



# THE CONSTITUTION

*as in force on 1 July 1999*





# The Constitution

AS IN FORCE ON 1 JULY 1999

*together with*

**Proclamation Declaring the  
Establishment of the Commonwealth**

**Letters Patent Relating to the  
Office of Governor-General**

***Statute of Westminster Adoption Act 1942***

***Australia Act 1986***

WITH

**OVERVIEW, NOTES AND INDEX**

BY THE

**ATTORNEY-GENERAL'S DEPARTMENT**

AND

**AUSTRALIAN GOVERNMENT SOLICITOR**

OFFICE OF LEGISLATIVE DRAFTING, ATTORNEY-GENERAL'S DEPARTMENT  
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# Contents

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|  |    |
|--|----|
| Overview .....   | 2  |
| The Constitution .....   | 11 |
| Schedule .....   | 59 |
| Notes .....  | 60 |
| Proclamation Declaring the Establishment of the Commonwealth ..... | 69 |
| Letters Patent Relating to the Office of Governor-General .....    | 71 |
| <i>Statute of Westminster Adoption Act 1942</i> .....              | 75 |
| <i>Australia Act 1986</i> .....                                    | 80 |
| Index .....  | 89 |

# Overview

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The Australian Constitution has properly been described as ‘the birth certificate of a nation’. It also provides the basic rules for the government of Australia. Indeed, the Constitution is the fundamental law of Australia binding everybody including the Commonwealth Parliament and the Parliament of each State.

## Background to the Constitution

The Australian Constitution was passed as part of a British Act of Parliament in 1900, and took effect on 1 January 1901. A British Act was necessary because before 1900 Australia was merely a collection of six self-governing British colonies and ultimate power over those colonies rested with the British Parliament. In reality, however, the Constitution is a document which was conceived by Australians, drafted by Australians and approved by Australians.

The Constitution was drafted at a series of conventions held during the 1890s and attended by representatives of the colonies. Before the Constitution came into effect, its terms, with one small exception, were approved by the people of New South Wales, Victoria, Queensland, Western Australia, South Australia, and Tasmania. During the course of this century, Australia has become an independent nation, and the character of the Constitution as the fundamental law of Australia is now seen as resting predominantly, not on its status as an Act of the British Parliament, which no longer has any power over Australia, but on the Australian people’s decision to approve and be bound by the terms of the Constitution.

What has been judicially described as ‘the sovereignty of the Australian people’ is also recognised by section 128 which provides that any change to the Constitution must be approved by the people of Australia.

The Constitution itself is contained in clause 9 of the British Act. The first eight clauses are commonly referred to as the ‘covering clauses’. They contain mainly introductory, explanatory and consequential provisions. For example, covering clause 2 provides that references to ‘the Queen’ (meaning Queen Victoria, who was British sovereign at the time the British Act was enacted) shall include references to Queen Victoria’s heirs and successors.

## **Creation of the Commonwealth of Australia**

On the commencement of the British Act on 1 January 1901, the Commonwealth came into being and the six colonies became the six States of Australia (covering clauses 4 and 6).

## **The Federal Structure**

The Constitution establishes a federal system of government. It is for this reason that the establishment of the Commonwealth in 1901 is often referred to as 'federation'. Under a federal system, powers are distributed between a central government and regional governments. In Australia, that distribution is between the Commonwealth and the six States. (The relationship between the Commonwealth and the Territories is discussed below.)

## **Separation of Powers**

Chapters I, II, and III of the Constitution confer the legislative, executive, and judicial powers of the Commonwealth on three different bodies which are established by the Constitution – the Parliament (Chapter I), the Executive Government (Chapter II), and the Judicature (Chapter III). Legislative power is the power to make laws. Executive power is the power to administer laws and carry out the business of government through such bodies as government departments, statutory authorities and the defence forces. Judicial power is the power traditionally exercised by courts such as the conduct of criminal trials and determining disputes in relation to such things as contracts and motor accidents.

Despite the structure of the Constitution there is no strict demarcation between the legislative and executive powers of the Commonwealth. Only the Parliament can pass Acts, but these Acts often confer on the Commonwealth Executive the power to make regulations, rules and by-laws in relation to matters relevant to the particular Acts.

For example, the Parliament has enacted in the Customs Act that no person may bring a 'prohibited import' into Australia, and then left it to the Executive to specify in the Customs Regulations what is a 'prohibited import'. This delegation of legislative power is not as extreme as it may appear, however, as both Houses of Parliament usually retain the power to 'disallow' (that is, reject), within a specified time, any regulation which has been made by the Executive.

The distinction between the Parliament and the Executive Government is further blurred by the fact that the Prime Minister and the other Government Ministers must be members of Parliament. This reflects the principle of responsible government (discussed below) under which Government Ministers must be members of, and accountable to, the Parliament.

By contrast, the separation between the Judicature on the one hand and the Parliament and the Executive on the other is strict. Only a court may exercise the

judicial power of the Commonwealth, so that, for example, the question whether a person has contravened a law of the Commonwealth Parliament (for example, by bringing a 'prohibited import' into the country) can only be conclusively determined by a court.

## **The Crown and Responsible Government**

As well as being a federation, Australia is a constitutional monarchy. Under this system of government, as the term suggests, the head of State of a country is a monarch whose functions are regulated by a constitution. Australia's Head of State is Queen Elizabeth II. The concept of the Crown pervades the Constitution. For example, the Queen is part of Parliament (section 1), and is empowered to appoint the Governor-General as her representative (section 2). The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as her representative (section 61).

Despite the terms of the Constitution, the Queen does not play a day-to-day role in the Commonwealth Government. Those few functions which the Queen does perform (for example, appointing the Governor-General) are done in accordance with advice from the Prime Minister.

The Governor-General performs a large number of functions. However, apart from exceptional circumstances (discussed below), the Governor-General acts in accordance with the advice of Commonwealth Ministers. The reason for this is the principle of responsible government which is basic to the British system of government and which underlies our Constitution. Under this principle, the Crown acts on the advice of its Ministers who are in turn members of, and responsible to, the Parliament. It is for this reason that section 64 of the Constitution requires Ministers to be, or become, members of Parliament.

There is a small number of matters in relation to which the Governor-General is not required to act in accordance with Ministerial advice. The powers which the Governor-General has in this respect are known as 'reserve powers'. There are probably only four: the powers to appoint and to dismiss a Prime Minister and to force a dissolution of the Parliament or to refuse to dissolve the Parliament. In exercising a reserve power, the Governor-General ordinarily acts in accordance with established and generally accepted rules of practice known as 'conventions'. For example, when appointing a Prime Minister under section 64 of the Constitution, the Governor-General must, by convention, appoint the parliamentary leader of the party or coalition of parties which has a majority of seats in the House of Representatives.

There can be circumstances, however, where there is no generally agreed convention to control the exercise of the Governor-General's reserve powers. Such a situation arose in 1975 when the Governor-General, Sir John Kerr, dismissed the Prime Minister, Mr E.G. Whitlam, after the Senate – which was not controlled by the Government – blocked the passage of the Supply Bill in an attempt to deprive the Whitlam Government of the funds needed to govern.



Some people argue that Sir John acted properly in dismissing Mr Whitlam as it was consistent with a 'convention' that a Prime Minister who cannot obtain supply should either seek a general election or be dismissed. Others contend that the dismissal of Mr Whitlam breached the convention that a person who retains majority support of the House of Representatives, as Mr Whitlam did, is entitled to remain Prime Minister.

## **Representative Government**

Another fundamental principle which underlies the Constitution is that of representative government – that is, government by representatives of the people who are chosen by the people. Consistently with this principle, sections 7 and 28 of the Constitution require regular elections for the House of Representatives and the Senate, and sections 7 and 24 require members of the Commonwealth Parliament to be directly chosen by the people.

## **Commonwealth Parliament**

The Constitution established the Commonwealth Parliament comprising the Queen, a House of Representatives and a Senate (sections 1–60). The people of each of the six States elect the same number of senators (currently 12), regardless of their State's population. (The people of the Northern Territory and the Australian Capital Territory are currently represented by two senators each.) The total number of senators is therefore 76.

In the House of Representatives the number of seats from each State depends on the size of the State's population (although each State is guaranteed at least five seats). After the 1998 election there were 148 members of the House of Representatives.

Before a proposed law (commonly referred to as a Bill) becomes an Act of Parliament it must be passed by both the House of Representatives and the Senate. The Bill is then presented to the Governor-General who assents to it in the Queen's name (section 58). A Bill becomes an Act of Parliament when it receives this assent. Nearly all Bills which subsequently become Acts of Parliament are proposed by the Government – that is, the parliamentary party or coalition of parties which holds a majority of seats in the House of Representatives.

Subject to the few exceptions referred to in section 53 in relation to the initiation and amendment of Bills which appropriate revenue or impose taxation, the Senate has equal power with the House of Representatives in respect of all Bills. Often the Government does not have a majority of seats in the Senate. Accordingly, disputes may arise between the two Houses as to whether a Bill should be passed in its proposed form. These disputes are nearly always resolved by the two Houses.

Section 57 prescribes the procedure for resolving any irreconcilable disagreement between the two Houses. That procedure essentially involves the dissolution of both Houses of Parliament by the Governor-General (that is, a ‘double dissolution’), the holding of an election for both the House of Representatives and the Senate, and then, if necessary, the convening of a joint sitting of the two Houses following the election to determine whether the proposed law or laws which led to the double dissolution should be passed.

## **Commonwealth Legislative Powers**

The Constitution does not confer on the Commonwealth Parliament the power to make laws on all subjects. Instead, it lists the subjects about which the Commonwealth Parliament can make laws. Most of these subjects are listed in sections 51 and 52. They include taxation; defence; external affairs; interstate and international trade; foreign, trading and financial corporations; marriage and divorce; immigration; bankruptcy; and interstate industrial arbitration.

This list of powers given to the Commonwealth Parliament does not expressly refer to a number of important subjects including education, the environment, criminal law, and roads – but this does not mean that those subjects are outside the Parliament’s powers in so far as they relate to the subjects that are listed. For example, even though the Commonwealth Parliament has no specific power in relation to the environment, it can, under its external affairs power, prohibit the construction of a dam by a State if that is necessary to give effect to an international agreement on the environment.

## **The States and their Legislative Powers**

Under the federal system created by the Australian Constitution, the six former colonies became the six States of Australia. Before federation, each of the six colonies had its own constitution. These constitutions continue to regulate, among other things, the Legislature, the Executive Government, and the Judiciary of the States. The Australian Constitution expressly guarantees the continuing existence of the States and preserves each of their constitutions. However, the States are bound by the Australian Constitution, and the constitutions of the States must be read subject to the Australian Constitution (sections 106 and 107).

Under the constitutions of each of the States, a State Parliament can make laws on any subject of relevance to that particular State. Subject to a few exceptions, the Australian Constitution does not confine the matters about which the States may make laws. (The most important exceptions are that the States cannot impose duties of customs and excise (section 90) and cannot raise defence forces without the consent of the Commonwealth Parliament (section 114).) Accordingly, the State Parliaments can pass laws on a wider range of subjects than the Commonwealth Parliament, and for this reason important areas such as education, criminal law, and roads are regulated primarily by laws of the States rather than by laws of the Commonwealth Parliament.

## **The Relationship between Commonwealth and State Powers**

Although the State Parliaments can pass laws on a wider range of subjects than the Commonwealth Parliament, the Commonwealth is generally regarded as the more powerful partner in the federation. One of the principal reasons for this is section 109 of the Constitution which provides that if a valid Commonwealth law is inconsistent with a law of a State, the Commonwealth law operates and the State law is invalid to the extent of the inconsistency.

Accordingly, the Commonwealth can, where the Constitution gives it power over a subject matter, override State laws. As a result, many subjects of Commonwealth power are regulated almost entirely by Commonwealth law, for example, bankruptcy, marriage and divorce, and immigration.

Further, the States have traditionally not raised sufficient revenue to perform all their functions and therefore they rely on grants of financial assistance from the Commonwealth. During the Second World War, Commonwealth legislation effectively excluded the States from imposing income tax, and since then, various political and economic considerations have resulted in income tax being imposed solely by the Commonwealth. Also, the States are unable to impose taxes of customs and excise (section 90).

Consequently, the Commonwealth grants financial assistance to the States, often with conditions attached in accordance with Section 96 of the Constitution. This power to impose conditions on how the money is spent by the States allows the Commonwealth to influence the way things are done in areas over which it has no direct power to pass laws. For example, the Commonwealth has exerted significant control over universities in this way even though it has no specific power in relation to education.

## **The Executive Government of the Commonwealth**

A literal reading of the Constitution does not give much information about how the Executive Government of the Commonwealth functions. For example, the terms of Chapter II (sections 61–70) give the impression that the Governor-General has sweeping powers in relation to the Commonwealth Government. Section 61 says that the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General, while section 68 provides that the command of the defence forces is vested in the Governor-General.

