September 1943
(xxv)	CURTIN MINISTRY	21 September 1943 to 6 July 1945
(xxvi)	FORDE MINISTRY	6 July 1945 to 13 July 1945
(xxvii)	CHIFLEY MINISTRY	13 July 1945 to 1 November 1946
(xxviii)	CHIFLEY MINISTRY	1 November 1946 to 19 December 1949
(xxix)	MENZIES MINISTRY	19 December 1949 to 11 May 1951
(xxx)	MENZIES MINISTRY	11 May 1951 to 11 January 1956
(xxxi)	MENZIES MINISTRY	11 January 1956 to 10 December 1958
(xxxii)	MENZIES MINISTRY	10 December 1958 to 18 December 1963
(xxxiii)	MENZIES MINISTRY	18 December 1963 to 26 January 1966
(xxxiv)	HOLT MINISTRY	26 January 1966 to 14 December 1966
(xxxv)	HOLT MINISTRY	14 December 1966 to 19 December 1967
(xxxvi)	McEWEN MINISTRY	19 December 1967 to 10 January 1968
(xxxvii)	GORTON MINISTRY	10 January 1968 to 28 February 1968
(xxxviii)	GORTON MINISTRY	28 February 1968 to 12 November 1969
(xxxix)	GORTON MINISTRY	12 November 1969 to 10 March 1971
(xl)	McMAHON MINISTRY	10 March 1971 to 5 December 1972
(xli)	WHITLAM MINISTRY	5 December 1972 to 19 December 1972
(xlii)	WHITLAM MINISTRY	19 December 1972 to 11 November 1975
(xliii)	FRASER MINISTRY	11 November 1975 to 22 December 1975
(xliv)	FRASER MINISTRY	22 December 1975 to 20 December 1977
(xlv)	FRASER MINISTRY	20 December 1977 to 3 November 1980
(xlvi)	FRASER MINISTRY	3 November 1980 to 7 May 1982
(xlvii)	FRASER MINISTRY	7 May 1982 to 11 March 1983
(xlviii)	HAWKE MINISTRY	11 March 1983 to 13 December 1984
(xlix)	HAWKE MINISTRY	13 December 1984 to 24 July 1987
(l)	HAWKE MINISTRY	24 July 1987 to 4 April 1990
(li)	HAWKE MINISTRY	4 April 1990 to 20 December 1991
(lii)	KEATING MINISTRY	20 December 1991 to 24 March 1993
(liii)	KEATING MINISTRY	24 March 1993

Source: Department of the Parliamentary Library.

In *Year Book Australia 1924*, the names are given of each Ministry up to the Bruce–Page Ministry together with the names of the successive holders of portfolios therein. *Year Book Australia 1953* contains a list which covers the period between 9 February 1923, the date on which the Bruce–Page Ministry assumed power, and 31 July 1951, showing the names of all persons who held office in each Ministry during that period. The names of members of subsequent Ministries are listed in issues of the *Year Book Australia,* 1953 to 1975-76 inclusive, and in successive issues from 1980.

Particulars of the Second Keating Ministry at March 1994 are shown below.

2.4 SECOND KEATING MINISTRY, AT MARCH 1994

Prime Minister	**The Hon. P. J. Keating, MP**
Minister for Aboriginal and Torres Strait Islander Affairs	The Hon. Robert Tickner, MP
Special Minister of State (Vice-President of the Executive Council)	The Hon. Gary Johns, MP
Parliamentary Secretary	*The Hon. Andrew Theophanous, MP*
Minister for Housing and Regional Development (Deputy Prime Minister)	**The Hon. Brian Howe, MP**
Parliamentary Secretary	*The Hon. Mary Crawford, MP*
Minister for Foreign Affairs (Leader of the Government in the Senate)	**Senator the Hon. Gareth Evans, QC**
Minister for Trade	**Senator the Hon. Bob McMullen**
Minister for Development Co-operation and Pacific Island Affairs	The Hon. Gordon Bilney, MP
Minister for Defence (Deputy Leader of the Government in the Senate)	**Senator the Hon. Robert Ray**
Minister for Veterans' Affairs	The Hon. Con Sciacca, MP
Minister for Defence Science and Personnel	The Hon.Gary Punch, MP
Parliamentary Secretary	*The Hon. Arch Bevis, MP*
Treasurer	**The Hon. Ralph Willis, MP**
Assistant Treasurer	The Hon. George Gear, MP
Parliamentary Secretary	*The Hon. Paul Elliott, MP*
Minister for Finance (Leader of the House)	**The Hon. Kim C. Beazley, MP**
Minister for Administrative Services	The Hon. Frank Walker, QC, MP
Minister for Industry, Science and Technology	**Senator the Hon. Peter Cook**
Minister Assisting the Prime Minister for Science	
Minister for Small Business, Customs and Construction	Senator the Hon. Chris Schacht
Parliamentary Secretary	*The Hon. E. J. Lindsay, MP*
Minister for Immigration and Ethnic Affairs	**Senator the Hon. Nick Bolkus**
Minister Assisting the Prime Minister for Multicultural Affairs	
Minister for Employment, Education and Training	**The Hon. Simon Crean, MP**
Minister for Schools, Vocational Education and Training	The Hon. Ross Free, MP
Parliamentary Secretary	*The Hon. Warren Snowdon, MP*
Minister for Primary Industries and Energy	**Senator the Hon. Bob Collins, MP**
Minister for Resources	The Hon. David Bedall, MP
Parliamentary Secretary	*Senator the Hon. Nick Sherry*
Minister for Social Security	**The Hon. Peter Baldwin, MP**
Parliamentary Secretary	*The Hon. Janice Crosio, MP*
Minister for Industrial Relations	**The Hon. Laurie Brereton, MP**
Assistant Minister for Industrial Relations	The Hon. Gary Johns, MP
Minister Assisting the Prime Minister for Public Service Matters	

... continued

2.4 SECOND KEATING MINISTRY, AT MARCH 1994 — *continued*

Minister for Transport	**The Hon. Laurie Brereton, MP**
Parliamentary Secretary	*The Hon. Gary Johns, MP*
Attorney-General	**The Hon. Michael Lavarch, MP**
Minister for Consumer Affairs	The Hon. Jeannette McHugh, MP
Minister for Justice	The Hon. Duncan Kerr, MP
Parliamentary Secretary	*The Hon. Peter Duncan, MP*
Minister for Communications and the Arts	**The Hon. Michael Lee, MP**
Minister for Tourism	**The Hon. Michael Lee, MP**
Minister for the Environment, Sport and Territories (Manager of Government Business in the Senate)	**Senator the Hon. John Faulkner**
Parliamentary Secretary	*The Hon. Warren Snowden, MP*
Minister for Human Services and Health	**The Hon. Carmen Laurence, MP**
Minister Assisting the Prime Minister for the Status of Women	
Minister for Family Services	Senator The Hon. Rosemary Crowley
Parliamentary Secretary	*The Hon. Andrew Theophanous, MP*

NOTE: Cabinet Ministers are shown in bold type. As a general rule, there is one Department in each portfolio. Except for the Department of the Prime Minister and Cabinet and the Department of Foreign Affairs and Trade, the title of each Department reflects that of the Portfolio Minister. There is also a Department of Administrative Services in the Finance portfolio; and a Department of Veterans' Affairs in the Defence portfolio.

Source: Department of the Parliamentary Library.

Mr A.J.G. Downer, MP(LP) is the leader of the Opposition.

2.5 STATE OF THE PARTIES IN THE COMMONWEALTH PARLIAMENT, JUNE 1994

House of Representatives		Senate	
ALP	80	ALP	30
LP	49	LP	30
NPA	16	AD	7
IND	2	NPA	6
		G(WA)	2
		OTHER	1

Source: Department of the Parliamentary Library.

Numbers and salaries of Commonwealth Government Ministers

Under sections 65 and 66, respectively, of the Australian Constitution the number of Ministers of State was not to exceed seven, and the annual sum payable for their salaries was not to exceed £12,000, each provision to operate, however, 'until the Parliament otherwise provides'.

Subsequently, the number and salaries have increased from time to time, and as at 10 March 1994 the number of Ministers was 30 and ministerial salaries ranged from $112,169 for the Prime Minister, to $72,780 for the Deputy Prime Minister, $59,317 for the Treasurer and for the Leader of the Government in the Senate, $52,641 for the Leader of the House, and $49,048 for a Minister other than the above. Where more than one office is held only one salary is payable, that being the higher salary.

All amounts shown in the foregoing paragraphs are in addition to amounts payable as parliamentary salaries and allowances.

PARLIAMENTS AND ELECTIONS

Qualifications for membership and for franchise — Commonwealth Parliament

Any Australian citizen, 18 years of age or over and who is, or is qualified to become, an elector of the Commonwealth Parliament is qualified for membership of either house of the Commonwealth Parliament. Any Australian citizen (or British subject who was on the Commonwealth Roll as at 25 January 1984) over 18 years of age is qualified to enrol and vote at federal elections. Residence in a subdivision for a period of one month before enrolment is necessary to enable a qualified person to enrol. Enrolment and voting are compulsory for all eligible persons.

The principal reasons for disqualification of persons otherwise eligible for election as members of either Commonwealth House are: membership of the other House; allegiance to a foreign power; being attainted of treason; being convicted and under sentence for any offence punishable by imprisonment for one year or longer; being an undischarged bankrupt or insolvent; holding an office of profit under the Crown (with certain exceptions); or having a pecuniary interest in any agreement with the public service of the Commonwealth except as a member of an incorporated company of more than 25 persons. Persons convicted of treason and not pardoned, or convicted and under sentence for any offence punishable by imprisonment for five years or longer, or of unsound mind, or persons who are holders of temporary entry permits under the *Migration Act 1958* or are prohibited non-citizens under that Act, are excluded from enrolment and voting.