The Governor-General, however, exercises his or her powers in accordance with the principle of responsible government (discussed earlier). Consequently, in all but exceptional circumstances, the Governor-General acts in accordance with advice from the Ministers of the Government. The appointment of Ministers and the creation of Departments of State to administer the Government of the Commonwealth are referred to in section 64. Section 64 also provides that Ministers must be, or become, members of Parliament.

In practice Ministers are also members of the parliamentary party or coalition of parties which holds a majority of seats in the House of Representatives. Ministers may either be senators or members of the House of Representatives, although established constitutional practice dictates that the Prime Minister must be a member of the House of Representatives rather than a senator. Despite their importance to the operations of the Executive Government, neither the head of the Government (the Prime Minister) nor the principal decision-making body in the Government (the Cabinet, which is made up of senior Government Ministers) is mentioned in the Constitution.

The Federal Executive Council, which is referred to in various provisions of the Constitution, and in the expression ‘Governor-General in Council’, comprises all past and current Ministers. However, only current Ministers take part in Executive Council business, and usually only two or three Ministers attend meetings of the Council with the Governor-General. Unlike the Cabinet, the Executive Council is not a deliberative body. Its principal functions are to receive advice and approve the signing of formal documents such as regulations and statutory appointments.

## **Federal Judicature**

Chapter III of the Constitution (sections 71–80) provides for the judicial branch of the Commonwealth. Section 71 establishes the High Court of Australia, one of the principal functions of which is to decide disputes about the meaning of the Constitution. For example, it is the High Court which ultimately determines whether an Act passed by the Commonwealth Parliament is within the legislative powers of the Commonwealth. The power which the High Court has to interpret the Constitution means that it is a very important body. The High Court is also the final court of appeal within Australia in all other types of cases, even those dealing with purely State matters such as the interpretation of State criminal laws.

Chapter III also gives the Commonwealth Parliament power to create other federal courts (for example, the Federal Court and the Family Court), and to vest federal judicial power in such courts and in courts of the States. ‘Federal judicial power’ is judicial power relating to one or more of the classes of dispute set out in sections 75 and 76.

## **An Australian ‘Common Market’**

Chapter IV of the Constitution (sections 81–105A) contains provisions regulating, among other things, trade and commerce throughout Australia. The desire to have a single trade area throughout Australia was one of the main reasons for the movement by the Australian people towards federation. To achieve this, Australia needed both uniform customs duties and the abolition of protectionist burdens on interstate trade.

The Constitution achieves the first of these objectives by requiring the Commonwealth Parliament to impose uniform customs duties (section 88) and by prohibiting the State Parliaments from imposing customs duties (section 90). It achieves the second objective primarily by providing in section 92 that trade and commerce between the States shall be ‘absolutely free’.

Section 92, in effect, prohibits action by either the Commonwealth or a State which discriminates against interstate trade or commerce and which has the purpose or effect of protecting intrastate trade or commerce of a State against competition from other States. For example, section 92 would be contravened if the New South Wales Parliament, in an attempt to make NSW milk more price-competitive, imposed a special tax on all milk sold in NSW which had been produced in Victoria.

Chapter IV also regulates other aspects of finance and trade. Two of the more important provisions are section 81, which provides that all money raised or received by the Executive Government of the Commonwealth is to form one Consolidated Revenue Fund, and section 83, which provides that no money may be expended by the Executive Government of the Commonwealth without the authority of Parliament.

## **New States**

The Constitution makes provision for the establishment and admission of new States (sections 121 and 124). No new States have been established or admitted since federation. Under section 121, a new State can be created by an ordinary Act of the Commonwealth Parliament.

## **Territories**

Section 122 empowers the Commonwealth Parliament to make laws in relation to Territories which have been ‘surrendered’ by the States or which have otherwise been acquired by the Commonwealth. In relation to these Territories (of which there are currently 10), the Commonwealth Parliament can make laws on any subject – that is, it does not share its law-making power with the State Parliaments as it does in relation to the rest of Australia. The Commonwealth Parliament has conferred a large measure of self-government on the people of three of the Territories, namely the Australian Capital Territory, Norfolk Island, and the Northern Territory.

## **Rights**

The Constitution has no equivalent to the Bill of Rights found in the United States Constitution which prohibits laws that infringe certain basic freedoms and rights, such as freedom of speech. Some express protections, however, are given by the Constitution against legislative or executive action by the Commonwealth, but not by the States. Examples are section 51(xxxi) (acquisition of property

must be 'on just terms'), section 80 (trial by jury is required in relation to some criminal offences), and section 116 (a right exists to exercise any religion).

Section 117 prohibits the Parliament of a State from discriminating against non-residents of that State. It provides, in effect, that a resident in, say, Victoria shall not be subject to any discrimination or disability in, say, Queensland unless the person would also be subject to that disability or discrimination as a resident of Queensland. (The question whether section 117 limits the law-making power of the Commonwealth Parliament has not yet been conclusively resolved by the High Court.)

The High Court has also recognised some implied restrictions on legislative power derived from the fundamental system of government established by the Constitution. For example, because of the separation of powers effected by the Constitution, only a court may exercise the judicial power of the Commonwealth. Accordingly, a law of the Commonwealth Parliament cannot confer judicial power on any body other than a court.

Similarly, the High Court has recognised that there is an implied restriction on the legislative and executive power of the Commonwealth and of the States and Territories protecting freedom of communication on governmental and political matters. This implication arises from the system of representative government (discussed above) created by the Constitution.

## **Amending the Constitution**

The Constitution provides a mechanism by which it can be altered, called a referendum. Before there can be any change to the Constitution, a majority of electors must vote in favour of the change. In addition, there must be a majority vote in a majority of States, that is, in four out of the six States. (Further, a proposed amendment which would diminish the representation of a State in the Commonwealth Parliament or which would alter the territorial limits of a State must be approved by a majority of electors in that State.) Ordinarily, before a matter can be the subject of a referendum, both Houses of the Commonwealth Parliament must pass the proposed law containing the suggested amendment of the Constitution (section 128).

*July 1999*



# The Constitution

# Commonwealth of Australia Constitution Act

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*with alterations of the Constitution made by*

- *Constitution Alteration (Senate Elections) 1906*  
(No. 1 of 1907)
- *Constitution Alteration (State Debts) 1909*  
(No. 3 of 1910)
- *Constitution Alteration (State Debts) 1928*  
(No. 1 of 1929)
- *Constitution Alteration (Social Services) 1946*  
(No. 81 of 1946)
- *Constitution Alteration (Aboriginals) 1967*  
(No. 55 of 1967)
- *Constitution Alteration (Senate Casual Vacancies) 1977*  
(No. 82 of 1977)
- *Constitution Alteration (Retirement of Judges) 1977*  
(No. 83 of 1977)
- *Constitution Alteration (Referendums) 1977*  
(No. 84 of 1977)

Note: The Constitution is printed here as fully amended by the Constitution Alterations specified above. Sections and paragraphs affected by these amendments are shown with their amendments indicated in full, in the Notes commencing on page 60.



# Table of Provisions

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## Covering Clause

1. Short title
2. Act to extend to the Queen's successors
3. Proclamation of Commonwealth
4. Commencement of Act
5. Operation of the Constitution and laws
6. Definitions
7. Repeal of Federal Council Act
8. Application of Colonial Boundaries Act
9. Constitution

## Chapter I – The Parliament

### PART I – GENERAL

#### Section

1. Legislative power
2. Governor-General
3. Salary of Governor-General
4. Provisions relating to Governor-General
5. Sessions of Parliament  
Prorogation and dissolution  
Summoning Parliament  
First session
6. Yearly session of Parliament

### PART II – THE SENATE

7. The Senate
8. Qualification of electors
9. Method of election of senators  
Times and places
10. Application of State laws
11. Failure to choose senators
12. Issue of writs
13. Rotation of senators
14. Further provision for rotation
15. Casual vacancies
16. Qualifications of senator
17. Election of President
18. Absence of President
19. Resignation of senator

20. Vacancy by absence
21. Vacancy to be notified
22. Quorum
23. Voting in Senate

**PART III – THE HOUSE OF REPRESENTATIVES**

24. Constitution of House of Representatives
25. Provision as to races disqualified from voting
26. Representatives in first Parliament
27. Alteration of number of members
28. Duration of House of Representatives
29. Electoral divisions
30. Qualification of electors
31. Application of State laws
32. Writs for general election
33. Writs for vacancies
34. Qualifications of members
35. Election of Speaker
36. Absence of Speaker
37. Resignation of member
38. Vacancy by absence
39. Quorum
40. Voting in House of Representatives

**PART IV – BOTH HOUSES OF THE PARLIAMENT**

41. Right of electors of States
42. Oath or affirmation of allegiance
43. Member of one House ineligible for other
44. Disqualification
45. Vacancy on happening of disqualification
46. Penalty for sitting when disqualified
47. Disputed elections
48. Allowance to members
49. Privileges etc. of Houses
50. Rules and orders

**PART V – POWERS OF THE PARLIAMENT**

51. Legislative powers of the Parliament
52. Exclusive powers of the Parliament
53. Powers of the Houses in respect of legislation
54. Appropriation Bills
55. Tax Bill
56. Recommendation of money votes
57. Disagreement between the Houses
58. Royal assent to Bills  
Recommendations by Governor-General
59. Disallowance by the Queen
60. Signification of Queen's pleasure on Bills reserved

## **Chapter II – The Executive Government**

61. Executive power
62. Federal Executive Council
63. Provisions referring to Governor-General
64. Ministers of State  
Ministers to sit in Parliament
65. Number of Ministers
66. Salaries of Ministers
67. Appointment of civil servants
68. Command of naval and military forces
69. Transfer of certain departments
70. Certain powers of Governors to vest in Governor-General

## **Chapter III – The Judicature**

71. Judicial power and Courts
72. Judges' appointment, tenure and remuneration
73. Appellate jurisdiction of High Court
74. Appeal to Queen in Council
75. Original jurisdiction of High Court
76. Additional original jurisdiction
77. Power to define jurisdiction
78. Proceedings against Commonwealth or State
79. Number of judges
80. Trial by jury

## **Chapter IV – Finance and Trade**

81. Consolidated Revenue Fund
82. Expenditure charged thereon
83. Money to be appropriated by law
84. Transfer of officers
85. Transfer of property of State
86. [Customs, excise, and bounties]
87. [Revenue from customs and excise duties]
88. Uniform duties of customs
89. Payment to States before uniform duties
90. Exclusive power over customs, excise, and bounties
91. Exceptions as to bounties
92. Trade within the Commonwealth to be free
93. Payment to States for five years after uniform tariffs
94. Distribution of surplus
95. Customs duties of Western Australia
96. Financial assistance to States
97. Audit
98. Trade and commerce includes navigation and State railways
99. Commonwealth not to give preference
100. Nor abridge right to use water
101. Inter-State Commission
102. Parliament may forbid preferences by State
103. Commissioners' appointment, tenure, and remuneration

- 104. Saving of certain rates
- 105. Taking over public debts of States
- 105A. Agreements with respect to State debts

### **Chapter V – The States**

- 106. Saving of Constitutions
- 107. Saving of power of State Parliaments
- 108. Saving of State laws
- 109. Inconsistency of laws
- 110. Provisions referring to Governor
- 111. States may surrender territory
- 112. States may levy charges for inspection laws
- 113. Intoxicating liquids
- 114. States may not raise forces  
Taxation of property of Commonwealth or State
- 115. States not to coin money
- 116. Commonwealth not to legislate in respect of religion
- 117. Rights of residents in States
- 118. Recognition of laws etc. of States
- 119. Protection of States from invasion and violence
- 120. Custody of offenders against laws of the Commonwealth

### **Chapter VI – New States**

- 121. New States may be admitted or established
- 122. Government of territories
- 123. Alteration of limits of States
- 124. Formation of new States

### **Chapter VII – Miscellaneous**

- 125. Seat of Government
- 126. Power to Her Majesty to authorise Governor-General to appoint deputies
- 127. [*Repealed by No. 55 of 1967, section 3*]

### **Chapter VIII – Alteration of the Constitution**

- 128. Mode of altering the Constitution

### **Schedule**

- Oath
- Affirmation

# Commonwealth of Australia Constitution Act

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## An Act to constitute the Commonwealth of Australia

[9th July 1900]

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

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

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

### 1 Short title

This Act may be cited as the Commonwealth of Australia Constitution Act.<sup>1</sup>

### 2 Act to extend to the Queen's successors

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

### 3 Proclamation of Commonwealth

It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation<sup>2</sup> that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

## 4 Commencement of Act

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

## 5 Operation of the Constitution and laws

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.<sup>3</sup>

## 6 Definitions

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

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

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

## 7 Repeal of Federal Council Act

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

Any such law may be repealed<sup>4</sup> as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

## **8 Application of Colonial Boundaries Act**

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

## **9 Constitution**

The Constitution of the Commonwealth shall be as follows:

### **The Constitution <sup>1</sup>**

This Constitution is divided as follows:

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

# Chapter I – The Parliament

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## Part I – General

### 1 Legislative power

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

### 2 Governor-General

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

### 3 Salary of Governor-General

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

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

### 4 Provisions relating to Governor-General

The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.



## **5 Sessions of Parliament. Prorogation and dissolution**

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

### *Summoning Parliament*

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

### *First session*

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

## **6 Yearly session of Parliament**

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

# **Part II – The Senate**

## **7 The Senate**

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

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

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

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

## **8 Qualification of electors**

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

## **9 Method of election of senators**

The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws<sup>6</sup> prescribing the method of choosing the senators for that State.

### *Times and places*

The Parliament of a State may make laws<sup>6</sup> for determining the times and places of elections of senators for the State.

## **10 Application of State laws**

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

## **11 Failure to choose senators**

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

## **12 Issue of writs**

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

## **13 Rotation of senators<sup>7</sup>**

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

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

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

#### **14 Further provision for rotation**

Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.<sup>8</sup>

#### **15 Casual vacancies<sup>9</sup>**

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

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

Where:

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

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

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

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

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

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

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

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

second House of Representatives to expire or be dissolved after that law came into operation or, if there is an earlier dissolution of the Senate, until that dissolution.

## **16 Qualifications of senator**

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

## **17 Election of President**

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

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

## **18 Absence of President**

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

## **19 Resignation of senator**

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

## **20 Vacancy by absence**

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

## **21 Vacancy to be notified**

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

## **22 Quorum**

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

## **23 Voting in Senate**

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

# **Part III – The House of Representatives**

## **24 Constitution of House of Representatives**

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

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

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

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

## **25 Provisions as to races disqualified from voting**

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

## **26 Representatives in first Parliament**

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

New South Wales . . . . . twenty-three;  
Victoria . . . . . twenty;  
Queensland . . . . . eight;  
South Australia . . . . . six;  
Tasmania . . . . . five;

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

New South Wales . . . . . twenty-six;  
Victoria . . . . . twenty-three;  
Queensland . . . . . nine;  
South Australia . . . . . seven;  
Western Australia . . . . . five;  
Tasmania . . . . . five.

## **27 Alteration of number of members**

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

## **28 Duration of House of Representatives**

Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

## **29 Electoral divisions**

Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws<sup>11</sup> for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

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

## **30 Qualification of electors**

Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which

is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

### **31 Application of State laws**

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

### **32 Writs for general election**

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

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

### **33 Writs for vacancies**

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

### **34 Qualifications of members**

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

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

### **35 Election of Speaker**

The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and



as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

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

### **36 Absence of Speaker**

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

### **37 Resignation of member**

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

### **38 Vacancy by absence**

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

### **39 Quorum**

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

### **40 Voting in House of Representatives**

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

## **Part IV – Both Houses of the Parliament**

### **41 Right of electors of States**

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

## **42 Oath or affirmation of allegiance**

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

## **43 Member of one House ineligible for other**

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

## **44 Disqualification**

Any person who:

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

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

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

## **45 Vacancy on happening of disqualification**

If a senator or member of the House of Representatives:

- (i) becomes subject to any of the disabilities mentioned in the last preceding section; or

- (ii) takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors; or
  - (iii) directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State;
- his place shall thereupon become vacant.

#### **46 Penalty for sitting when disqualified**

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

#### **47 Disputed elections**

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

#### **48 Allowance to members**

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

#### **49 Privileges etc. of Houses**

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

#### **50 Rules and orders**

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

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

## Part V – Powers of the Parliament

### 51 Legislative powers of the Parliament

The Parliament shall, subject to this Constitution, have power<sup>12</sup> to make laws for the peace, order, and good government of the Commonwealth with respect to:

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

- form of civil conscription), benefits to students and family allowances;<sup>13</sup>
- (xxiv) the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States;
  - (xxv) the recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States;
  - (xxvi) the people of any race for whom it is deemed necessary to make special laws;<sup>14</sup>
  - (xxvii) immigration and emigration;
  - (xxviii) the influx of criminals;
  - (xxix) external affairs;
  - (xxx) the relations of the Commonwealth with the islands of the Pacific;
  - (xxxi) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws;
  - (xxxii) the control of railways with respect to transport for the naval and military purposes of the Commonwealth;
  - (xxxiii) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State;
  - (xxxiv) railway construction and extension in any State with the consent of that State;
  - (xxxv) conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State;
  - (xxxvi) matters in respect of which this Constitution makes provision until the Parliament otherwise provides;
  - (xxxvii) matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States,<sup>15</sup> but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law;
  - (xxxviii) the exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia;
  - (xxxix) matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

## **52 Exclusive powers of the Parliament**

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

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

### **53 Powers of the Houses in respect of legislation**

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

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

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

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

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

### **54 Appropriation Bills**

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

### **55 Tax Bill**

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

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

## **56 Recommendation of money votes**

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

## **57 Disagreement between the Houses**

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

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

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

## **58 Royal assent to Bills**

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

### ***Recommendations by Governor-General***

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

## **59 Disallowance by the Queen**

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

## **60 Signification of Queen's pleasure on Bills reserved**

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



# Chapter II – The Executive Government

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## 61 Executive power

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

## 62 Federal Executive Council

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

## 63 Provisions referring to Governor-General

The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

## 64 Ministers of State

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

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

### *Ministers to sit in Parliament*

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

## **65 Number of Ministers**

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

## **66 Salaries of Ministers**

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

## **67 Appointment of civil servants**

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

## **68 Command of naval and military forces**

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

## **69 Transfer of certain departments**

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

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

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

## **70 Certain powers of Governors to vest in Governor-General**

In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

# Chapter III – The Judicature

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## 71 Judicial power and Courts

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

## 72 Judges' appointment, tenure and remuneration<sup>16</sup>

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

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

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

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

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

The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by the Parliament and may at any time repeal or amend such a law, but any such repeal or

amendment does not affect the term of office of a Justice under an appointment made before the repeal or amendment.

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

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

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

### **73 Appellate jurisdiction of High Court**

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

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

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

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

### **74 Appeal to Queen in Council**

No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits

inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

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

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

## **75 Original jurisdiction of High Court**

In all matters:

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

the High Court shall have original jurisdiction.

## **76 Additional original jurisdiction**

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

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

## **77 Power to define jurisdiction**

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

- (i) defining the jurisdiction of any federal court other than the High Court;

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

### **78 Proceedings against Commonwealth or State**

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

### **79 Number of judges**

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

### **80 Trial by jury**

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

## Chapter IV – Finance and Trade

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### **81 Consolidated Revenue Fund**

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

### **82 Expenditure charged thereon**

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

### **83 Money to be appropriated by law**

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

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

### **84 Transfer of officers**

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

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



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

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

## **85 Transfer of property of State**

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

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

## **86 [Customs, excise, and bounties]<sup>18</sup>**

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

## **87 [Revenue from customs and excise duties]<sup>18</sup>**

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

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

## **88 Uniform duties of customs**

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

## **89 Payment to States before uniform duties**

Until the imposition of uniform duties of customs:

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

## **90 Exclusive power over customs, excise, and bounties**

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

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of

or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

### **91 Exceptions as to bounties**

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

### **92 Trade within the Commonwealth to be free**

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

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

### **93 Payment to States for five years after uniform tariffs**

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

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

### **94 Distribution of surplus**

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

## **95 Customs duties of Western Australia**

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

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

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

## **96 Financial assistance to States**

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

## **97 Audit**

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

## **98 Trade and commerce includes navigation and State railways**

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

### **99 Commonwealth not to give preference**

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

### **100 Nor abridge right to use water**

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

### **101 Inter-State Commission**

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

### **102 Parliament may forbid preferences by State**

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

### **103 Commissioners' appointment, tenure, and remuneration**

The members of the Inter-State Commission:

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

## **104 Saving of certain rates**

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

## **105 Taking over public debts of States<sup>19</sup>**

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

## **105A Agreements with respect to State debts<sup>20</sup>**

- (1) The Commonwealth may make agreements with the States with respect to the public debts of the States, including:
  - (a) the taking over of such debts by the Commonwealth;
  - (b) the management of such debts;
  - (c) the payment of interest and the provision and management of sinking funds in respect of such debts;
  - (d) the consolidation, renewal, conversion, and redemption of such debts;
  - (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and
  - (f) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.
- (2) The Parliament may make laws for validating any such agreement made before the commencement of this section.
- (3) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.
- (4) Any such agreement may be varied or rescinded by the parties thereto.

- (5) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.
- (6) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.

## **Chapter V – The States**

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### **106 Saving of Constitutions**

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

### **107 Saving of power of State Parliaments**

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

### **108 Saving of State laws**

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

### **109 Inconsistency of laws**

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

### **110 Provisions referring to Governor**

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



### **111 States may surrender territory**

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

### **112 States may levy charges for inspection laws**

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

### **113 Intoxicating liquids**

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

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

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

### **115 States not to coin money**

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

### **116 Commonwealth not to legislate in respect of religion**

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

### **117 Rights of residents in States**

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

### **118 Recognition of laws etc. of States**

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

### **119 Protection of States from invasion and violence**

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

### **120 Custody of offenders against laws of the Commonwealth**

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

## Chapter VI – New States

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### **121 New States may be admitted or established**

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

### **122 Government of territories**

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

### **123 Alteration of limits of States**

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

### **124 Formation of new States**

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

## Chapter VII – Miscellaneous

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### **125 Seat of Government**

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

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

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

### **126 Power to Her Majesty to authorise Governor-General to appoint deputies**

The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies<sup>21</sup> within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

### **127** <sup>22</sup>

# Chapter VIII – Alteration of the Constitution

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## 128 Mode of altering the Constitution<sup>23</sup>

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

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

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

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

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

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or

otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

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

# Schedule

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## Oath

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

## Affirmation

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

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

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## Notes

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1. The Constitution as printed above contains all the alterations of the Constitution made up to 1 July 1999. Particulars of the Acts by which the Constitution was altered are as follows:

| <b>Act</b>  | <b>Number and year</b> | <b>Date of Assent</b> |
|---|------------------------|-----------------------|
| <i>Constitution Alteration (Senate Elections) 1906</i>        | 1, 1907                | 3 Apr 1907            |
| <i>Constitution Alteration (State Debts) 1909</i>             | 3, 1910                | 6 Aug 1910            |
| <i>Constitution Alteration (State Debts) 1928</i>             | 1, 1929                | 13 Feb 1929           |
| <i>Constitution Alteration (Social Services) 1946</i>         | 81, 1946               | 19 Dec 1946           |
| <i>Constitution Alteration (Aboriginals) 1967</i>             | 55, 1967               | 10 Aug 1967           |
| <i>Constitution Alteration (Senate Casual Vacancies) 1977</i> | 82, 1977               | 29 July 1977          |
| <i>Constitution Alteration (Retirement of Judges) 1977</i>    | 83, 1977               | 29 July 1977          |
| <i>Constitution Alteration (Referendums) 1977</i>             | 84, 1977               | 29 July 1977          |

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### Table of Amendments

ad. = added or inserted; am. = amended; rep. = repealed; rs. = repealed and substituted

| <b>Provision affected</b> | <b>How affected</b>            |
|---------------------------|--------------------------------|
| s. 13                     | am. No. 1, 1907                |
| s. 15                     | rs. No. 82, 1977               |
| s. 51                     | am. No. 81, 1946; No. 55, 1967 |
| s. 72                     | am. No. 83, 1977               |
| s. 105                    | am. No. 3, 1910                |
| s. 105A                   | ad. No. 1, 1929                |
| s. 127                    | rep. No. 55, 1967              |
| s. 128                    | am. No. 84, 1977               |

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2. Covering Clause 3 – The Proclamation under covering clause 3 was made on 17 September 1900 (see page 69) and published in *Gazette* 1901.
3. Covering Clause 5 – See also the *Statute of Westminster Adoption Act 1942*.
4. Covering Clause 7 – The following Acts have repealed Acts passed by the Federal Council of Australasia:
 

*Defence Act 1903* (No. 20, 1903), s. 6

*Pearl Fisheries Act 1952* (No. 8, 1952), s. 3 (*Pearl Fisheries Act 1952* repealed by *Continental Shelf (Living Natural Resources) Act 1968*, s. 3)

*Service and Execution of Process Act 1901* (No. 11, 1901), s. 2 (s. 2 subsequently repealed by *Service and Execution of Process Act 1963*, s. 3).
5. Section 7 – The number of senators for each State was increased to 12 by the *Representation Act 1983*, s. 3.
6. Section 9 – The following State Acts have been passed in pursuance of the powers conferred by s. 9:

| State           | Number             | Short title   | How affected   |
|-----------------|--------------------|---|--|
| New South Wales | No. 73, 1900       | <i>Federal Elections Act 1900</i>   | Ss. 2, 3, 4, 5 and 6 and the Schedule repealed by No. 9, 1903; wholly repealed by No. 41, 1912 |
|                 | No. 9, 1903        | <i>Senators' Elections Act 1903</i>   | <i>(Still in force)</i>  |
| Victoria        | No. 1715           | <i>Federal Elections Act 1900</i>   | Repealed by No. 1860   |
|                 | No. 1860           | <i>Senate Elections (Times and Places) Act 1903</i>   | Repealed by No. 2723   |
|                 | No. 2399           | <i>Senate Elections (Times and Places) Act 1912</i>   | Repealed by No. 2723   |
|                 | No. 2723           | <i>Senate Elections (Times and Places) Act 1915</i>   | Repealed by No. 3769   |
|                 | No. 3769           | <i>Senate Elections (Times and Places) Act 1928</i>   | Repealed by No. 6365   |
|                 | No. 6365           | <i>Senate Elections Act 1958</i>  | <i>(Still in force)</i>  |
| Queensland      | 64 Vic. No. 25     | <i>The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900</i> | Operation exhausted  |
|                 | 3 Edw.VII. No. 6   | <i>The Election of Senators Act of 1903</i>   | Repealed by 9 Eliz. II. No. 20   |
|                 | 9 Eliz. II. No. 20 | <i>The Senate Elections Act of 1960</i>   | <i>(Still in force)</i>  |

| State              | Number           | Short title                              | How affected                 |
|--------------------|------------------|--|------------------------------|
| <i>(continued)</i> |                  |  |                              |
| South Australia    | No. 834          | <i>The Election of Senators Act 1903</i> | <i>(Still in force)</i>      |
| Western Australia  | No. 11, 1903     | <i>Election of Senators Act 1903</i>     | <i>(Still in force)</i>      |
| Tasmania           | 64 Vic. No. 59   | <i>The Federal Elections Act 1900</i>    | Repealed by 26 Geo. V. No. 3 |
|                    | 3 Edw. VII No. 5 | <i>The Election of Senators Act 1903</i> | Repealed by 26 Geo. V. No. 3 |
|                    | 26 Geo. V. No. 3 | <i>Senate Elections Act 1935</i>         | <i>(Still in force)</i>      |

7. Section 13 was amended by the *Constitution Alteration (Senate Elections) 1906*. Alterations are marked as follows:

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

The election to fill vacant places shall be made ~~in the year at the expiration of which~~ within one year before the places are to become vacant.