Commonwealth Parliaments — representation and elections

From the establishment of the Commonwealth of Australia until 1949 the Senate consisted of 36 members, 6 being returned by each of the original federating States. The Australian Constitution empowers the Commonwealth Parliament to increase or decrease the size of the Parliament, and, as the population of Australia had more than doubled since its inception, the Parliament passed the *Representation Act 1948* which provided that there should be 10 Senators from each State instead of six, thus increasing the total to 60 Senators, enlarging both Houses of Parliament and providing a representation ratio nearer to the proportion which existed at Federation. The *Representation Act 1983* further provided for 12 Senators for each State from the first meeting of the thirty-fourth Parliament.

The *Senate (Representation of Territories) Act 1973* made provision for two Senators to be elected from both the Northern Territory and the Australian Capital Territory. Elections for the Territory Senators are held at the same time as general elections for the House of Representatives.

In accordance with the Constitution, the total number of State Members of the House of Representatives must be as nearly as practicable twice the total number of State Senators. Consequent upon the increase in the size of the Senate in 1949, the number of State Members was increased from 74 to 121. In 1955 there were 122 State Members; in 1969, 123; in 1974, 124; in 1977, 121; in 1980, 122. From the first meeting of the thirty-fourth Parliament, there was a further increase of 23 to 145 State Members flowing from the increase in the number of State Senators to 72.

Since the redistribution of electorates in 1949 giving effect to the increase in the size of the House of Representatives, further redistributions have taken place in 1955, 1968, 1974 (Western Australia only), 1977, 1979 (Western Australia only), 1984, when the size of the Parliament was increased again, 1988–89 (Victoria and Western Australia only) and 1991 (New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory). Redistributions must be held whenever the representation entitlement of a State changes, when more than one-third of the electorates in a State deviates from the quota by more than 10 per cent for more than two months, or every seven years. The quota (or average number) of electors is the basis for electoral distribution. There may be a deviation from the quota of up to 10 per cent in order to achieve equality of enrolment midway between redistributions. In determining boundaries, Redistribution Committees take account of economic, social and regional interests, means of communication and travel, the trend of population changes,

physical features and area, and the existing boundaries of electoral divisions.

The Electoral Commissioner determines the representation entitlements of the States and Territories during the tenth month after the first meeting of a new House of Representatives. Determinations are based on the latest population statistics as provided by the Australian Statistician. The quota is ascertained by dividing the number of people of the Commonwealth by twice the number of Senators representing the States. The population of the Territories and all Senators representing the Territories are excluded from calculation when determining the quota. The population of each State and Territory is then divided by the quota to determine their representation entitlements. If there is a remaining fraction of over half a quota, the State or Territory is entitled to an additional seat. This accounts for the minor fluctuations in the size of the House of Representatives. The representation entitlements of the States at the three most recent determinations are shown in the following table, which also shows the Territorial representation and the total size of the Parliament. Under section 24 of the Constitution, Tasmania remains entitled to the five seats guaranteed to any original State in 1901.

2.6 REPRESENTATION ENTITLEMENTS OF THE STATES AND TERRITORIES

State/Territory	*1981*	*1984*	*1988*	*1991*
State				
New South Wales	43	51	51	50
Victoria	33	39	38	38
Queensland	19	24	24	25
South Australia	11	13	13	12
Western Australia	11	13	14	14
Tasmania	5	5	5	5
Territories				
Northern Territory	1	1	1	1
Australian Capital Territory	2	2	2	2
Total Parliament	**125**	**148**	**148**	**147**

Source: Department of the Parliamentary Library.

From 1922 to 1968 the Northern Territory was represented in a limited capacity by one member in the House of Representatives. In May 1968 the *Northern Territory Representation Act 1922* was amended to give full voting rights to the Member for the Northern Territory effective from 15 May 1968, the day on which the Act received Royal assent.

From 1948 to 1967 the Australian Capital Territory was represented in a limited capacity by one member in the House of Representatives. The Member for the Australian Capital Territory was granted full voting rights on 21 February 1967.

Following the passing of the *Australian Capital Territory Representation (House of Representatives) Act 1973* the Australian Capital Territory was divided into two electoral divisions.

Members of the House of Representatives are elected for the duration of the Parliament, which is limited to three years. At elections for Senators the whole State constitutes the electorate. For the purpose of elections for the House of Representatives the State is divided into single electorates corresponding in number to the number of members to which the State is entitled.

In 1948, amendments to the *Commonwealth Electoral Act 1918* changed the system of scrutiny and counting of votes in Senate elections from the alternative vote to that of proportional representation. The method of voting for both the Senate and the House of Representatives is preferential.

Particulars of voting at Senate elections and elections for the House of Representatives up to 1984 appear in earlier issues of *Year Book*

Australia. Full details are contained in the *Election Statistics* issued by the Electoral Commissioner following each election.

The numbers of electors and primary votes cast for the major political parties in each State and Territory at the 1993 election for each House of the Commonwealth Parliament were as follows:

2.7 COMMONWEALTH PARLIAMENT ELECTIONS, 13 MARCH 1993

	NSW	*Vic.*	*Qld*	*SA*	*WA*	*Tas.*	*NT*	*ACT*	*Australia*
Electors enrolled	3,814,932	2,932,640	1,971,729	1,014,400	1,038,968	327,919	91,563	192,487	11,384,638
HOUSE OF REPRESENTATIVES									
First preference votes									
Australian Labor Party	1,714,512	1,273,974	739,862	358,707	381,143	143,621	43,578	95,993	4,751,390
Liberal Party	1,127,291	1,102,965	571,226	421,687	474,743	129,132	—	61,535	3,888,579
National Party	346,191	137,470	269,152	2,878	2,345	—	—	—	758,036
Country Liberal Party	—	—	—	—	—	—	35,207	—	35,207
Australian Democrats	99,817	101,185	74,278	71,981	31,791	7,653	—	10,355	397,060
Others	260,667	127,221	172,806	68,422	78,571	26,734	—	12,086	746,507
Formal votes	3,548,478	2,742,815	1,827,324	923,675	968,593	307,140	78,785	179,969	10,576,779
Informal votes	113,664	79,811	49,135	39,088	24,992	8,634	2,518	6,240	324,082
Total votes recorded	**3,662,142**	**2,822,626**	**1,876,459**	**962,763**	**993,585**	**315,774**	**81,303**	**186,209**	**10,900,861**
SENATE									
First preference votes									
Australian Labor Party	1,681,528	1,235,344	729,265	359,491	373,247	131,876	43,740	89,380	4,643,871
Liberal Party	—	—	582,766	431,642	472,131	113,347	—	64,318	1,664,204
National Party	—	—	268,809	4,498	17,075	—	—	—	290,382
Liberal–National Party	1,394,111	1,211,046	—	—	—	—	—	—	2,605,157
Country Liberal Party	—	—	—	—	—	—	35,405	—	35,405
Australian Democrats	176,324	109,223	130,405	93,325	39,849	5,162	—	12,656	566,944
Call to Australia	53,445	20,105	11,546	10,762	11,568	1,519	—	—	108,945
The Greens (WA)	—	—	—	—	53,757	—	—	—	53,757
Others	278,671	170,866	127,870	46,257	8,145	56,859	—	17,472	706,140
Formal votes	3,584,079	2,746,584	1,850,661	945,975	975,772	308,763	79,145	183,826	10,674,805
Informal votes	97,534	86,634	38,491	22,390	20,983	8,121	2,312	2,988	279,453
Total votes recorded	**3,681,613**	**2,833,218**	**1,8891,52**	**968,365**	**996,755**	**316,884**	**81,457**	**186,814**	**10,954,258**

Source: Department of the Parliamentary Library.

Parliamentary salaries and allowances

The basic salary payable to a Senator or Member of the House of Representatives was $69,693 at 10 March 1994. In addition, Senators or Members receive an electoral allowance of $24,558 in the case of a Senator or a Member representing an electorate of less than 2,000 square kilometres, $29,202 in the case of a Member representing an electorate of 2,000 square kilometres or more, but less than 5,000 square kilometres, or $35,611 in the case of a Member representing an electorate of 5,000 square kilometres or more.

Referendums

In accordance with section 128 of the Constitution, any proposed law for the alteration of the Constitution, in addition to being passed by an absolute majority of each House of Parliament, (except in circumstances specified in section 128 of the Constitution which permits a referendum to proceed if passed by only one chamber), must be submitted to a referendum of the electors in each State and Territory and must be approved by a majority of the electors in a majority of the States and by a majority of all the voters who voted before it can be presented for Royal assent.

Since 1901, 42 proposals have been submitted to referendums. The consent of the electors has been received in eight cases: the first in relation to the election of Senators in 1906, the second (1910) and third (1928) in respect of State Debts, the fourth in respect of Social Services in 1946 and the fifth in respect of Aboriginals in 1967. The remaining three proposals in relation respectively to Senate casual vacancies, maximum retirement age for justices of the High Court and judges of other Federal Courts, and the right of electors in the Territories to vote in referendums for the alteration of the Constitution, were approved in May 1977. In addition to referendums for alterations of the Constitution, other Commonwealth referendums have been held — two prior to Federation regarding the proposed Constitution and two regarding military service during World War I. A National song poll was held on 21 May 1977. Voting was preferential and after the distribution of preferences Advance Australia Fair became the national song of Australia.