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

8. Section 14 – For the provisions applicable upon the increase in the number of senators to 12 made by the *Representation Act 1983*, see section 3 of that Act.
9. Section 15 was replaced by the *Constitution Alteration (Senate Casual Vacancies) 1977*, and previously read as follows:

“15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the

expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General.”

10. Section 15 – The proposed law to alter the Constitution entitled *Constitution Alteration (Simultaneous Elections) 1977* was submitted to the electors in each State of the Commonwealth on 21 May 1977: it was not approved by a majority of all the electors voting in a majority of the States. See *Gazette* 1977, No. S100, p. 1.
11. Section 29 – The following State Acts were passed in pursuance of the powers conferred by s. 29, but ceased to be in force upon the enactment of the *Commonwealth Electoral Act 1902*:

| State             | Number         | Short title   |
|-------------------|----------------|---|
| New South Wales   | No. 73, 1900   | <i>Federal Elections Act 1900</i>   |
| Victoria          | No. 1667       | <i>Federal House of Representatives Victorian Electorates Act 1900</i>  |
| Queensland        | 64 Vic. No. 25 | <i>The Parliament of the Commonwealth Elections Act and The Elections Acts 1885 to 1898 Amendment Act of 1900</i> |
| Western Australia | 64 Vic. No. 6  | <i>Federal House of Representatives Western Australian Electorates Act 1900</i>                                   |

12. Section 51 – The following Imperial Acts extended the legislative powers of the Parliament:
  - Whaling Industry (Regulations) Act 1934*, s. 15
  - Geneva Convention Act 1937*, s. 2
  - Emergency Powers (Defence) Act 1939*, s. 5
  - Army and Air Force (Annual) Act 1940*, s. 3.

13. Section 51(xxiiiA) – This section was inserted by the *Constitution Alteration (Social Services) 1946*.

14. Section 51(xxvi) was amended by the *Constitution Alteration (Aboriginals) 1967*. Alterations are marked as follows:

“(xxvi) the people of any race, ~~other than the aboriginal race in any State,~~  
for whom it is deemed necessary to make special laws;”

15. Section 51(xxxvii) – The following Acts have been passed by the Parliaments of the States to refer matters to the Parliament under section 51(xxxvii):

| State           | Number               | Short title   | How affected  |
|-----------------|----------------------|---|---|
| New South Wales | No. 65, 1915         | <i>Commonwealth Powers (War) Act 1915</i>                   | Expired 9 Jan 1921; <i>see</i> s. 5                                   |
|                 | No. 33, 1942         | <i>Commonwealth Powers Act 1942</i>                         | Expired; <i>see</i> s. 4  |
|                 | No. 18, 1943         | <i>Commonwealth Powers Act 1943</i>                         | Expired; <i>see</i> s. 4  |
|                 | No. 48, 1983         | <i>Commonwealth Powers (Meat Inspection) Act 1983</i>       | <i>(Still in force)</i>   |
|                 | No. 182, 1986        | <i>Commonwealth Powers (Family Law – Children) Act 1986</i> | <i>(Still in force)</i>   |
|                 | No. 61, 1992         | <i>Mutual Recognition (New South Wales) Act 1992</i>        | <i>(Still in force)</i>   |
|                 | No. 104, 1992        | <i>Commonwealth Powers (State Banking) Act 1992</i>         | <i>(Still in force)</i>   |
|                 | No. 100, 1993        | <i>Commonwealth Powers (Poultry Processing) Act 1993</i>    | <i>(Still in force)</i>   |
| Victoria        | No. 3108             | <i>Commonwealth Powers (Air Navigation) Act 1920</i>        | Repealed by No. 4502  |
|                 | No. 3658             | <i>Commonwealth Arrangements Act 1928 (Part III)</i>        | Repealed by No. 4502  |
|                 | No. 4009             | <i>Debt Conversion Agreement Act 1931 (No. 2)</i>           | <i>(Still in force)</i>   |
|                 | No. 4950             | <i>Commonwealth Powers Act 1943</i>                         | Not proclaimed to come into operation and cannot now be so proclaimed |
|                 | No. 92, 1986         | <i>Commonwealth Powers (Family Law – Children) Act 1986</i> | <i>(Still in force)</i>   |
|                 | No. 2, 1993          | <i>Mutual Recognition (Victoria) Act 1993</i>               | <i>(Still in force)</i>   |
| Queensland      | 12 Geo. V.<br>No. 30 | <i>The Commonwealth Powers (Air Navigation) Act 1921</i>    | Repealed by 1 Geo. VI. No. 8  |

| State                    | Number               | Short title  | How affected                     |
|--------------------------|----------------------|--|----------------------------------|
| <i>(Continued)</i>       |                      |  |                                  |
|                          | 22 Geo. V.<br>No. 30 | <i>The Commonwealth<br/>Legislative Power Act 1931</i>                             | Repealed by No. 46, 1983         |
|                          | 7 Geo. VI.<br>No. 19 | <i>Commonwealth Powers<br/>Act 1943</i>  | Expired; <i>see</i> s. 4         |
|                          | 14 Geo. VI.<br>No. 2 | <i>The Commonwealth<br/>Powers (Air Transport)<br/>Act 1950</i>                    | <i>(Still in force)</i>          |
|                          | No. 37, 1990         | <i>Commonwealth Powers (Family<br/>Law –Children) Act 1990</i>                     | <i>(Still in force)</i>          |
|                          | No. 67, 1992         | <i>Mutual Recognition<br/>(Queensland) Act 1992</i>                                | <i>(Still in force)</i>          |
| <b>South Australia</b>   | No. 1469, 1921       | <i>Commonwealth Powers<br/>(Air Navigation) Act 1921</i>                           | Repealed by No. 2352, 1937       |
|                          | No. 2061, 1931       | <i>Commonwealth<br/>Legislative Power Act 1931</i>                                 | <i>(Still in force)</i>          |
|                          | No. 3, 1943          | <i>Commonwealth Powers<br/>Act 1943</i>  | Expired; <i>see</i> s. 5         |
|                          | No. 89, 1986         | <i>Commonwealth Powers<br/>(Family Law) Act 1986</i>                               | <i>(Still in force)</i>          |
|                          | No. 72, 1993         | <i>Mutual Recognition<br/>(South Australia) Act 1993</i>                           | <i>(Still in force)</i>          |
| <b>Western Australia</b> | No. 4, 1943          | <i>Commonwealth Powers<br/>Act 1943</i>  | Repealed by No. 58, 1965         |
|                          | No. 57, 1945         | <i>Commonwealth Powers<br/>Act 1945</i>  | Repealed by No. 58, 1965         |
|                          | No. 30, 1947         | <i>Commonwealth Powers<br/>Act 1943, Amendment<br/>Act 1947</i>                    | Repealed by No. 58, 1965         |
|                          | No. 31, 1947         | <i>Commonwealth Powers<br/>Act 1945, Amendment<br/>Act 1947</i>                    | Repealed by No. 58, 1965         |
|                          | No. 73, 1947         | <i>Commonwealth Powers<br/>Act 1945, Amendment<br/>Act (No. 2) 1947</i>            | Repealed by No. 58, 1965         |
|                          | No. 81, 1947         | <i>Commonwealth Powers<br/>Act 1945-1947, Amendment<br/>(Continuance) Act 1947</i> | Repealed by No. 58, 1965         |
|                          | No. 53, 1995         | <i>Mutual Recognition (Western<br/>Australia) Act 1995</i>                         | <i>(Still in force)</i>          |
| <b>Tasmania</b>          | 11 Geo. V.<br>No. 42 | <i>Commonwealth Powers<br/>(Air Navigation) Act 1920</i>                           | Repealed by 1 Geo.<br>VI. No. 14 |
|                          | No. 46, 1952         | <i>Commonwealth Powers<br/>(Air Transport) Act 1952</i>                            | <i>(Still in force)</i>          |
|                          | No. 62, 1966         | <i>Commonwealth Powers<br/>(Trade Practices) Act 1966</i>                          | Expired; <i>see</i> s. 2         |

| State              | Number       | Short title  | How affected            |
|--------------------|--------------|--|-------------------------|
| <i>(Continued)</i> |              |  |                         |
|                    | No. 5, 1987  | <i>Commonwealth Powers (Family Law) Act 1987</i>           | <i>(Still in force)</i> |
|                    | No. 33, 1993 | <i>Mutual Recognition (Tasmania) Act 1993</i>              | <i>(Still in force)</i> |
|                    | No. 20, 1994 | <i>Commonwealth Powers (Family Law) Amendment Act 1994</i> | <i>(Still in force)</i> |

16. Section 72 was amended by the *Constitution Alteration (Retirement of Judges) 1977*. Alterations are marked as follows:

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

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

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

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

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

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

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

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

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

17. Section 74 – See *Privy Council (Limitation of Appeals) Act 1968*, *Privy Council (Appeals from the High Court) Act 1975* and *Kirmani v Captain Cook Cruises Pty Ltd (No. 2); Ex parte Attorney-General (QLD)* (1985) 159 CLR 451.

18. Sections 86 and 87 – the headings for these sections have been added for reprint purposes.

19. Section 105 was amended by the *Constitution Alteration (State Debts) 1909*. Alterations are marked as follows:

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

20. Section 105A – This section was inserted by the *Constitution Alteration (State Debts) 1928*.

21. Section 126 – See clause IV of the Letters Patent relating to the Office of Governor-General, published in *Gazette* 1984, S334, pp. 3 and 4.

22. Section 127 (titled “Aborigines not to be counted in reckoning population”) was repealed by the *Constitution Alteration (Aboriginals) 1967*. It previously read as follows:

“**127.** In reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.”

23. Section 128 was amended by the *Constitution Alteration (Referendums) 1977*. Alterations are marked as follows:

“**128.** This Constitution shall not be altered except in the following manner:

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

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

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

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

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

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



# Proclamation Declaring the Establishment of the Commonwealth

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PROCLAMATION UNITING THE PEOPLE OF NEW SOUTH WALES, VICTORIA, SOUTH AUSTRALIA, QUEENSLAND, TASMANIA, AND WESTERN AUSTRALIA IN A FEDERAL COMMONWEALTH.

*(Imperial Statutory Rules and Orders, revised 1948, Vol. II., Australia, p. 1027.)  
1900 No. 722.*

**At the Court at Balmoral,**

the 17th day of September, 1900.

**Present:**

*The Queen's Most Excellent Majesty in Council.*

*The following Draft Proclamation was this day read at the Board and  
approved: – A. W. FITZROY.*

**By The Queen**

## PROCLAMATION

WHEREAS by an Act of Parliament passed in the sixty-third and sixty-fourth years of Our Reign intituled, "An Act to constitute the Commonwealth of Australia," it is enacted that it shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation that, on and after a day appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia:

And whereas We are satisfied that the people of Western Australia have agreed thereto accordingly:

We, therefore, by and with the advice of Our Privy Council, have thought fit to issue this Our Royal Proclamation, and We do hereby declare that on and after the first day of January, One thousand nine hundred and one, the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia.

Given at Our Court at Balmoral, this seventeenth day of September, in the year of Our Lord One thousand nine hundred and in the sixty-fourth year of Our Reign.

**God Save The Queen!**

# Letters Patent Relating to the Office of Governor-General

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## LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR-GENERAL OF THE COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth,

### **Greeting:**

WHEREAS, by the Constitution of the Commonwealth of Australia, certain powers, functions and authorities are vested in a Governor-General appointed by the Queen to be Her Majesty's representative in the Commonwealth:

AND WHEREAS, by Letters Patent dated 29 October 1900, as amended, provision was made in relation to the office of Governor-General:

AND WHEREAS, by section 4 of the Constitution of the Commonwealth, the provisions of the Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth:

AND WHEREAS We are desirous of making new provisions relating to the office of Governor-General and for persons appointed to administer the Government of the Commonwealth:

NOW THEREFORE, by these Letters Patent under Our Sign Manual and the Great Seal of Australia –

- I. We revoke the Letters Patent dated 29 October 1900, as amended, and Our Instructions to the Governor-General dated 29 October 1900, as amended.
- II. We declare that –
  - (a) the appointment of a person to the office of Governor-General shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia; and

- (b) before assuming office, a person appointed to be Governor-General shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia.

III. We declare that –

- (a) the appointment of a person to administer the Government of the Commonwealth under section 4 of the Constitution of the Commonwealth shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia;
- (b) the powers, functions and authorities of the Governor-General shall, subject to this Clause, vest in any person so appointed from time to time by Us to administer the Government of the Commonwealth only in the event of the absence out of Australia, or the death, incapacity or removal, of the Governor-General for the time being;
- (c) a person so appointed shall not assume the administration of the Government of the Commonwealth –
  - (i) in the event of the absence of the Governor-General out of Australia – except at the request of the Governor-General or the Prime Minister of the Commonwealth;
  - (ii) in the event of the absence of the Governor-General out of Australia and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth – except at the request of the Governor-General, the Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;
  - (iii) in the event of the death, incapacity or removal of the Governor-General – except at the request of the Prime Minister of the Commonwealth; or
  - (iv) in the event of the death, incapacity or removal of the Governor-General and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth – except at the request of the Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;
- (d) a person so appointed shall not assume the administration of the Government of the Commonwealth unless he has taken on that occasion or has previously taken the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia;

- (e) a person so appointed shall cease to exercise and perform the powers, functions and authorities of the Governor-General vested in him when a successor to the Governor-General has taken the prescribed oaths or affirmations and has entered upon the duties of his office, or the incapacity or absence out of Australia of the Governor-General for the time being has ceased, as the case may be; and
- (f) for the purposes of this clause, a reference to absence out of Australia is a reference to absence out of Australia in a geographical sense but does not include absence out of Australia for the purpose of visiting a Territory that is under the administration of the Commonwealth of Australia.

IV. In pursuance of section 126 of the Constitution of the Commonwealth of Australia –

- (a) We authorize the Governor-General for the time being, by instrument in writing, to appoint any person, or any persons jointly or severally, to be his deputy or deputies within any part of the Commonwealth, to exercise in that capacity, during his pleasure, such powers and functions of the Governor-General as he thinks fit to assign to him or them by the instrument, but subject to the limitations expressed in this clause; and
- (b) We declare that a person who is so appointed to be deputy of the Governor-General shall not exercise a power or function of the Governor-General assigned to him on any occasion –
  - (i) except in accordance with the instrument of appointment;
  - (ii) except at the request of the Governor-General or the person for the time being administering the Government of the Commonwealth that he exercise that power or function on that occasion; and
  - (iii) unless he has taken on that occasion or has previously taken the Oath or Affirmation of Allegiance in the presence of the Governor-General, the Chief Justice or another Justice of the High Court of Australia or the Chief Judge or another Judge of the Federal Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth.

V. For the purposes of these Letters Patent –

- (a) a reference to the Oath or Affirmation of Allegiance is a reference to the Oath or Affirmation in accordance with the form set out in the Schedule to the Constitution of the Commonwealth of Australia; and
- (b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Us, Our heirs and successors according to law in the particular office and

to do right to all manner of people after the laws and usages of the Commonwealth of Australia, without fear or favour, affection or illwill.

- VI. We direct that these Letters Patent, each Commission appointing a Governor-General or person to administer the Government of the Commonwealth of Australia and each instrument of appointment of a deputy of the Governor-General shall be published in the official gazette of the Commonwealth of Australia.
- VII. We further direct that these Letters Patent shall take effect without affecting the efficacy of any Commission or appointment given or made before the date hereof or of anything done in pursuance of any such Commission or appointment, or of any oath or affirmation taken before that date for the purpose of any such Commission or appointment.
- VIII. We reserve full power from time to time to revoke, alter or amend these Letters Patent as We think fit.

GIVEN at Our Court

at Balmoral

on 21 August 1984

By Her Majesty's Command,

BOB HAWKE

*Prime Minister*

# Statute of Westminster Adoption Act 1942

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## STATUTE OF WESTMINSTER ADOPTION ACT 1942

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

### Preamble

WHEREAS certain legal difficulties exist which have created doubts and caused delays in relation to certain Commonwealth legislation, and to certain regulations made thereunder, particularly in relation to the legislation enacted, and regulations made, for securing the public safety and defence of the Commonwealth of Australia, and for the more effectual prosecution of the war in which His Majesty the King is engaged:

AND WHEREAS those legal difficulties will be removed by the adoption by the Parliament of the Commonwealth of Australia of sections two, three, four, five and six of the Statute of Westminster, 1931, and by making such adoption have effect as from the commencement of the war between His Majesty the King and Germany:

BE it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

### Short title

1. This Act may be cited as the *Statute of Westminster Adoption Act 1942*.<sup>1</sup>

### Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

### Adoption of Statute of Westminster, 1931

3. Sections two, three, four, five and six of the Imperial Act entitled the Statute of Westminster, 1931 (which Act is set out in the Schedule to this Act) are adopted and the adoption shall have effect from the third day of September, One thousand nine hundred and thirty-nine.

## THE SCHEDULE

### STATUTE OF WESTMINSTER, 1931

*An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.*

*(11th December 1931.)*

WHEREAS the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

AND WHEREAS it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

AND WHEREAS it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

AND WHEREAS it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

AND WHEREAS the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

NOW, THEREFORE, be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: –



### **Meaning of “Dominion” in this Act**

1. In this Act the expression “Dominion” means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

### **Validity of laws made by Parliament of a Dominion 28 and 29 Vict. c. 63**

2. (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.
- (2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

### **Power of Parliament of Dominion to legislate extra-territorially**

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

### **Parliament of United Kingdom not to legislate for Dominion except by consent**

4.<sup>2</sup>

### **Powers of Dominion Parliaments in relation to merchant shipping 57 and 58 Vict. c. 60**

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

### **Powers of Dominion Parliaments in relation to Courts of Admiralty 53 and 54 Vict. c. 27**

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty’s pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

**Saving for British North America Acts and application of the Act to Canada**

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.
- (2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.
- (3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada, or of any of the legislatures of the Provinces respectively.

**Saving for Constitution Acts of Australia and New Zealand**

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

**Saving with respect to States of Australia**

- 9.<sup>2</sup> (1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

**Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted**

- 10.<sup>2</sup> (1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.
- (3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

### Meaning of “Colony” in future Acts 52 and 53 Vict. c. 63

11. Notwithstanding anything in the Interpretation Act, 1889, the expression “Colony” shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

### Short title

12. This Act may be cited as the Statute of Westminster, 1931.

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## NOTES

1. Act No. 56, 1942; assented to 9 October 1942.
2. Sections 4, 9(2) and (3) and 10(2) of the Statute of Westminster 1931, in so far as they were part of the law of the Commonwealth, of a State or of a Territory, have been repealed by section 12 of the *Australia Act 1986*. The Parliament of the Commonwealth of Australia has on three occasions passed Acts requesting and consenting to the enactment by the Parliament of the United Kingdom of Acts extending to Australia. The Acts of the Parliaments of the Commonwealth and of the United Kingdom, respectively, are as follows:

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| <b>Australia</b>  | <b>United Kingdom</b>      |
|---|----------------------------|
| <i>Australia (Request and Consent) Act 1985</i>               | Australia Act, 1986        |
| <i>Christmas Island (Request and Consent) Act 1957</i>        | Christmas Island Act, 1958 |
| <i>Cocos (Keeling) Islands (Request and Consent) Act 1954</i> | Cocos Islands Act, 1955    |

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# Australia Act 1986

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## TABLE OF PROVISIONS

### Section

1. Termination of power of Parliament of United Kingdom to legislate for Australia
2. Legislative powers of Parliaments of States
3. Termination of restrictions on legislative powers of Parliaments of States
4. Powers of State Parliaments in relation to merchant shipping
5. Commonwealth Constitution, Constitution Act and Statute of Westminster not affected
6. Manner and form of making certain State laws
7. Powers and functions of Her Majesty and Governors in respect of States
8. State laws not subject to disallowance or suspension of operation
9. State laws not subject to withholding of assent or reservation
10. Termination of responsibility of United Kingdom Government in relation to State matters
11. Termination of appeals to Her Majesty in Council
12. Amendment of Statute of Westminster
13. Amendment of Constitution Act of Queensland
14. Amendment of Constitution Act of Western Australia
15. Method of repeal or amendment of this Act or Statute of Westminster
16. Interpretation
17. Short title and commencement

# Australia Act 1986

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

WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:

AND WHEREAS in pursuance of paragraph 51 (xxxviii) of the Constitution the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### **1 Termination of power of Parliament of United Kingdom to legislate for Australia**

No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the Commonwealth, to a State or to a Territory as part of the law of the Commonwealth, of the State or of the Territory.

### **2 Legislative powers of Parliaments of States**

- (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.
- (2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement

of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

### **3 Termination of restrictions on legislative powers of Parliaments of States**

- (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.
- (2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

### **4 Powers of State Parliaments in relation to merchant shipping**

Sections 735 and 736 of the Act of the Parliament of the United Kingdom known as the Merchant Shipping Act 1894, in so far as they are part of the law of a State, are hereby repealed.

### **5 Commonwealth Constitution, Constitution Act and Statute of Westminster not affected**

Sections 2 and 3(2) above:

- (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and
- (b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

### **6 Manner and form of making certain State Laws**

Notwithstanding sections 2 and 3(2) above, a law made after the commencement of this Act by the Parliament of a State respecting the constitution, powers or procedure of the Parliament of the State shall be of no force or effect unless it is made in such manner and form as may from time to time be required by a law made by that Parliament, whether made before or after the commencement of this Act.

## **7 Powers and functions of Her Majesty and Governors in respect of States**

- (1) Her Majesty's representative in each State shall be the Governor.
- (2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.
- (3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.
- (4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.
- (5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

## **8 State laws not subject to disallowance or suspension of operation**

An Act of the Parliament of a State that has been assented to by the Governor of the State shall not, after the commencement of this Act, be subject to disallowance by Her Majesty, nor shall its operation be suspended pending the signification of Her Majesty's pleasure thereon.

## **9 State laws not subject to withholding of assent or reservation**

- (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.
- (2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

## **10 Termination of responsibility of United Kingdom government in relation to State matters**

After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State.

## 11 Termination of appeals to Her Majesty in Council

- (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian Court.
- (2) Subject to subsection (4) below:
  - (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
  - (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.
- (3) The enactments referred to in subsection (2)(a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15

The Judicial Committee Act 1833

The Judicial Committee Act 1844

The Australian Constitutions Act 1850, section 28

The Colonial Courts of Admiralty Act 1890, section 6.

- (4) Nothing in the foregoing provisions of this section:
  - (a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or
  - (b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted:
    - (i) pursuant to leave granted by an Australian court on an application made before that commencement; or
    - (ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

but this subsection shall not be construed as permitting or enabling an appeal to Her Majesty in Council to be instituted or continued that could not have been instituted or continued if this section had not been enacted.



## 12 Amendment of Statute of Westminster

Sections 4, 9(2) and (3) and 10(2) of the Statute of Westminster 1931, in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

## 13 Amendment of Constitution Act of Queensland

- (1) The Constitution Act 1867-1978 of the State of Queensland is in this section referred to as the *Principal Act*.
- (2) Section 11A of the Principal Act is amended in subsection (3):
  - (a) by omitting from paragraph (a):
    - (i) “and Signet”; and
    - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and
  - (b) by omitting from paragraph (b):
    - (i) “and Signet”; and
    - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.
- (3) Section 11B of the Principal Act is amended:
  - (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
  - (b) by omitting subsection (1); and
  - (c) by omitting from subsection (2):
    - (i) “(2)”;
    - (ii) “this section and in”; and
    - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.
- (4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B,”.

## 14 Amendment of Constitution Act of Western Australia

- (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the *Principal Act*.
- (2) Section 50 of the Principal Act is amended in subsection (3):
  - (a) by omitting from paragraph (a):
    - (i) “and Signet”; and
    - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;

- (b) by omitting from paragraph (b):
    - (i) “and Signet”; and
    - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and
  - (c) by omitting from paragraph (c):
    - (i) “under the Great Seal of the United Kingdom”; and
    - (ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.
- (3) Section 51 of the Principal Act is amended:
- (a) by omitting subsection (1); and
  - (b) by omitting from subsection (2):
    - (i) “(2)”; and
    - (ii) “this section and in”; and
    - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

## **15 Method of repeal or amendment of this Act or Statute of Westminster**

- (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.
- (2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.
- (3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

## 16 Interpretation

- (1) In this Act, unless the contrary intention appears:

**appeal** includes a petition of appeal, and a complaint in the nature of an appeal.

**appeal to Her Majesty in Council** includes any appeal to Her Majesty.

**Australian court** means a court of a State or any other court of Australia or of a Territory other than the High Court.