For further details of referendums see *Year Book Australia 1966*, pages 66–68, *Year Book Australia 1974*, pages 90–91, *Year Book Australia 1977–78*, pages 72–73 and *Year Book Australia 1986*, pages 55–56.

The States and Territories

This section contains summarised information; for greater detail refer to State *Year Books*.

2.8 GOVERNMENT LEADERS IN STATES AND TERRITORIES, JUNE 1994

New South Wales	THE HON. J. J. FAHEY, M.P. (LP)
Victoria	THE HON. J. G. KENNETT, M.P. (LP)
Queensland	THE HON. W. K. GOSS, MLA (ALP)
South Australia	THE HON. D. C. BROWN, MP (LP)
Western Australia	THE HON. R. COURT, MLA (LP)
Tasmania	THE HON. R. J. GROOM, MHA (LP)
Northern Territory	THE HON. M. PERRON, MLA (CLP)
Australian Capital Territory	THE HON. R. FOLLETT, MLA (ALP)

Source: Department of the Parliamentary Library.

2.9 OPPOSITION LEADERS IN STATES AND TERRITORIES, JUNE 1994

New South Wales	R. J. CARR, M.P. (ALP)
Victoria	J. M. BRUMBY, M.P. (ALP)
Queensland	R. E. BORBIDGE, MLA (NP)
South Australia	THE HON. L. M. F. ARNOLD, M.P. (ALP)
Western Australia	THE HON. I. TAYLOR MLA (ALP)
Tasmania	THE HON. M. W. FIELD, MHA (ALP)
Northern Territory	B. R. EDE, MLA (ALP)
Australian Capital Territory	K. CARNELL, MLA (LP)

Source: Department of the Parliamentary Library.

2.10 STATE OF THE PARTIES IN THE STATES AND TERRITORIES, JANUARY 1994

New South Wales — *Legislative Assembly*		*Legislative Council*	
ALP	47	ALP	18
LP	31	LP	13
NPA	17	NPA	7
IND	4	IND	2
		AD	2
Victoria — *Legislative Assembly*		*Legislative Council*	
ALP	27	ALP	14
LP	52	LP	24
NPA	9	NPA	6
Queensland — *Legislative Assembly*			
ALP	54		
NPA	26		
LP	9		
South Australia — *House of Assembly*		*Legislative Council*	
ALP	10	ALP	9
LP	37	LP	11
		AD	2
Western Australia — *Legislative Assembly*		*Legislative Council*	
ALP	24	ALP	15
LP	26	LP	14
NPA	6	NPA	3
IND	1	IND	2
Tasmania — *House of Assembly*		*Legislative Council*	
LP	19	LP	1
ALP	11	ALP	1
IND	5	IND	17
Northern Territory — *Legislative Assembly*			
CLP	14		
ALP	9		
IND	2		
Australian Capital Territory — *Legislative Assembly*			
ALP	8		
LP	6		
IND	3		

NOTE: Explanation of abbreviations:
AD — Australian Democrats; ALP — Australian Labor Party; CLP — Country–Liberal Party; IND — Independent; LP — Liberal Party; NPA — National Party of Australia.
Source: Department of the Parliamentary Library.

ACTS OF THE COMMONWEALTH PARLIAMENTS

In the Commonwealth Parliament all laws are enacted in the name of the Sovereign, the Senate, and the House of Representatives. The subjects with respect to which the Commonwealth Parliament is empowered to make laws are enumerated in the Australian Constitution. In all States, other than South Australia and Tasmania, laws are enacted in the name of the Sovereign by and with the consent of the Legislative Council (except in Queensland) and Legislative Assembly. In South Australia and Tasmania laws are enacted in the name of the Governor of the State, with the advice and consent of the Parliament in the case of South Australia, and of the Legislative Council and House of Assembly in the case of Tasmania. Generally, assent to Bills passed by the Legislatures is given by the Governor-General or State Governor acting on behalf of, and in the name of, the Sovereign. In certain special cases Bills are reserved for the Royal assent. The Parliaments of the States are empowered generally, subject to the Australian Constitution, to make laws in and for their respective States in all cases

whatsoever. The power of the States to make laws was enhanced in 1986 by the enactment by the Commonwealth Parliament of the *Australia Act 1986* and the accompanying *Australia (Request and Consent) Act 1986*. Subject to certain limitations they may alter, repeal, or vary their Constitutions. Where a law of a State is inconsistent with a law of the Commonwealth Parliament, the latter law prevails and the former law is, to the extent of the inconsistency, invalid.

The enactment of Commonwealth Parliament legislation

The legislation passed by the Commonwealth Parliament between 1901 and 1973, and which was then still in operation, was published in a consolidated form entitled *Acts of the Parliament 1901–1973*. Since 1974, annual volumes of Acts have also been published. The consolidation contains a chronological table of Acts passed from 1901 to 1973, showing how they are affected by subsequent legislation or lapse of time, together with a table of legislation of the Commonwealth Parliament passed between 1901 and 1973 in relation to the several provisions of the Australian Constitution. Reference should be made to these for complete information.

In 1991 the number of enactments of the Commonwealth Parliament was 121.

NATIONAL ANTHEM AND COLOURS OF AUSTRALIA

Details of the official proclamation issued on 19 April 1984 are as follows:

His Excellency, the Governor-General of the Commonwealth of Australia, issued the following Proclamation on 19 April 1984:

I, SIR NINIAN MARTIN STEPHEN, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby declare:

(a) that the anthem 'God Save The Queen' shall henceforth be known as the Royal Anthem and be used in the presence of Her Majesty The Queen or a member of the Royal Family;

(b) that the National Anthem shall consist of the tune known as 'Advance Australia Fair' with the following words:

Australians all let us rejoice,
For we are young and free,
We've golden soil and wealth for toil;
Our home is girt by sea;
Our land abounds in nature's gifts
Of beauty rich and rare,
In history's page, let every stage
Advance Australia Fair.
In joyful strains then let us sing,
Advance Australia Fair.

Beneath our radiant Southern Cross
We'll toil with hearts and hands;
To make this Commonwealth of ours
Renowned of all the lands;
For those who've come across the seas
We've boundless plains to share;
With courage let us all combine
To Advance Australia Fair.
In joyful strains then let us sing,
Advance Australia Fair.

(c) that the Vice-Regal Salute to be used in the presence of His Excellency The Governor-General shall consist of the first four bars and the last four bars of the tune known as 'Advance Australia Fair';

(d) that the National Anthem shall be used on all official and ceremonial occasions, other than occasions on which either the Royal Anthem or the Vice-Regal Salute is used; and

(e) that green and gold (Pantone Matching System numbers 116C and 348C as used for printing on paper) shall be the national colours of Australia for use on all occasions on which such colours are customarily used.

An Australian Republic — Issues and Options

(This article is a reproduction of the summary report, under the same title, of the Republic Advisory Committee, subject to minor changes in presentation for the Year Book.)

Background

The question of whether to retain the monarchy or move to a republic is one which has been debated in Australia since before federation in 1901. The widespread interest in the question in recent times has highlighted the need for information about what a move to a republic might involve.

It was for this purpose that the Republic Advisory Committee was established by the Prime Minister, The Honourable P J Keating MP, on 28 April 1993. The Committee was asked to examine the issues and develop:

> an options paper which describes the minimum constitutional changes necessary to achieve a viable Federal Republic of Australia, maintaining the effect of our current conventions and principles of government.

The Committee was asked specifically not to make recommendations, but did come to a number of conclusions about matters relevant to consideration of the options.

The *Report of the Republic Advisory Committee* was published in 1993 by the Australian Government Printer, Canberra. What follows is a summary of the Report taken from *An Australian Republic, The Options — An Overview* produced by the Committee in the interests of achieving a wide understanding of the issues and options involved if Australia were to become a republic.

What it is about

In looking at the options, the Committee was required by its Terms of Reference to address the following:

- the removal of all references to the monarch in the Constitution;
- the need for an office of an Australian head of state, its creation, and what it might be called;
- how the head of state might be appointed and removed;
- how the powers of a head of state should be made subject to the same conventions and principles as apply to the powers of the Governor-General;
- how the Constitution would need to be changed for Australia to become a republic; and
- the implications for the States.

What it is not about

The other question, i.e. whether Australia should or should not become a republic, is for the community to consider. The Committee has not addressed this question, indeed it was specifically excluded from the Terms of Reference. The Committee's contribution to the broader debate over the republic question is to provide some concrete options for a republic to enable the debate to proceed in an informed way.

In both consultations with the public and written submissions it was apparent to the Committee that many people were concerned about a variety of issues including whether or not there should be a change to the national flag, the powers of the Senate, the role of the States, and Australia's membership of the Commonwealth of Nations, amongst others. These issues are quite separate from the task the Committee was asked to undertake and are in no way affected by the options outlined by the Committee.

The consultation process

At the outset, the Committee prepared and distributed an 'Issues Paper' along with copies of the Australian Constitution. (The Constitution was reproduced in the 1992 Year Book). The Issues Paper provided a background to the issues arising from the Terms of Reference and briefly outlined some

of the possible methods of dealing with them. It was designed to serve as a guide to members of the public in preparing submissions to the Committee.

In addition to receiving over 400 written submissions, the Committee conducted public hearings in all capital cities and in major regional centres. The Committee also consulted with a wide range of individuals including Governors, Heads of Government and other leaders of political parties, Ministers, other politicians, Solicitors-General and representatives of trade unions and of organisations representing ethnic communities.

The Committee's task

The Terms of Reference require the Committee to produce an 'options paper' describing the minimum constitutional changes necessary to achieve a viable federal republic of Australia, while maintaining the effect of our current conventions and principles of government.

It is in this respect that the Committee's task has been described as 'minimalist'. Australia is already a state in which sovereignty derives from its people, and in which all public offices, except that at the very top of the system, are filled by persons deriving authority, directly or indirectly, from the people. The only element of the Australian system of government which is not consistent with a republican form of government is the monarchy (which is an hereditary office succession to which is governed by the laws of another country).

If the monarchy were to be replaced with a republican head of state, the Constitution would need to be amended in only three substantive ways:

- First, provisions establishing the office of a new Australian head of state would have to be set out in the Constitution together with a method of appointment and, where necessary, removal.
- Second, a method of dealing with the powers of the head of state, and the existing conventions surrounding the exercise of those powers, would need to be incorporated into the Constitution.
- Third, as the Queen is also head of state of each of the six Australian States, the position of the States would need to be addressed.

The remaining amendments to the Constitution which would be necessary to establish a republic (including removing references to the Queen and the Governor-General) are essentially consequential on those changes.

The Committee was required to describe the 'minimum constitutional changes' necessary to achieve a viable republic, and in doing so, to exclude any which would 'otherwise change our structure of government, including the relationship between the Commonwealth and the States'.

Before summarising the options which the Committee believe satisfy these criteria, it is appropriate to consider briefly the main elements of our existing structure of government.

Our way of government

The Commonwealth of Australia is a federal parliamentary democracy. Under the Constitution, the Parliament, consisting of the Queen, the Senate and the House of Representatives, exercises the legislative power of the Commonwealth. The Queen is the head of state and is represented in Australia by the Governor-General, who is appointed by the Queen acting on the advice of the Prime Minister of Australia.

The House of Representatives is currently made up of 147 members each of whom represents a single electorate. The electorates are distributed between the States and mainland territories in accordance with their populations, subject to a constitutional guarantee that each of the existing States is to have at least five seats.

The Senate was designed as a 'States House'. Each State has the same number of Senators (currently twelve) regardless of population, elected on a State-wide basis by a system of proportional representation. The Northern Territory and the Australian Capital Territory have two Senators each, giving the Senate a current total membership of 76.

The powers of the Senate and the House of Representatives in relation to legislation are, in most respects, equal. The Senate cannot, however, initiate laws appropriating revenue of moneys or laws imposing taxation and cannot amend laws imposing taxation or providing money for the ordinary annual services of the Government. If the Senate does not agree with

a bill passed by the House of Representatives, then the Prime Minister can, if certain conditions have been fulfilled, advise the Governor-General to dissolve both the Senate and the House of Representatives for an election.

The description of Australia as a federation indicates that the responsibilities of governing the country are divided between the Governments and Parliaments of the six States, the two self-governing Territories and the Commonwealth. The distribution of powers between the Commonwealth and the States is set out in the Constitution and the High Court adjudicates on whether legislation of the Parliaments is consistent with these provisions.

Australia has a system of 'responsible government'. This means that the government of the nation is conducted by a Prime Minister and Ministers, each of whom administers, and is responsible for, a particular department or departments of government. The Government is responsible to the House of Representatives in that it must have the 'confidence' of the House to remain in office. The Prime Minister is the person who leads the political party, or coalition of parties, which has won a majority in the House of Representatives, or who can otherwise command the support of a majority of its members. Generally, as is the case at the present time, the senior members of the Ministry form the Cabinet, which is the principal decision-making body of the Government.

Unlike some other systems of Government, such as in the United States, the head of government, the Prime Minister, is not the same person as the head of state. In this respect, we are similar to many republics such as Germany, Italy, India and Ireland and constitutional monarchies like the United Kingdom. A head of state like that of Australia is often referred to as a 'non-executive head of state' to distinguish the office from an 'executive head of state', such as the American President.

The Constitution and the reality of modern government

One has only to examine the Commonwealth Constitution to see that, read alone, it is a poor guide to the manner in which Australia is actually governed and can give a misleading impression of the actual powers of both the Queen and the Governor-General. The powers conferred on the Queen and the Governor-General are, on a literal reading, very extensive. Of course these constitutional powers are exercised by the Queen and Governor-General (almost invariably) on ministerial advice, but this important element of our system of responsible government is not set out in the Constitution. The 'real' relationship between the Queen and the Governor-General on the one hand, and the elected Government on the other, is governed by unwritten rules — the so-called 'constitutional conventions'.

Moreover, there is no reference in the Constitution to the Prime Minister or the Cabinet, and while it does refer to Ministers of State, they are said to be appointed by, and to hold office 'during the pleasure of', the Governor-General. There is no specific reference to the need for the Prime Minister or Ministers to command the confidence of the House of Representatives.

Section 1 of the Constitution states that the Legislative power of the Commonwealth is vested in a Federal Parliament which consists of 'the Queen, a Senate and a House of Representatives'. Section 2 goes on to provide that the Queen's representative shall be a Governor-General who holds office 'during her pleasure' and that the Governor-General shall have such 'powers and functions as the Queen may be pleased to assign to him'. The executive power of the Commonwealth is 'vested in the Queen' by section 61 although 'exercisable by the Governor-General as the Queen's representative'. Section 68 says that the Governor-General is commander in chief of the armed forces.

Sections 58 and 59 of the Constitution appear to confer extraordinary powers over Australian affairs on the Queen. Section 58 provides that the Governor-General may give, or withhold, assent to bills passed by both Houses of Parliament. It also provides that he may reserve such bills for the Queen's pleasure. If a bill is reserved for the monarch's approval she has two years to decide whether she will approve it. Moreover, under section 59, the monarch has the right to disallow legislation passed by Parliament and assented to by the Governor-General.

These provisions were appropriate in 1901 because Australia was still a dependent part of the British Empire. They were designed to enable the Imperial Government in London to oversee the conduct of Australian affairs and intervene if the Australian Parliament and Government acted in a way that was unacceptable to the Imperial Government or inconsistent with British interests. They are clearly inappropriate in the Constitution of an independent nation, as Australia now is.

Constitutional conventions

Part of the reason why the Constitution is not an accurate description of the way Australia is governed is that the constitutional conventions which govern the conduct of both the Queen and the Governor-General are not recorded in the Constitution or any other legislative instrument. The conventions, which are unwritten rules not enforceable by the courts, embody many of the essential principles of responsible government. These conventions — for example, that the Government must have the confidence of the popularly elected House of Parliament and that the Queen (and the Governor-General) acts on ministerial advice except in relation to the exercise of the 'reserve' powers — were clearly understood in 1900. The convention debates of the 1890s show that the framers of the Commonwealth Constitution assumed, for example, that the Government of Australia would be administered by Ministers who could command a majority in the House of Representatives. They chose quite deliberately not to set them down in the text of the Constitution itself. The High Court has, however, held that responsible government is implied in the Constitution.

Responsible government in Australia is still carried on in accordance with these constitutional conventions but they are not authoritatively or comprehensively articulated. Many of the conventions are well understood and accepted, but views differ about the content and operation of some, such as the circumstances in which the Governor-General can dismiss the Prime Minister.

The Queen today

Nowadays the only remaining substantive functions the Queen has in respect of Australia are to appoint, and if requested, to remove, the Governor-General. Both functions would only be performed on the advice of the Australian Prime Minister. This was not the case in 1901 when the Governor-General was not merely the local representative of the Queen, but was the representative of the British Government who appointed him to that post.

The Queen does not represent Australia abroad as she does the United Kingdom. When the Queen visits a foreign country, other than as head of the Commonwealth of Nations, she does so as head of state of the United Kingdom only.

The Queen is the head of state of each of the Australian States and the State constitutions all reflect the central role of the Crown as part of the Parliament and Executive of the State. Since 1986, in performing any functions concerning a particular State of Australia, she acts on the advice of the State Premier. Prior to that time she acted on the formal advice of the British Government with respect to State matters, although for the most part the British Government simply relayed the wishes of the relevant State Government.

The Governor-General today

The Governor-General ceased to be a representative of the United Kingdom Government (and to be appointed on the advice of that Government) following Imperial Conferences in 1926 and 1930, and now represents only the Queen in her capacity as head of state of Australia. The Governor-General is a *viceroy* (or deputy head of state) and fulfills a largely symbolic or ceremonial role.

The Governor-General's functions are of three kinds:

- those arising under the Constitution (such as the issuing of writs for an election or appointment of federal judges), or under Commonwealth legislation (such as making regulations or proclamations), in relation to which the Governor-General acts on ministerial advice;
- the so-called 'reserve powers' (rarely exercised constitutional functions in relation to which the Governor-General is entitled, according to convention, to act otherwise than on ministerial advice), which allow the Governor-General to act as a 'constitutional umpire'; and

- the ceremonial and representative functions which at present appear to occupy about 80 per cent of the Governor-General's time.

The Constitution provides that some functions are performed by the 'Governor-General in Council'. This refers to the Governor-General acting with the advice of the Executive Council. (All Ministers and Parliamentary Secretaries are members of the Executive Council, as are Ministers of former governments, although only those currently serving in the Ministry are under summons to attend meetings.)

Other constitutional powers, such as assenting to legislation and exercising the executive power of the Commonwealth, do not require the advice of the Executive Council. However, this distinction is largely formal: these powers are, by convention, only exercised on the advice of responsible Ministers.