**court** includes a judge, judicial officer or other person acting judicially.

**decision** includes determination, judgment, decree, order or sentence.

**Governor**, in relation to a State, includes any person for the time being administering the government of the State.

**State** means a State of the Commonwealth and includes a new State.

**the Commonwealth of Australia Constitution Act** means the Act of the Parliament of the United Kingdom known as the Commonwealth of Australia Constitution Act.

**the Constitution of the Commonwealth** means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time.

**the Statute of Westminster 1931** means the Act of the Parliament of the United Kingdom known as the Statute of Westminster 1931.

- (2) The expression **a law made by that Parliament** in section 6 above and the expression **a law made by the Parliament** in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.
- (3) A reference in this Act to the **Parliament of a State** includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

## 17 Short title and commencement

- (1) This Act may be cited as the *Australia Act 1986*.<sup>1</sup>
- (2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.<sup>1</sup>

## NOTES

1. Act No. 142, 1985; assented to 4 December 1985 and came into operation on 3 March 1986 at 5.00 a.m. Greenwich Mean Time (see *Gazette* 1986, No. S85, p.1).
2. In addition to this *Australia Act 1986* an Australia Act 1986, in substantially identical terms, was enacted by the United Kingdom Parliament (1986 Chapter 2) pursuant to a request made and consent given by the Parliament and Government of the Commonwealth in the *Australia (Request and Consent) Act 1986* and with the concurrence of all the States of Australia (see the *Australia Acts Request Act 1985* of each State).

# Index

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Note: In the reference to sections, the numbers to which the letters “cl.” are prefixed refer to the “covering clauses” of the Constitution Act. Numbers without that prefix refer to the sections of the Constitution or the other legislation.

This index does not form part of the Constitution or related materials, and is included for convenience of reference only.

| <i>Subject</i>  | <i>Page</i>  | <i>Section</i>             |
|---|--------------|----------------------------|
| <b>A</b>  |              |                            |
| ABSENCE FROM OFFICE   |              |                            |
| Governor-General, administration of Government in the event of    | 72, 73       | (s. III)                   |
| members of House of Representatives                               | 28, 29       | (s. 33, 38)                |
| President of Senate   | 25           | (ss. 18, 19, 21)           |
| senators  | 25           | (s. 20)                    |
| Speaker of House of Representatives                               | 28, 29       | (ss. 33, 36, 37)           |
| ACQUISITION OF PROPERTY   |              |                            |
| legislative powers  | 33           | (s. 51(xxxi))              |
| places for public purposes  | 34           | (s. 52(i))                 |
| with transfer of departments                                      | 45           | (s. 85)                    |
| ACQUISITION OF RAILWAYS   | 33           | (s. 51(xxxiii))            |
| ACQUISITION OF TERRITORIES  | 55           | (s. 122)                   |
| seat of Government  | 56           | (s. 125)                   |
| ACTS, <i>SEE</i> LAWS   |              |                            |
| ADMINISTRATOR OF GOVERNMENT                                       | 20<br>72-74  | (s. 4)<br>(ss. III, V-VII) |
| ADMINISTRATOR OF STATE GOVERNMENT                                 | 52<br>87     | (s. 110)<br>(s. 16(1))     |
| ADMIRALTY JURISDICTION  | 42           | (s. 76(iii))               |
| Colonial Court of Admiralty Act, 1890                             | 77<br>84     | (s. 6)<br>(s. 11(2), (3))  |
| ADMISSION TO COMMONWEALTH   |              |                            |
| continuance of Constitutions, power of Parliaments and laws after | 52           | (ss. 106-108)              |
| new States  | 55           | (s. 121)                   |
| ADULT ELECTORS, RIGHT TO VOTE OF                                  | 29           | (s. 41)                    |
| AFFIRMATION OF ALLEGIANCE   |              |                            |
| administrator of Government                                       | 72<br>73, 74 | (s. III(d))<br>(s. V)      |
| deputies of Governor-General                                      | 73, 74       | (ss. IV (b) (iii), V)      |
| Governor-General  | 72           | (s. II(b))                 |
| members of Parliament   | 30           | (s. 42)                    |
| form of   | 59           | (schedule)                 |

|   | <i>Page</i> | <i>Section</i>      |
|---|-------------|---------------------|
| AGE   |             |                     |
| maximum, of federal court Justices  | 40, 41      | (s. 72)             |
| minimum, of senators  | 25          | (s. 16)             |
| minimum, of members of House of Representatives   | 28          | (s. 34(i))          |
| AGE PENSIONS  | 32          | (s. 51(xxiii))      |
| AGREEMENTS WITH RESPECT TO STATE DEBTS  | 50, 51      | (s. 105A)           |
| AGREEMENTS WITH PUBLIC SERVICE, DISQUALIFICATION FOR PARLIAMENT BECAUSE OF  | 30          | (s. 44(v))          |
|   | 30, 31      | (s. 45)             |
| ALCOHOLIC LIQUIDS   | 53          | (s. 113)            |
| ALIENS  | 32          | (s. 51(xix))        |
| ALLEGIANCE, OATH OR AFFIRMATION OF  |             |                     |
| administrator of Government   | 72          | (s. III(d))         |
|   | 73, 74      | (s. V)              |
| deputies of Governor-General  | 73, 74      | (ss. IV(b)(iii), V) |
| Governor-General  | 72          | (s. II(b))          |
|   | 73, 74      | (s. V)              |
| members of Parliament   | 30          | (s. 42)             |
| form of   | 59          | (schedule)          |
| ALLEGIANCE TO FOREIGN POWER, DISQUALIFICATION FOR PARLIAMENT  | 30          | (s. 44(i))          |
|   | 30, 31      | (s. 45)             |
| ALLOWANCES  |             |                     |
| legislative powers  | 32, 33      | (s. 51(xxiiiA))     |
| members of Parliament   | 31          | (s. 48)             |
| retiring, officers transferred to public service of Commonwealth  | 44, 45      | (s. 84)             |
| ALTERATION (AMENDMENT) OF <i>AUSTRALIA ACT 1986</i>   | 86          | (s. 15)             |
| ALTERATION (AMENDMENT) OF BILLS   |             |                     |
| for appropriation or taxation, by Senate  | 34          | (s. 53)             |
| disagreement between Houses   | 35          | (s. 57)             |
| recommended by Governor-General   | 36          | (s. 58)             |
| ALTERATION (AMENDMENT) OF COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT, BY STATE ACTS   | 82          | (s. 5(b))           |
| ALTERATION (AMENDMENT) OF CONSTITUTION  | 57, 58      | (s. 128)            |
| Acts containing   | 60          | (n. 1)              |
| power to make, not affected by Statute of Westminster 1931  | 78          | (s. 8)              |
| powers conferred on Parliament by, not limited by repeal or amendment of <i>Australia Act 1986</i> or Statute of Westminster 1931 | 86          | (s. 15(3))          |
| by State Acts   | 82          | (s. 5(b))           |
| ALTERATION (AMENDMENT) OF ENGLISH LAW   |             |                     |
| power of Parliament   | 77          | (s. 2(2))           |
| powers of State Parliaments   | 82          | (s. 3(2))           |
| ALTERATION OF NUMBER OF MEMBERS OF HOUSE OF REPRESENTATIVES   | 27          | (s. 27)             |
| Bills to alter proportionate or minimum representation of States  | 57, 58      | (s. 128)            |
| ALTERATION OF NUMBER OF SENATORS  | 21          | (s. 7)              |
| Bills to alter proportionate representation of States   | 57, 58      | (s. 128)            |
| regularity in rotation  | 23          | (s. 14)             |
| ALTERATION (AMENDMENT) OF STATE LAWS  |             |                     |
| within concurrent powers  | 52          | (s. 108)            |
| Constitutions   | 52          | (s. 106)            |
| ALTERATION OF STATE LIMITS  | 55          | (s. 123)            |
|   | 57, 58      | (s. 128)            |
| ALTERATION (AMENDMENT) OF STATUTE OF WESTMINSTER  | 86          | (s. 15)             |
| by State Acts   | 82          | (s. 5(b))           |
| APPEALS   |             |                     |
| High Court jurisdiction   | 41          | (s. 73)             |
| interpretation in <i>Australia Act 1986</i>   | 87          | (s. 16(1))          |

|   | <i>Page</i> | <i>Section</i>   |
|---|-------------|------------------|
| APPEALS TO PRIVY COUNCIL  |             |                  |
| from High Court decisions   | 41, 42      | (s. 74)          |
| laws limiting   | 67          | (n. 17)          |
| interpretation in <i>Australia Act 1986</i>                           | 87          | (s. 16(1))       |
| termination   | 84          | (s. 11)          |
| APPOINTMENTS  |             |                  |
| administrator of Government   | 20          | (s. 4)           |
|   | 72-74       | (ss. III, V-VII) |
| civil servants  | 38          | (s. 67)          |
| deputies of Governor-General  | 56          | (s. 126)         |
|   | 73, 74      | (ss. IV-VII)     |
| Governor-General  | 20          | (s. 2)           |
|   | 71, 72      | (s. II)          |
| Commission for  | 74          | (ss. VI, VII)    |
| first   | 17          | (cl. 3)          |
| oath or affirmation of allegiance                                     | 73, 74      | (s. V)           |
| Inter-State Commissioners   | 49          | (s. 103(i))      |
| Justices of High Court and other federal courts                       | 40, 41      | (s. 72)          |
| Ministers   | 37          | (s. 64)          |
| Senate casual vacancies   | 23-25       | (s. 15)          |
|   | 62, 63      | (n. 9)           |
| State Governors   | 83          | (s. 7(3))        |
| APPROPRIATION OF REVENUE OR MONEYS                                    | 44          | (ss. 81, 83)     |
| Bills   | 34          | (ss. 53, 54)     |
| recommendation by Governor-General                                    | 35          | (s. 56)          |
| ARBITRATION AND CONCILIATION  | 33          | (s. 51 (xxxv))   |
| ARMY DEFENCE, <i>SEE</i> DEFENCE                                      |             |                  |
| ASSENT TO BILLS   | 36          | (ss. 58-60)      |
| admiralty jurisdiction, laws relating to                              | 77          | (s. 6)           |
| appeals to Queen in Council, laws limiting                            | 41, 42      | (s. 74)          |
| State laws  | 83          | (ss. 8, 9)       |
| ASTRONOMICAL OBSERVATIONS   | 32          | (s. 51 (viii))   |
| AUDIT   |             |                  |
| legislative powers relating to  | 33          | (s. 51 (xxxvi))  |
| provisional laws applying   | 48          | (s. 97)          |
| <i>AUSTRALIA ACT 1986</i>   | 79          | (n. 2)           |
|   | 81-88       |                  |
| AUSTRALIAN CAPITAL TERRITORY (SEAT OF GOVERNMENT)                     | 56          | (s. 125)         |
| legislative powers  | 34          | (s. 52(i))       |
| AUSTRALIAN CONSTITUTIONS ACT 1850, SECTION 28 REPEALED                | 84          | (s. 11 (2), (3)) |
| AUSTRALIAN COURT, INTERPRETATION IN <i>AUSTRALIA ACT 1986</i>         | 87          | (s. 16(1))       |
| AUSTRALIAN COURTS ACT 1828, SECTION 15 REPEALED                       | 84          | (s. 11 (2), (3)) |
| AUTHORITIES OF COLONIES, TRANSFER OF POWERS TO                        |             |                  |
| EXECUTIVE GOVERNMENT OF COMMONWEALTH                                  | 39          | (s. 70)          |
| AUTHORITIES OF STATES, PREFERENCE OR DISCRIMINATION AS TO RAILWAYS BY | 49          | (s. 102)         |
| <b>B</b>  |             |                  |
| BANKING   | 32          | (s. 51 (xiii))   |
| BANKRUPTCY  |             |                  |
| disqualification for Parliament                                       | 30          | (s. 44(iii))     |
|   | 31          | (s. 45(ii))      |
| legislative powers  | 32          | (s. 51 (xvii))   |
| BEACONS   |             |                  |
| legislative powers  | 32          | (s. 51 (vii))    |
| transfer of State departments responsible for                         | 38          | (s. 69)          |