Of the powers conferred on the Governor-General by the Constitution, only a few are considered 'reserve powers', that is, powers exercisable in some circumstances on the Governor-General's own discretion, without, or contrary to the advice of Ministers.

These are:

- the power to appoint the Prime Minister;
- the power to dismiss the Prime Minister, and therefore the Government; and
- the power to refuse to follow advice to dissolve the House of Representatives, or both Houses.

The situations in which it is regarded as acceptable for the Governor-General to exercise these powers are governed by the unwritten constitutional conventions.

Does Australia need a head of state?

Against this background, the Committee has considered whether Australia really needs a head of state. To a certain extent, the answer to this question will depend on the value which is given to each of the functions carried out by the Governor-General described above. The issues to be considered are:

- whether it is considered necessary that these functions continue to be performed;
- if so, whether it is necessary or desirable that they continue to be carried out by the occupant of a separate office established for that purpose; or
- whether they could be carried out by someone else, or in some other manner.

It is argued by some that there is no need to incur the expense (about $11 million a year) of a ceremonial head of state: the community role could be performed by other public officials, such as the Speaker of the House of Representatives or the President of the Senate; and the ordinary governmental role could be performed by those persons responsible for giving the advice in accordance with which the Governor-General presently must act. Finally, it is argued that the reserve powers could be done away with by establishing rules in the Constitution itself which would make unnecessary the intervention of a 'constitutional umpire'.

The cost of the office is something which can be dealt with outside of the Constitution. Parliament can provide for as lavish, or as spartan, a life-style for the Governor-General (or a republican head of state) as it wishes.

While dispensing with the office of head of state is an option which some Australians may think is worthy of serious consideration, it must be acknowledged that this would be a major departure from our existing system of government. The Committee is not aware of any nation (as opposed to provinces or states within nations) which does not have a head of state and, while the Prime Minister is unquestionably seen as a leader of the nation, there is much to be said for a national figure who stands above the hurly-burly of partisan politics and who can represent the nation as a whole, both to Australians and to the rest of the world.

A new office of head of state

If a new office of head of state is to be established and our current principles of government are to be retained, the functions to be carried out are likely to be similar to those of the Governor-General. Because the new head of state would not be just a representative of the Queen, but Australia's head of state in his or her own right, he or she would occupy a more important and prominent role in Australian life than the Governor-General, even though the duties would remain almost entirely ceremonial. Moreover, the creation of an Australian office

of head of state would provide an opportunity to consider the manner in which the functions of the office are to be carried out and to determine what is appropriate for Australia, including the introduction of certainty as to the extent of those functions.

What should the head of state be called?

The office of the head of state in republics around the world is almost invariably titled 'President', but there are other practical and acceptable options which would be consistent with republican status. While many were suggested to the Committee, the two most popular after 'President' were 'Governor-General' and 'Head of State'. Each of these three titles has advantages and disadvantages which are canvassed in the Committee's Report. The Committee is confident, however, that the name selected would soon become accepted.

What qualifications should the head of state have?

It is probably fair to assume that there is some unanimity among Australians about the qualities a head of state should possess: that the person be an eminent Australian who is widely respected and regarded as able to behave in a politically impartial manner. While a person who lacks these qualities would be very unlikely to be chosen, the question arises what (if any) specific qualifications should be set out in the Constitution.

Possible qualifications include a minimum age, residency in Australia for a certain period, Australian citizenship, and those qualifications such as those currently applying to members of the Commonwealth Parliament. The Committee also considered the often suggested option of excluding former politicians from holding the office (whether for all time or for a limited time after leaving Parliament).

What kinds of qualifications are appropriate depends to some extent on the nature of the office and the method by which the head of state is to be appointed. Given the degree of scrutiny likely to be involved in the selection of the head of state, the Committee is inclined to the view that specific qualifications are not necessary beyond the fundamental ones that the person be an adult Australian citizen and not hold another remunerated position while in office.

How long should the term of office be?

The term should be specified, but there are a number of options in regard to its length — any period from four to seven years would seem reasonable. A term of five years would continue the practice established for Governors-General.

Re-appointment could be excluded altogether, allowed but only once (including for a shorter period of, say, three years), or allowed without restriction. Unlimited reappointment might not be appropriate in a republic with our system of government.

Who should perform the functions of the head of state in his or her absence?

The Committee considered the following options:

- keep the system as at present, with the senior, available State Governor being used;
- use another office holder such as the Speaker of the House of Representatives or the Chief Justice of the High Court; or
- create a separate office of 'Deputy Head of State'.

If the head of state is to have functions similar to the Governor-General, and to exercise much the same kind of powers, the first may be considered the most practical option.

How should the head of state be appointed?

At the moment, the Governor-General is chosen by the Prime Minister and appointed by the Queen on the Prime Minister's advice. The Governor-General can be removed by the same process — that is, by the Queen acting on the recommendation of the Prime Minister. Many different methods by which a head of state might be elected were suggested to the Committee, both in written submissions and at public meetings. The overriding theme to emerge was that the office of the head of state should be 'above politics' and the person holding the position should be seen as a 'non-partisan' figure, commanding a wide degree of popular support, and support from all sides of politics.

Appointment by the Prime Minister

Leaving the appointment of the head of state to the Government of day is the option which most closely reflects the current practice. Although Prime Ministers would no doubt continue to appoint appropriately qualified individuals and those appointees would similarly carry out the functions of the office in an even-handed fashion, the *process* of appointment may be viewed as a partisan one if left to the Prime Minister alone.

Appointment by Parliament

Involving the people in the appointment process through their parliamentary representatives is a democratic process and, depending on the particular method selected, can ensure that the person selected has the support of all major parties. Moreover, it would, through the Senate, reflect the federal nature of the Commonwealth.

There are a number of issues to be resolved. These include:

- whether the Houses should vote separately, thereby risking deadlock, or whether the members should vote in a joint sitting;
- whether the vote should require a simple majority of members or whether a 'special majority' should be required to ensure that the person selected would have not only the support of the Government members, but also of a substantial number of non-Government members; and
- whether a single nomination by the Prime Minister or a bipartisan nominating panel should be considered, or a number of nominations from other sources.

A joint sitting of the Houses would be in keeping with the importance of the occasion and could provide a symbol of unity appropriate for the appointment of a head of state who would represent the nation as a whole.

Requiring only a simple majority in each House, or indeed of members of both Houses in a joint sitting could, depending on the relative size of the Government's majority in the House of Representatives and its representation in the Senate, see the Government determine the outcome without the support of any other party, or with the support of only a small number of non-Government Senators.

Adopting a voting procedure which would necessarily require the support of members of more than one political party (e.g. a two-thirds majority) would discourage the nomination of individuals who were not likely to gain that support and would encourage prior consultation between parties on nominees.

A single nomination by the Government would have the advantage of avoiding parliamentary discussion on the relative merits of the candidates which could be seen as divisive and detrimental to the office. Moreover, if a two-thirds majority were required, prior consultation with other parties could be expected. An alternative to a Government nomination would be nomination by an independent commission or group of eminent people with membership on an *ex officio* basis (such as the Chief Justice of the High Court, the Prime Minister and the Leader of the Opposition) or made up of Australians outside the political process.

If having only a single nomination was considered too restrictive, multiple nominations could be allowed, possibly by a specified number of members of Parliament or by a nominating commission. A two-thirds majority requirement would ensure a bipartisan result in the end.

Popular election

The head of state could be elected by the people in a direct election. The argument in favour of such a method is that it is entirely democratic and would give Australians a direct voice in the process.

Another argument made to the Committee is that a direct election would prevent a political appointment, as could occur if the matter was left to politicians. This may not turn out to be the case in practice — indeed a direct election could ensure that the person elected is the nominee of one or other of the major political parties which have the expertise and resources to mount nation-wide political campaigns. A popular election might ensure that the head of state is not a 'political' appointment, but it may well result in the person elected being a 'politician'.

The Committee considered two options which might reduce the partisan nature of a popular

election — a ban on political parties endorsing candidates for the head of state and excluding former politicians. It is doubtful whether such provisions would be effective in freeing the election from political campaigning and they may be seen as unduly restricting political freedoms.

The Committee considered that, while the option of popular election of the head of state is one which appears to have significant public support, it should be recognised that it would be expensive (particularly if held separately from a parliamentary election), would almost certainly involve political parties in the endorsement of candidates, and by its nature could discourage suitable candidates from standing. Moreover, the process of popular election may encourage the head of state to believe that he or she has a popular mandate to exercise the powers of that office, including the ability to make public statements and speeches, in a manner which could bring the head of state into conflict with the elected Government.

The Committee is therefore of the view that if popular election is chosen as the method of selecting the head of state, then, if the effect of our current conventions and principles of government is to be maintained, the Constitution should be amended so as clearly to define and delimit the powers of the head of state so that the Australian people know precisely the powers and duties of the head of state they are being called upon to elect.

Appointment by an electoral college

Several federal nations with non-executive heads of state establish electoral colleges to appoint their heads of state. Typically, the electoral college is made up of representatives from the national and State Parliaments. The case for including representatives of the States and Territories in the process for selecting the Commonwealth head of state this way is not, in the view of the Committee, a compelling one.

It would be possible to design a special body with representatives drawn from outside the Commonwealth, State and Territory Parliaments with the task of electing the head of state. Reaching a consensus in the community as to which groups or individuals should participate in such an electoral college would, to say the least, not be a straightforward task.

Summary

In summary, the main options as reflected in the submissions received by the Committee appear to be those involving selection either by a special majority of Parliament or by popular election. Both of these would represent a diminution of the present power of the Prime Minister to select the Governor-General, and an increase in the power of the electors or their representatives to determine the outcome. If the head of state is to be popularly elected however, careful thought would have to be given to the issue of the powers of the head of state in order to ensure that he or she could not become a political rival to the elected Government.

Removal of the head of state

Even though it is unlikely to happen, it is possible that the head of state may become mentally or physically incapacitated, commit a criminal offence or behave in a way which otherwise brings the office into disrepute. If the occupant was not inclined or able to resign, some method should be available to remove the person from office. In determining what the procedure should be there are two main issues to take into account. These are:

- whether the method of removal should reflect the method of appointment; and
- whether it should be necessary to establish specific grounds before the head of state could be dismissed.

The Committee considered that, unless there were practical reasons for not doing so, the method of removal should reflect the method of appointment. The Committee felt that there would be a case for not specifying grounds where the method of removal required an expression of a general dissatisfaction with the head of state, such as a two-thirds vote in the Parliament.

Removal in the case of a head of state appointed by the Prime Minister

The Government alone could have the power to remove the head of state, as is in practice the case with the Governor-General (although the Queen formally exercises the power). This might be considered appropriate only where the head of state is appointed by the Government. Even then it could be seen as jeopardising the impartiality and independence

of the office. This, however, is not generally regarded as a disadvantage of the current system. Another option would be to have an independent tribunal establish the grounds for removal before the Government takes action.

Removal in the case of a head of state appointed by Parliament

The most practical option for removing a head of state appointed by Parliament is removal by the same means. As with appointment, there are a number of points to consider, including the majority required for removal; whether the Houses should consider the issue separately (and if so what should their respective roles be) whether the Constitution should provide for a tribunal to assist Parliament; and how the removal process should be initiated. There are particular advantages in having a joint sitting for the purpose of removing the head of state, both to avoid a deadlock and undesirable delay.

Requiring a majority which virtually guaranteed that removal could only occur if support were forthcoming from non-government members (two-thirds or even three-quarters if that were the majority necessary for appointment) would be in keeping with the principle that the office of head of state be kept free of partisan political considerations to the greatest extent possible.

As to the grounds of removal, there is a strong argument that, if two-thirds of the members of Parliament in a joint sitting resolve that the head of state should cease to hold office, that expression of dissatisfaction should be cause in itself for the head of state to be removed without proof of any particular misbehaviour or incapacity.

Removal of a popularly elected head of state

While there is an argument that the electorate should have a say in the removal of a head of state who has been popularly elected, the Committee considers that there are a number of practical reasons why it may not be appropriate. Consideration of sensitive issues such as a person's mental or physical state, or whether he or she behaved in a way that demonstrates unfitness to hold office, is not readily susceptible to a drawn out and expensive referendum process. It would also be cumbersome in circumstances where the head of state is incapacitated, but by reason of that incapacity, is unable to resign.

The Committee believes that removal by a special majority (e.g. two-thirds majority) on the basis of demonstrated unfitness may be one way of providing the necessary degree of protection where a head of state is elected through an expression of popular will.

Removal in the case of a head of state elected by an electoral college

Removal of a head of state by an electoral college by that same process appears to be the logical option but, if the practical problems associated with reconvening such a specially constituted body are judged to be substantial, removal by the Commonwealth Parliament, upon proof of unfitness for office, could be considered.

Powers of the head of state

Clearly the expression 'maintaining the effect of our current conventions and principles of government' in the Terms of Reference means that the head of State would not exercise day-to-day political power. The Committee considers that there are no strong reasons why a new head of state should not continue to exercise the same kind of 'governmental' functions on the advice of the Government of the day as are presently exercised by the Governor-General. In order to eliminate any uncertainty however, the Constitution should provide that in the exercise of these powers the head of state acts on ministerial advice.

The Committee also notes that to eliminate the 'reserve powers' might be regarded as a substantial change in our way of government. This leaves for consideration therefore, the issue of how the reserve powers (and the unwritten constitutional conventions which govern the exercise of those powers) should be dealt with in the Constitution so as to maintain the effect of the existing conventions and principles.

The options considered by the Committee are:

- leaving the powers of the head of state in the same form as are presently set out in the Constitution, but stating in the Constitution that the existing constitutional conventions will continue to apply to the exercise of those powers;

- leaving the powers of the head of state in the same form as are presently set out in the Constitution and formulating the relevant constitutional conventions in an authoritative written form, but not as part of the Constitution;
- leaving the powers of the head of state in the same form as are presently set out in the Constitution and providing that Parliament can make laws (possibly by a two-thirds majority) to formulate the relevant constitutional conventions in a legislative form; and
- 'codifying' the relevant conventions by setting out in the Constitution the circumstances in which the head of state can exercise the reserve powers.

This last option can be done in one of two ways:

- by setting out the most important conventions about which there is general agreement (such as that the head of state appoints as Prime Minister the person the head of state believes can form a government with the support of the House of Representatives), and providing that the remaining (unwritten) conventions are otherwise to continue (i.e. partial codification); or
- by setting out in the Constitution all the circumstances in which the head of state can exercise a reserve power and stating expressly that in all other circumstances the head of state is to act on the advice of the Prime Minister, the Federal Executive Council or some other Minister (i.e. full codification).

The Committee has formulated some draft provisions which illustrate these approaches. These are located in Chapter 6 of the Report.

The Committee has considered the possibility of leaving the provisions conferring powers on the head of state in their present very broad terms, saying nothing about the constitutional conventions and simply assuming that they will continue to apply. The Committee does not regard this as a viable option. Such an approach would lead many people to fear (perhaps justifiably) that the conventions, which grew up around monarchical powers, would not apply in a republic and that as a result, the new head of state would have potentially autocratic powers.

Some provision should therefore be made in the Constitution in relation to the exercise of the head of state's powers. Whether that provision is to be an express incorporation of the existing conventions (without defining them), or some form of codification of those rules which currently depend on convention, it is clearly possible to define the powers of a new head of state in a way that preserves the essential elements of Australian democracy and maintains the present balance between the Government and the head of state.

The Senate, supply and the reserve powers

Any attempt to codify the reserve powers of an Australian head of state must deal, in one way or another, with the question of the Senate and supply. The Committee considered the following approaches to the question of what the head of state should do if faced with a similar situation as occurred in 1975 (when the Senate deferred consideration of the Bills providing money necessary for the Government to carry on governing and the Governor-General dismissed the Prime Minister):

- continue the existing conventions which, while not providing a clear answer to that question (because views differ about the relevant conventions), merely preserves the uncertainty of the current situation;
- rely on a codification provision which allows the head of state to dissolve the House of Representatives if the Government is breaching the Constitution (as it would be if it spent money that had not been appropriated by Parliament), and also dismiss the Prime Minister (and therefore the Government) if the Government persists in the contravention;
- provide in the Constitution for an automatic double dissolution in such circumstances; or
- remove the Senate's power to reject or delay these kinds of bills.

It should be noted that at least the last two of these approaches may be regarded as a substantive change to our present way of government. The removal of the uncertainties would involve resolving a more fundamental question about the relative powers of the House of Representatives and the Senate.

How does the Constitution have to be amended for Australia to become a republic?

It is necessary to amend the Constitution (which, of course, requires the agreement of the people in a referendum) in order to establish a republic in Australia. Changes to the Constitution for this purpose would involve provisions:

- terminating the Queen's role as head of state and establishing a new office of head of state if it is decided to create one;
- dealing with appointment and removal of the new head of state and other matters relevant to the new office;
- dealing with the powers of the new head of state;
- dealing with the position of the States and their links with the Crown; and
- making consequential changes, mostly removing the references to the Queen and replacing the references to the Governor-General with references to the new head of state, and inserting transitional provisions.

The important legal issues considered by the Committee in this regard are as follows:

- whether the method of amending the Constitution provided in section 128 (i.e. a popular referendum requiring approval of a majority of voters nationally and also a majority of voters in four of the six States) can be used to make the necessary changes;
- whether the *Commonwealth of Australia Constitution Act 1990* (the Act of the British Parliament of which our Constitution is a part) needs to be amended in order to create a republic; and
- whether that Act be amended through the referendum process.

The Committee is satisfied, based on advice provided by the Acting Commonwealth Solicitor-General, that section 128 gives the Australian people through a referendum sufficient power to establish a republic. Amendment of the British Act, though not strictly necessary, is legally possible by Australians in Australia and, since that Act contains several references to the British Crown, it may be appropriate to amend it as part of a change to a republican Commonwealth of Australia.

What are the implications for the States?

None of the options referred to above would change the relationship between the Commonwealth and the States. However, there are implications for the States in a move to a republic as the Queen is head of state in the States as well as the Commonwealth of Australia.

There are different views of what might be the legal effect on the States if Australians decided in a referendum to become a republic. Some commentators argue that the Crown's links with the Commonwealth and the States are independent (or even that there are seven separate Crowns) and therefore that removal of the Crown at the Commonwealth level need not affect the States. However, there is an alternative view that there is only one Crown of Australia and its removal at the Commonwealth level, without any special provision for the States, would in effect abolish the Crown at the State level as well.

The Committee accepts the conclusion of the Acting Solicitor-General that, in order to minimise legal debate on these matters, it would be sensible for amendments creating a republic to deal specifically with the position of the States. Just how the Constitution should deal with the States would depend on whether any of the States wished to retain the person who is monarch of the United Kingdom as its head of state, notwithstanding the approval of the change at a nation level in the referendum, and whether that prospect was considered acceptable.