|   | <i>Page</i> | <i>Section</i>   |
|---|-------------|------------------|
| BENEFITS  | 32, 33      | (s. 51 (xxiiiA)) |
| BILLS (PROPOSED LAWS)   | 34-36       | (ss. 53-60)      |
| to alter Constitution   | 57, 58      | (s. 128)         |
| <i>see also</i> assent to Bills                                     |             |                  |
| BILLS OF EXCHANGE   | 32          | (s. 51 (xvi))    |
| BORDERS, STATES   | 55          | (s. 123)         |
| alteration  | 57, 58      | (s. 128)         |
| industrial disputes extending beyond                                | 55          | (s. 123)         |
| State banking extending beyond                                      | 57, 58      | (s. 128)         |
| State insurance extending beyond                                    | 33          | (s. 51 (xxxv))   |
| <i>see also</i> extra-territorial legislative power                 | 32          | (s. 51 (xiii))   |
|   | 32          | (s. 51 (xiv))    |
| BORROWING BY COMMONWEALTH   |             |                  |
| Commonwealth-State agreements                                       | 50          | (s. 105A(1) (f)) |
| legislative powers  | 32          | (s. 51 (iv))     |
| BORROWING BY STATES   | 50          | (s. 105A(1) (f)) |
| BOUNTIES  | 46          | (s. 86)          |
| legislative powers  | 32          | (s. 51 (iii))    |
| State powers  | 46, 47      | (s. 90)          |
| transfer of property with transfer of State departments controlling | 47          | (s. 91)          |
|   | 45          | (s. 85(i))       |
| BRITISH SHIPS, COMMONWEALTH LAWS IN FORCE ON                        | 18          | (cl. 5)          |
| BUOYS   |             |                  |
| legislative powers  | 32          | (s. 51 (vii))    |
| transfer of State departments responsible for                       | 38          | (s. 69)          |
| <b>C</b>  |             |                  |
| CANBERRA (SEAT OF GOVERNMENT)                                       | 56          | (s. 125)         |
| legislative powers  | 34          | (s. 52(i))       |
| CASUAL VACANCIES IN SENATE  | 23-25       | (s. 15)          |
|   | 62, 63      | (n. 9)           |
| CENSUS AND STATISTICS   | 32          | (s. 51 (xi))     |
| CHARGES AND FEES  |             |                  |
| Bills containing provisions for                                     | 34          | (s. 53)          |
| inspection levies on goods  | 53          | (s. 112)         |
| by members of Parliament, for services rendered                     | 31          | (s. 45(iii))     |
| CHIEF JUSTICE   | 40          | (s. 71)          |
| CHILD ENDOWMENT   | 32, 33      | (s. 51 (xxiiiA)) |
| CHILDREN, CUSTODY AND GUARDIANSHIP OF                               | 32          | (s. 51 (xxii))   |
| CITIZENS OF FOREIGN POWER, DISQUALIFICATION FOR PARLIAMENT          | 30          | (s. 44(i))       |
|   | 30, 31      | (s. 45)          |
| CIVIL PROCESS, SERVICE AND EXECUTION OF                             | 33          | (s. 51 (xxiv))   |
| CIVIL SERVANTS  |             |                  |
| appointment and removal   | 38          | (s. 67)          |
| of departments transferred to Commonwealth                          | 44, 45      | (s. 84)          |
| CIVIL SERVICE DEPARTMENTS, <i>SEE</i> DEPARTMENTS                   |             |                  |
| COINAGE   |             |                  |
| by States   | 53          | (s. 115)         |
| legislative powers  | 32          | (s. 51 (xii))    |
| COLONIAL BOUNDARIES ACT, 1895                                       | 19          | (cl. 8)          |
| COLONIAL COURT OF ADMIRALTY ACT, 1890                               |             |                  |
| sections 4 and 7  | 77          | (s. 6)           |
| section 6   | 84          | (s. 11(2), (3))  |



|   | <i>Page</i> | <i>Section</i>             |
|---|-------------|----------------------------|
| COLONIAL GOVERNORS' POWERS VESTED IN GOVERNOR-GENERAL   | 39          | (s. 70)                    |
| COLONIAL LAWS VALIDITY ACT, 1865  |             |                            |
| not applied to laws made by Parliament  | 77          | (s. 2(1))                  |
| not applied to laws made by State Parliaments   | 82          | (s. 3(1))                  |
| COLONIES  |             |                            |
| continuance of Constitutions, power of Parliaments and laws after admission to Commonwealth   | 52          | (s. 106)                   |
| laws made after passing of Commonwealth of Australia Constitution Act   | 18          | (cl. 4)                    |
| naturalization under law of, qualification for Parliament   | 28          | (s. 34(ii))                |
| powers and functions vested in Executive Government   | 39          | (s. 70)                    |
| "COLONY"  |             |                            |
| meaning in future United Kingdom Acts   | 79          | (s. 11)                    |
| COMMAND IN CHIEF OF FORCES  | 38          | (s. 68)                    |
| COMMERCE, <i>SEE</i> TRADE AND COMMERCE   |             |                            |
| COMMISSION OF APPOINTMENT OF GOVERNOR-GENERAL, ADMINISTRATOR OR DEPUTY  | 74          | (ss. VI, VII)              |
| COMMONWEALTH  | 18          | (cl. 6)                    |
| acquisition of property   |             |                            |
| legislative powers  | 33          | (ss. 51 (xxxix), (xxxiii)) |
|   | 34          | (s. 52(i))                 |
| with transfer of departments  | 45          | (s. 85)                    |
| acquisition of territories  | 53          | (s. 111)                   |
|   | 55          | (s. 122)                   |
| seat of Government  | 56          | (s. 125)                   |
| admission of States   | 52          | (ss. 106-108)              |
|   | 55          | (s. 121)                   |
| application of Colonial Boundaries Act 1895   | 19          | (cl. 8)                    |
| Constitutional powers, appeals involving  | 41, 42      | (ss. 74, 76(i))            |
|   | 67          | (n. 17)                    |
|   | 84          | (s. 11)                    |
| departments transferred to  | 38          | (s. 69)                    |
|   | 44, 45      | (ss. 84, 85)               |
| deputies of Governor-General for parts of establishment   | 56          | (s. 126)                   |
| executive power   | 18          | (cl. 4)                    |
| exclusive jurisdiction  | 37          | (s. 61)                    |
| federal in nature   | 53          | (s. 111)                   |
| indissoluble  | 17          | (preamble, cl. 3)          |
| judicial power  | 17          | (preamble)                 |
| jurisdiction over parts of States surrendered to  | 40          | (s. 71)                    |
| legislative power   | 53          | (s. 111)                   |
| name  | 20          | (s. 1)                     |
| not included in expression "Colony" in United Kingdom Acts  | 17          | (cl. 3)                    |
| proceedings by or against   | 79          | (s. 11)                    |
| proclamation  | 42, 43      | (ss. 75 (iii), 78)         |
| text of   | 17          | (cl. 3)                    |
| property of State not taxable by  | 69, 70      |                            |
| protection of States by   | 53          | (s. 114)                   |
| seat of Government  | 54          | (s. 119)                   |
|   | 34          | (s. 52(i))                 |
|   | 56          | (s. 125)                   |
| trade within  | 47          | (s. 92)                    |
| United Kingdom Parliament's power to legislate for terminated   | 81          | (s. 1)                     |
| <i>see also</i> Executive Government, Judicature, Parliament  |             |                            |
| COMMONWEALTH OF AUSTRALIA CONSTITUTION, <i>SEE</i> CONSTITUTION   |             |                            |
| COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT, <i>SEE</i> CONSTITUTION ACT   |             |                            |
| COMMONWEALTH OF AUSTRALIA GAZETTE, PUBLICATION OF APPOINTMENT OF GOVERNOR-GENERAL, ADMINISTRATOR OF GOVERNMENT OR DEPUTY OF GOVERNOR-GENERAL IN | 74          | (s. VI)                    |

|  | <i>Page</i> | <i>Section</i>  |
|--|-------------|-----------------|
| COMMONWEALTH OFFICERS  |             |                 |
| appointment and removal  | 38          | (s. 67)         |
| of departments transferred to Commonwealth   | 44, 45      | (s. 84)         |
| legislative power incidental to powers vested in Ministers   | 33          | (s. 51 (xxxix)) |
|  | 30          | (s. 44)         |
|  | 37, 38      | (ss. 64-66)     |
| religious test as qualification  | 53          | (s. 116)        |
| writ of Mandamus or prohibition or injunction sought against   | 42          | (s. 75(v))      |
| COMMONWEALTH PROPERTY, ACQUISITION OF  |             |                 |
| legislative powers   | 33          | (s. 51 (xxxi))  |
| places for public purposes   | 34          | (s. 52(i))      |
| with transfer of departments   | 45          | (s. 85)         |
| COMMONWEALTH PROPERTY, TAXATION BY STATES  | 53          | (s. 114)        |
| COMMONWEALTH-STATE PUBLIC DEBT AGREEMENTS  | 50, 51      | (s. 105A)       |
| COMMUNICATION SERVICES   |             |                 |
| legislative powers   | 32          | (s. 51(v))      |
| transfer of State departments responsible for  | 38          | (s. 69)         |
| COMPENSATION   |             |                 |
| officers not retained in service of Commonwealth on transfer of departments  | 44, 45      | (s. 84)         |
| property acquired from State on transfer of departments  | 45          | (s. 85(iii))    |
| CONCILIATION AND ARBITRATION   | 33          | (s. 51 (xxxv))  |
| CONCURRENT LEGISLATIVE POWER   | 52          | (ss. 107, 108)  |
| CONSERVATION, RIGHTS TO REASONABLE USE OF RIVER WATERS FOR   | 49          | (s. 100)        |
| CONSOLIDATED REVENUE FUND  | 44          | (ss. 81, 82)    |
| salaries payable from  |             |                 |
| Governor-General's   | 20          | (s. 3)          |
| Ministers  | 38          | (s. 66)         |
| CONSTITUTION   | 19-58       |                 |
| commencement   | 18          | (cl. 4)         |
| Commonwealth united under  | 17          | (preamble)      |
| execution and maintenance  | 37          | (s. 61)         |
| jurisdiction in matters arising under or involving interpretation  | 42, 43      | (ss. 76(i), 77) |
| laws made under; binding   | 18          | (cl. 5)         |
| not affected by legislative powers of State Parliaments  | 82          | (s. 5)          |
| power to repeal or alter not affected by Statute of Westminster 1931   | 78          | (s. 8)          |
| State debt agreements binding, notwithstanding   | 51          | (s. 105A(5))    |
| <i>see also</i> alteration of Constitution, State Constitutions  |             |                 |
| CONSTITUTION ACT   | 17-58       |                 |
| binding in operation   | 18          | (cl. 5)         |
| commencement   | 18          | (cl. 4)         |
| not affected by legislative powers of State Parliaments  | 82          | (s. 5)          |
| power to repeal or alter not affected by Statute of Westminster 1931   | 78          | (s. 8)          |
| CONSTITUTION ACT OF QUEENSLAND, AMENDMENT BY <i>AUSTRALIA ACT 1986</i>   | 85          | (s. 13)         |
| CONSTITUTION ACT OF WESTERN AUSTRALIA  |             |                 |
| amendment by <i>Australia Act 1986</i>   | 85, 86      | (s. 14)         |
| included in expression "a law made by that Parliament" in s. 6 (manner and form of making laws) and s. 9 (withholding of assent or reservation) of <i>Australia Act 1986</i> | 87          | (s. 16(2))      |
| CONSULS, JURISDICTION IN MATTERS AFFECTING   | 42          | (s. 75(ii))     |
| CONTRACTORS WITH GOVERNMENT, DISQUALIFICATION FOR PARLIAMENT   | 30          | (s. 44(v))      |
|  | 30, 31      | (s. 45)         |
| CONVICTION FOR OFFENCE, DISQUALIFICATION FOR PARLIAMENT  | 30          | (s. 44(ii))     |
|  | 30, 31      | (s. 45)         |
| COPYRIGHTS   | 32          | (s. 51 (xviii)) |
| CORPORATIONS   | 32          | (s. 51 (xx))    |
| banks  | 32          | (s. 51 (xiii))  |