If all of the States decided to conform with a national decision in favour of a republic, the Constitution could be amended so as to prevent the States from recognising a monarch as their head of state. This approach would leave the States to amend their own constitutions, but the amendments could be framed so as to override some of the provisions which currently require special majorities or State referenda for this to be done. The States would need to make provision in their constitutions for the functions previously carried out by the Governor as the monarch's representative. There would also be a need to amend the *Australia Act 1986* to resolve any doubts as

to whether it entrenches the monarchy at State level.

The Committee has concluded that, however anomalous it might appear, particularly after a referendum in which the majority of Australians in a majority of States expressed the desire for Australia to become a republic, it would be legally possible for the Constitution to allow a State to remain a monarchy within a federal republic (assuming that the Queen agreed to such an arrangement). In the event that a State decided to retain the monarchy, the committee has concluded that:

- States could be left free to choose their own course (in which case, to avoid legal doubt, it would be advisable to insert some specific provision in the Constitution — e.g. providing for the monarch to remain as head of state in each State but with a mechanism for a State to abandon the monarchy should it decide to do so); and
- if the prospect of States retaining links with the monarchy was considered unacceptable, the amendments described above (abolishing the monarchy at State level) could be made without the cooperation of all States. (In order to prevent a governmental vacuum in a State, it would be necessary to include transitional provisions in the Commonwealth Constitution applying to that State, for instance providing for the incumbent Governor to remain in office).

Other issues relevant to Australia becoming a republic

Among the other issues considered by the Committee were the following:

- whether a change to a republic necessarily involves a change to the name 'Commonwealth of Australia' — the Committee concluded that it does not, and that there does not appear to be a strong case for such a change;
- whether a change to the preamble to the *Commonwealth of Australia Constitution Act 1990* would be necessary or desirable if Australia were to become a republic — the Committee concluded that it is not necessary, as a matter of law, to change the preamble, but that the change to a republic might be an appropriate time to reassess the statements about Australia which are contained in the preamble;
- whether the specific references in the text of the Constitution to the Queen and the Governor-General would have to be removed — the Committee concluded that generally they would;
- what should be done in relation to the 'royal prerogatives' — the Committee concluded that it would be necessary to preserve the powers and rights of Commonwealth and State governments which are presently derived from the common law prerogatives of the Crown and that, based on the advice of the Acting Solicitor-General, this could be achieved by including a provision to that effect in the Constitution; and
- what other aspects of the law and our legal system would need to be modified as a result of a change to a republic — the Committee concluded that consideration would have to be given to changes in the following areas (amongst others):

  - laws and practices relating to royal charters, the use of 'royal' titles etc;
  - a replacement mechanism for filling offices presently filled by commissions from the Crown (such as Defence Force officers and the police); and
  - transitional and consequential provisions to replace references in legislation to the Governor-General (Governor), Crown etc, at the Commonwealth and State level.

The Committee also concluded that a change to a republic need not have any implications for Australia's membership of the Commonwealth of Nations, more than half the members of which are already republics.

Conclusion

The view is often expressed that Australians generally do not know enough about the Australian Constitution, its history and our system of government. The Committee would like to think that its work and the surrounding debate has contributed to a higher level of understanding of, and interest in constitutional issues. Nonetheless, much more needs to be done. The Committee found a common view among the community and its leaders, regardless of particular views held on the republican debate, that Australians should have

more opportunity to understand the basic principles of Australian government. The Committee believes that those entrusted with primary and secondary education in particular, should consider the introduction or extension of appropriate courses in the fields of civics and government.

The debate about the republic has awakened interest in many other proposals for constitutional change, such as changes to the role of the States and the powers of the Senate. No doubt the increased public understanding arising from the current republican debate will allow these issues to be considered on a more informed basis. The Committee believes that this is a very healthy trend. Those who demand that the Constitution be defended as though it were holy writ often overlook that most important clause of the Constitution, section 128, which permits the Constitution to be amended by a vote of the Australian people. Nonetheless, the issue of whether Australia should have an Australian head of state is a discrete one, both logically and legally, and deserves consideration on its own merits.

The primary question for Australians to consider in the course of the republic debate is whether Australia should have an Australian citizen chosen by Australians as its head of state, or whether it should retain as its head of state the person who is monarch of the United Kingdom. This is an issue on which views of Australians differ and on which the debate is likely to continue. It is not one which this Committee has been asked to consider, and the Report does not do so.

The Committee has instead addressed a question which is probably just as important — 'What might be involved in a change to a republic in Australia?'. Many have argued that it is only when that question is answered that they will be in a position to make an informed judgment about whether a republican Australia is what they want.

This overview and the full Report will, the Committee hopes, assist in clarifying the issues associated with a change to a republic. The major issues are few — how should the head of state be appointed (and removed if necessary), what sort of powers and functions should the head of state have; what will be the effect of the Queen's role in the States if Australia were to become a republic; and finally, what changes to the Constitution need to be made to achieve this outcome. That is not to say that those issues will not require careful consideration and may not raise complex legal questions. The Committee's Report summarised in this overview demonstrates, however, that there are a number of practical and workable options for addressing these issues, and that the legal complexities are readily soluble.

Concerns have been voiced about the effect that a move to a republic may have on our existing system of parliamentary government. The Report demonstrates that the options addressed will enable a republic to be achieved without making changes which in any way detract from the fundamental constitutional principles on which our system of government is based — federalism, responsible parliamentary government and the separation of powers, and judicial review of legislation and government action. As a Justice of the High Court has remarked:

> To my mind, the final formal end to the role of the monarchy in Australia, if it occurs, need not mean a fundamental change in our constitutional structure or, at least, a fundamental change in the sense in which I am speaking, for I am speaking of the machinery of government and not the history of sentiment. If it were thought desirable to substitute the Governor-General, elected or appointed, as the head of state it would, I think, be possible to achieve that in a manner which would involve little disruption to the present constitutional set-up and may even serve to eliminate some of the difficulties which still remain in discerning the role of the Crown in our federation.

If Australians through the referendum process do decide that they wish to have an Australian citizen as head of state, our existing system of government will be affected only to the extent that Australians desire it.

Those who are anxious that a republic would result in an enhancement of the authority of the Prime Minister will have noted that most of the options canvassed in the report will actually enhance the standing of the head of state. For instance, an Australian head of state appointed (and removable) by a two-thirds majority of a joint sitting of Parliament could be seen as more independent than a

Governor-General who holds office in effect at the pleasure of the Prime Minister.

Others have expressed fears that a new head of state could be freed from the conventions which limit the exercise of vice-regal powers and could therefore have too much power. The Report outlines several methods by which the effect of those conventions could be applied to a new head of state, and perhaps also clarified.

As to the argument that a move to a republic would impinge on the rights and autonomy of the States, the Report demonstrates that no change to Commonwealth – State relations would necessarily arise from such a move. It is even possible for a State to retain the Queen (assuming she were to agree) as its head of state.

This is not to say that a move to a republic is other than an important constitutional change which requires careful consideration. But fears that it must involve substantial and unwelcome change to our political system are not well founded. The establishment of an Australian republic is essentially a symbolic change, with the main arguments, both for and against, turning on questions of national identity rather than questions of substantive change to our political system.

The republic debate will doubtless continue to involve a fair degree of rhetoric from all sides. But in the midst of that rhetoric, and occasional hyperbole, the Committee hopes there will be enough room for a sober discussion of the more practical issues of constitutional law and practice discussed in the Report. That discussion will be enhanced considerably if a genuine effort is made to inform Australians, particularly young Australians, about their Constitution, its history and their system of government generally. If, as time goes on, the debate becomes more informed, the quality of our democracy will be improved regardless of whether a republic is established. All those who participate in that debate owe a responsibility to their fellow citizens to ensure that the debate is one which appeals at least as much to reason as it does to emotions.

The Mabo Case and the Native Title Act

(This article has been contributed by the Native Title Section of the Department of Prime Minister and Cabinet.)

Recognition of native title

In May 1982, Eddie Mabo and four other Meriam people of the Murray Islands in the Torres Strait began action in the High Court of Australia seeking confirmation of their traditional land rights. They claimed that Murray Island (Mer) and surrounding islands and reefs had been continuously inhabited and exclusively possessed by the Meriam people who lived in permanent communities with their own social and political organisation. They conceded that the British Crown in the form of the colony of Queensland became sovereign of the islands when they were annexed in 1879. Nevertheless they claimed continued enjoyment of their land rights and that these had not been validly extinguished by the sovereign. They sought recognition of these continuing rights from the Australian legal system. The case was heard over ten years through both the High Court and the Queensland Supreme Court. During this time, three of the plaintiffs including Eddie Mabo died.

On 3 June 1992, the High Court by a majority of six to one upheld the claim and ruled that the lands of this continent were not terra nullius or land belonging to no-one when European settlement occurred, and that the Meriam people were 'entitled as against the whole world to possession, occupation, use and enjoyment of (most of) the lands of the Murray Islands.'

The decision struck down the doctrine that Australia was terra nullius — a land belonging to no-one. The High Court judgment found that native title rights survived settlement, though subject to the sovereignty of the Crown. The judgment contained statements to the effect that it could not perpetuate a view of the common law which is unjust, does not respect all Australians as equal before the law, is out of step with international human rights norms, and is inconsistent with historical reality. The High Court recognised the fact that Aboriginal people had lived in Australia for thousands of years and enjoyed rights to their land according to their own laws and customs. They had been dispossessed of their lands piece by piece as the colony grew and that very dispossession underwrote the development of Australia into a nation.

The *Native Title Act 1993* is part of the Commonwealth Government's response to that historic High Court decision.

The Native Title Act

The Prime Minister said in December 1993 during the passage of the Native Title Bill through Parliament:

'... as a nation, we take a major step towards a new and better relationship between Aboriginal and non-Aboriginal Australians. We give the indigenous people of Australia, at last, the standing they are owed as the original occupants of this continent, the standing they are owed as seminal contributors to our national life and culture: as workers, soldiers, explorers, artists, sportsmen and women — as a defining element in the character of this nation — and the standing they are owed as victims of grave injustices, as people who have survived the loss of their land and the shattering of their culture.'

The Government was simultaneously presented with an opportunity and a challenge. The opportunity was to improve the relationship between Aboriginal and non-Aboriginal Australians, and recognise their basic property rights. The challenge was how to respond to the land management issues because these property rights were recognised.

The Prime Minister said also during the passage of the legislation through Parliament

that the Government made its twin objectives clear in its response to *Mabo*: to do justice to the High Court decision in protecting native title, and to ensure workable, certain land management.

The Act does five things:

- It recognises and protects native title.
- It provides for the validation of any past grants of land that may otherwise have been invalid because of the existence of native title.
- It provides a regime to enable future dealings in native title lands and imposes conditions on those dealings.
- It establishes a regime to ascertain where native title exists, who holds it and what it is, and to determine compensation for acts affecting it.
- It creates a land acquisition fund to meet the needs of dispossessed Aboriginal and Torres Strait Islander peoples who would not be able to claim native title.

In the Act, the Commonwealth has adopted the common law definition of native title. Native title is defined as the rights and interests that are possessed under the traditional laws and customs of Aboriginal and Torres Strait Islander peoples, and that are recognised by common law. Native title will be subject to the general laws of Australia, including State and Territory laws that are consistent with the Act, although native title rights to hunt, fish and carry on other activities may be exercised without the need for a licence or permit where others can carry out the activity only with a licence or permit.

The legislation represents a point of balance that recognises everyone's interests: Aboriginal and Torres Strait Islander peoples who need their property rights and cultural rights recognised and respected; land developers — miners, pastoralists, tourist operators and others — who need access to land and certainty of title; and State and Territory Governments that need to manage land resources.

The Native Title Act came into operation on 1 January 1994. From that time no action may validly be taken in relation to land that is subject to native title except in accordance with the Act. Where land has been subject to certain types of tenure such as freehold, any native title to that land has been extinguished. In such cases, any action in relation to that land, such as the processing of mining applications, may proceed. However, if it is not clear from the tenure history that native title would have been extinguished on the land in question, for example, on vacant Crown land, then the proposed dealings in land would have to proceed with due regard for native title under the Act.

The National Native Title Tribunal

The Act provides for a systematic legal framework to deal with matters affecting native title. The new National Native Title Tribunal has the power to determine uncontested native title and compensation claims and will handle other issues including assisting negotiations and making decisions on proposed grants. The Act gives jurisdiction to the Federal Court to determine contested claims. The Tribunal is based in Perth and there are registries in all capital cities. The Tribunal is headed by Justice Robert French, whose appointment as President commenced on 2 May 1994 for three years. Among other things in a distinguished career, Justice French helped found, and later became Chairman of, the Aboriginal Legal Service in Western Australia.

The procedures of the Tribunal and those of the Federal Court are designed to be fair, just, economical and prompt. Those procedures must take account of the cultural and customary concerns of Aboriginal and Torres Strait Islander peoples, and are not bound by legal forms or rules of evidence. This ensures that there will be sensitivity to traditional laws and customs. At the same time, there are safeguards against frivolous and vexatious claims, which will be rejected, and applications must contain sufficient information about the claims and must specify the area covered.

The Native Title Act provides an innovative and accessible approach to settle native title claims. For example, the Act confirms the potential to settle difficult cases by negotiation and further recognises that agreements might be reached on a regional basis.

The Act also sets out criteria to be satisfied in order to ensure that there is a nationally consistent approach to the recognition of native title so that State and Territory tribunals and processes can be recognised in order to fulfil the functions of the National Tribunal.

Role of the States and Territories

The Act is designed to allow a cooperative regime between the Commonwealth and the States and Territories by enabling their own bodies to be set up to determine native title, compensation claims and whether future dealings in native land can be done. States and Territories can choose, however, to use the Commonwealth regime. States and Territories can enact complementary validating legislation and develop other appropriate processes. At the time of writing there had been some clear developments in this area. Most States and Territories have enacted or introduced legislation intended to validate their past acts. The legislation of several States also makes provision for arrangements to determine whether future dealings in native title land can take place.

Where such State or Territory legislation exists and has been recognised, Aboriginal and Torres Strait Islander peoples will have a choice as to whether they seek determinations of native title and compensation through the Commonwealth or State or Territory systems. Determinations on whether certain grants over native title land can proceed would be made under the State or Territory law.

Compensation

Native title holders are entitled to compensation for the effect of the validation of past acts on their rights. That compensation is payable by the Government that made the past act.

If a future act extinguishes or impairs native title, the native title holders will be entitled to compensation on essentially the same basis as someone who holds a freehold title (or leasehold in the Australian Capital Territory or Jervis Bay Territory), according to the relevant compensation laws.

The National Native Title Tribunal can deal with uncontested claims for compensation and will seek to mediate contested claims. If mediation is unsuccessful, the matter will be referred to the Federal Court.

The Commonwealth has offered to pay the majority of certain costs: three-quarters of the cost of past acts, and, until 1998, half of the continuing costs for State/Territory recognised bodies and alternative provisions to the Commonwealth regime.

Non-claimant applications

Anybody with an interest in land — for example, holders of certain types of lease or an exploration permit — and all governments may wish to know whether native title exists in relation to that land, or whether a claim has been made for a determination about native title. If it cannot be readily established that native title has been extinguished, application can be made to the Tribunal for a determination. These applications are called non-claimant applications, to distinguish them from claims for native title from Aboriginal and Torres Strait Islander peoples who believe they may have native title rights.

If no claim is made within two months of the non-claimant application being publicly advertised, the government in question can issue the lease. Even if native title is later found to have existed, the lease remains valid and any compensation would be payable by the government. Through the non-claimant process, the Act sets up a system where future acts can take place with certainty and the process takes place in a defined time frame.

Compulsory acquisition procedures

Normal government compulsory acquisition procedures, including a right to compensation, can apply to native title land. This means that governments may acquire land from native title holders, just as from other land holders, for public purposes such as infrastructure.

Surrender of native title

The legislation further recognises that native title holders may choose to surrender native title on terms acceptable to them, for example, to exchange it for a statutory title to allow them to engage in tourism or other commercial ventures.

The Land Acquisition Fund

Native title has been widely extinguished by past acts of government, such as the granting of freehold and leasehold title. Many Aboriginal and Torres Strait Islander peoples now live away from their traditional lands and could find it impossible to demonstrate a connection with those lands. In recognition of the fact that many Aboriginal and Torres Strait Islander peoples will not be able to gain native title because of historic dispossession, the Commonwealth Government also

established a land acquisition fund under the Act. The fund allows Aboriginal and Torres Strait Islander peoples to acquire and manage land in a way that provides economic, environmental, social or cultural benefits to them.

In the 1994–95 Budget the Commonwealth Government announced that a total of $1,463 million is to be allocated to the fund over ten years. These allocations will be invested so as to accumulate a self-sustaining fund for land acquisition and management.

The Act and mining

There is no provision in the Act for native title holders to veto mining on their land. The Act does, however, provide them with the right to negotiate under certain circumstances. Those circumstances include the compulsory acquisition by governments of native title where it is not for a direct public purpose (for example, building a school or road) but for the purpose of granting the land to a third party such as a property developer; and the creation of a right to mine. In a lot of cases the outcome will most likely be decided between the developer and the relevant Aboriginal or Torres Strait Islander community. Where agreement cannot be reached, the Act provides for an arbitrated determination by the Tribunal and, potentially, a ministerial decision, which overrides the Tribunal's determination. The Act sets out fair and finite time periods for this process.

The Act also allows certain future activities that will have minimal effect on native title to be excluded from the arrangements which give rights to negotiate to native title holders. This will be of special relevance and value to mineral exploration.

State and Territory mining laws that deal with other aspects of the mining regime are unaffected by the Native Title Act. The Act ensures that legislative regimes for economic activities offshore, especially commercial fisheries, and petroleum extraction can be validated.

Mining leases will not extinguish native title, which can be exercised after the grant and any renewals have expired. Future mining grants will not extinguish native title. This provision is in line with existing State practices with respect to mining grants over freehold land. Mining leases may be renewed on the same terms as before.

Pastoral leases

The Act makes provision for Aboriginal people who own or acquire a pastoral lease to choose to claim native title rights where it is determined that the owners would otherwise meet native title criteria apart from the existence of the lease. The pastoral lease would not be given up. Existing covenants and conditions in the lease will continue to apply and prevail over native rights. Valid pastoral leases can be renewed even if native title has survived the lease and the use of the land. For pastoral leases generally, the Act ensures that the existing rights of pastoral lease holders are protected: should any invalidity be found because of native title, the lease will be validated.

The way ahead

The *Native Title Act 1993* and the High Court decision that preceded it are only part of the reconciliation process taking place between indigenous and other Australians. For example, Australia is seeing historic accords between Aboriginal peoples and mining companies that show the way to a new working relationship. Working with the Native Title Act means working with Aboriginal and Torres Strait Islander peoples towards a better social and economic future, within a framework of national equity and fairness for all Australians.