|  | <i>Page</i> | <i>Section</i>        |
|--|-------------|-----------------------|
| <b>COUNTRIES OTHER THAN AUSTRALIA</b>  |             |                       |
| aliens from  | 32          | (s. 51 (xix))         |
| allegiance to or citizen of, disqualification for Parliament                   | 30          | (s. 44(i))            |
|  | 30, 31      | (s. 45)               |
| representatives of, jurisdiction in matters affecting                          | 42          | (s. 75(ii))           |
| Pacific islands, relations of Commonwealth with                                | 33          | (s. 51 (xxx))         |
| States' relations with   | 81          | (s. 2(2))             |
| trade and commerce with  | 32          | (s. 51(i))            |
| "COURT", INTERPRETATION IN <i>AUSTRALIA ACT 1986</i>                           | 87          | (s. 16(1))            |
| <b>COURTS</b>  |             |                       |
| Admiralty jurisdiction   | 40-43       | (ss. 71-80)           |
|  | 42          | (s. 76(iii))          |
|  | 77          | (s. 6)                |
|  | 84          | (s. 11(2), (3))       |
| appeals from decisions   |             |                       |
| to High Court  | 41          | (s. 73)               |
| to Privy Council (Her Majesty in Council)                                      | 41, 42      | (s. 74)               |
|  | 84          | (s. 11)               |
| execution of judgments   | 33          | (s. 51 (xxiv))        |
| laws binding upon  | 18          | (cl. 5)               |
| legislative power incidental to powers vested in Federal Judicature            | 33          | (s. 51 (xxxix))       |
| <i>see also</i> State courts   |             |                       |
| <b>CREDIT OF COMMONWEALTH, BORROWING MONEY ON</b>                              |             |                       |
|  | 32          | (s. 51 (iv))          |
| <b>CRIMINALS, INFLUX OF</b>  |             |                       |
|  | 33          | (s. 51 (xxviii))      |
| <b>CROWN</b>   |             |                       |
| Commonwealth united under  | 17          | (preamble)            |
| office of profit under; or pension payable during pleasure of                  | 30          | (s. 44 (iv))          |
|  | 30, 31      | (s. 45)               |
| <i>see also</i> Queen  |             |                       |
| <b>CROWN LANDS WITHIN TERRITORY OF SEAT OF GOVERNMENT</b>                      |             |                       |
|  | 56          | (s. 125)              |
| <b>CURRENCY</b>  |             |                       |
| legal tender   | 53          | (s. 115)              |
| legislative powers   | 32          | (s. 51 (xii), (xiii)) |
| <b>CUSTODY OF INFANTS</b>  |             |                       |
|  | 32          | (s. 51 (xxii))        |
| <b>CUSTODY OF OFFENDERS AGAINST COMMONWEALTH LAWS</b>                          |             |                       |
|  | 54          | (s. 120)              |
| <b>CUSTOMS DUTIES</b>  |             |                       |
|  | 46-48       | (ss. 86-90, 92-95)    |
| laws imposing  | 34, 35      | (s. 55)               |
| transfer of State departments responsible for                                  | 38          | (s. 69)               |
| transfer and acquisition of property in connexion with                         | 45          | (s. 85(i))            |
| <br><b>D</b>   |             |                       |
| <b>DEADLOCK BETWEEN HOUSES OF PARLIAMENT OVER BILL</b>                         |             |                       |
| to alter Constitution  | 35          | (s. 57)               |
|  | 57, 58      | (s. 128)              |
| <b>DEATH OF GOVERNOR-GENERAL, ADMINISTRATION OF GOVERNMENT IN THE EVENT OF</b> |             |                       |
|  | 72, 73      | (s. III)              |
| <b>DEBTS, LEGAL TENDER IN PAYMENT</b>  |             |                       |
|  | 53          | (s. 115)              |
| <b>DEBTS OF STATES TAKEN OVER BY COMMONWEALTH</b>                              |             |                       |
| interest on  | 50, 51      | (ss. 105, 105A)       |
|  | 46          | (s. 87)               |
| "DECISION", INTERPRETATION IN <i>AUSTRALIA ACT 1986</i>                        | 87          | (s. 16(1))            |
| <b>DEFENCE</b>   |             |                       |
|  | 54          | (s. 119)              |
| command in chief of forces   | 38          | (s. 68)               |
| legislative powers   | 32          | (s. 51 (vi))          |
|  | 33          | (s. 51 (xxxii))       |
| State forces   | 53          | (s. 114)              |
| transfer of State departments responsible for                                  | 38          | (s. 69)               |

|  | <i>Page</i>  | <i>Section</i>      |
|--|--------------|---------------------|
| DEFENCE FORCE OFFICERS OR MEMBERS,<br>OFFICE OF PROFIT DISQUALIFICATION NOT APPLICABLE | 30           | (s. 44)             |
| DENTAL SERVICES  | 32, 33       | (s. 51 (xxiiiA))    |
| DEPARTMENTS  |              |                     |
| administration   | 37           | (s. 64)             |
| legislative powers   | 33           | (s. 51 (xxxix))     |
| exclusive  | 34           | (s. 52(ii))         |
| Ministers for  | 30           | (s. 44)             |
|  | 37, 38       | (ss. 64-66)         |
| office of profit disqualification not applicable                                       | 30           | (s. 44)             |
| transferred to Commonwealth  | 34           | (s. 52(ii))         |
|  | 38           | (s. 69)             |
|  | 44, 45       | (ss. 84, 85)        |
| DEPUTIES OF GOVERNOR-GENERAL   | 56           | (s. 126)            |
|  | 73, 74       | (ss. IV-VII)        |
| DESIGNS, PATENTS OF  | 32           | (s. 51 (xviii))     |
| DETENTION OF OFFENDERS AGAINST COMMONWEALTH LAWS                                       | 54           | (s. 120)            |
| DIPLOMATS OF OTHER COUNTRIES, JURISDICTION IN MATTERS AFFECTING                        | 42           | (s. 75(ii))         |
| DISABILITY ON RESIDENTS OF OTHER STATES, STATES MAY NOT IMPOSE                         | 54           | (s. 117)            |
| DISAGREEMENT BETWEEN HOUSES OF PARLIAMENT OVER BILL<br>to alter Constitution           | 35<br>57, 58 | (s. 57)<br>(s. 128) |
| DISALLOWANCE OF LAWS<br>of States  | 36<br>83     | (s. 59)<br>(s. 8)   |
| DISCRIMINATION   |              |                     |
| railways, by States  | 49           | (s. 102)            |
| residents of other States, by States   | 54           | (s. 117)            |
| taxation between States  | 32           | (s. 51 (iii))       |
| trade, commerce or revenue between States or parts of States                           | 49           | (s. 99)             |
| DISPUTED ELECTIONS   | 31           | (s. 47)             |
| DISQUALIFICATION   |              |                     |
| for Parliament   | 30, 31       | (ss. 44-46)         |
| from voting  | 26           | (s. 25)             |
| DISSOLUTION OF COMMONWEALTH  | 17           | (preamble)          |
| DISSOLUTION OF HOUSE OF REPRESENTATIVES  | 21           | (s. 5)              |
|  | 27           | (s. 28)             |
| issue of writs for general election after  | 28           | (s. 32)             |
| DISSOLUTION OF SENATE  | 35           | (s. 57)             |
| issue of writs for elections   | 22           | (s. 12)             |
| rotation of senators after   | 22, 23       | (s. 13)             |
| DISTILLED LIQUIDS  | 53           | (s. 113)            |
| DIVISIONS, ELECTORAL   |              |                     |
| House of Representatives   | 27           | (s. 29)             |
| Senate   | 21           | (s. 7)              |
| DIVORCE  | 32           | (s. 51 (xxii))      |
| DOUBLE DISSOLUTION   | 35           | (s. 57)             |
| DURATION OF HOUSE OF REPRESENTATIVES   | 27           | (s. 28)             |
| DUTIES OF CUSTOMS AND EXCISE   | 46-48        | (ss. 86-90, 92-95)  |
| laws imposing  | 34, 35       | (s. 55)             |
| transfer of State departments responsible for  | 38           | (s. 69)             |
| transfer and acquisition of property with  | 45           | (s. 85(i))          |

|  | <i>Page</i> | <i>Section</i>  |
|--|-------------|-----------------|
| <b>E</b>   |             |                 |
| EDUCATION  |             |                 |
| student benefits   | 32, 33      | (s. 51(xxiiiA)) |
| ELECTION OF PRESIDENT OF SENATE                          | 25          | (s. 17)         |
| ELECTION OF SPEAKER OF HOUSE OF REPRESENTATIVES          | 28, 29      | (s. 35)         |
| ELECTIONS  |             |                 |
| disputed   | 31          | (s. 47)         |
| House of Representatives (general elections)             | 26-28       | (ss. 24-33)     |
| right to vote  | 29          | (s. 41)         |
| Senate   | 21-23       | (ss. 7-13)      |
| simultaneous   | 61          | (n. 6)          |
| summoning Parliament after                               | 63          | (n. 10)         |
| <i>see also</i> voting                                   | 21          | (s. 5)          |
| ELECTORAL DIVISIONS                                      |             |                 |
| House of Representatives                                 | 27          | (s. 29)         |
| Senate   | 21          | (s. 7)          |
| ELECTORS   |             |                 |
| alteration of Constitution, approval by                  | 57, 58      | (s. 128)        |
| alteration of State limits, approval by                  | 55          | (s. 123)        |
| members of Parliament must be, or be qualified to become | 25          | (s. 16)         |
|  | 28          | (s. 34(i))      |
| majorities required, in referenda to alter Constitution  | 57, 58      | (s. 128)        |
| right to vote  | 29          | (s. 41)         |
| to vote only once  | 22          | (s. 8)          |
|  | 27, 28      | (s. 30)         |
| ELECTORS, QUALIFICATION OF                               |             |                 |
| House of Representatives elections                       | 27, 28      | (s. 30)         |
| referenda to alter Constitution                          | 57, 58      | (s. 128)        |
| Senate elections   | 22          | (s. 8)          |
| EMIGRATION   | 33          | (s. 51(xxvii))  |
| EQUALITY OF STATE RESIDENTS                              | 54          | (s. 117)        |
| ESTABLISHMENT OF COMMONWEALTH                            | 18          | (cl. 4)         |
| ESTABLISHMENT OF DEPARTMENTS OF STATE                    | 37          | (s. 64)         |
| ESTABLISHMENT OF NEW STATES                              | 55          | (s. 121)        |
| saving of Constitutions on                               | 52          | (s. 106)        |
| saving of power of Parliaments on                        | 52          | (s. 107)        |
| EXCISE DUTIES  | 46          | (s. 86)         |
| exclusive powers over                                    | 46, 47      | (s. 90)         |
| laws imposing  | 34, 35      | (s. 55)         |
| revenue from   | 46          | (s. 87)         |
| transfer of State departments responsible for            | 38          | (s. 69)         |
| transfer and acquisition of property in connexion with   | 45          | (s. 85(i))      |
| EXCLUSIVE JURISDICTION OF COMMONWEALTH                   | 53          | (s. 111)        |
| EXCLUSIVE JURISDICTION OF FEDERAL COURTS                 | 43          | (s. 77(ii))     |
| EXCLUSIVE POWERS OF PARLIAMENT                           | 33, 34      | (s. 52)         |
|  | 52          | (s. 107)        |
| over customs, excise and bounties                        | 46, 47      | (s. 90)         |
| EXECUTION OF CONSTITUTION AND LAWS                       | 37          | (s. 61)         |
| control of forces to                                     | 32          | (s. 51(vi))     |
| relating to trade and commerce                           | 49          | (s. 101)        |
| EXECUTION OF PROCESS                                     | 33          | (s. 51(xxiv))   |
| EXECUTIVE COUNCIL  | 37          | (ss. 62-64)     |

|   | <i>Page</i> | <i>Section</i>       |
|---|-------------|----------------------|
| EXECUTIVE GOVERNMENT (GOVERNMENT OF COMMONWEALTH)                                   | 37-39       | (ss. 61-70)          |
| customs, excise and bounties passed to  | 46          | (s. 86)              |
| departments transferred to  |             |                      |
| legislative powers in matters relating to   | 34          | (s. 52(ii))          |
| officers subject to   | 44, 45      | (s. 84)              |
| legislative powers incidental to powers vested in                                   | 33          | (s. 51 (xxxix))      |
| revenues or moneys raised or received by  | 44          | (ss. 81, 82)         |
| EXECUTIVE POWER OF COMMONWEALTH   | 37          | (s. 61)              |
| EXPENDITURE   |             |                      |
| audit, provisional laws applying to   | 48          | (s. 97)              |
| customs and excise duty revenue applied to  | 46          | (s. 87)              |
|   | 46          | (s. 89(ii))          |
|   | 47          | (s. 93(ii))          |
| revenue applied to, in first instance   | 44          | (s. 82)              |
| <i>see also</i> revenue   |             |                      |
| EXPORT BOUNTIES   | 46          | (s. 86)              |
| legislative powers  | 32          | (s. 51 (iii))        |
|   | 46, 47      | (s. 90)              |
| State powers  | 47          | (s. 91)              |
| transfer of property with transfer of State departments controlling                 | 45          | (s. 85(i))           |
| EXPORT INSPECTION CHARGES   | 53          | (s. 112)             |
| EXTERNAL AFFAIRS AND RELATIONS  | 33          | (ss. 51 (xxix, xxx)) |
| jurisdiction in matters relating to   | 42          | (s. 75 (i), (ii))    |
| States  | 81, 82      | (s. 2(2))            |
| EXTRA-TERRITORIAL LEGISLATIVE POWER   | 77          | (s. 3)               |
| fisheries within Australian waters  | 32          | (s. 51 (x))          |
| State Parliaments   | 81          | (s. 2(1))            |
| EXTRA-TERRITORIAL OPERATION OF CONSTITUTION ACT<br>AND LAWS MADE UNDER CONSTITUTION | 18          | (cl. 5)              |
| <b>F</b>  |             |                      |
| FAMILY ALLOWANCES   | 32, 33      | (s. 51 (xxiiiA))     |
| FEDERAL CAPITAL (SEAT OF GOVERNMENT)  | 56          | (s. 125)             |
| legislative powers  | 34          | (s. 52(i))           |
| FEDERAL COMMONWEALTH  | 17          | (preamble, cl. 3)    |
| FEDERAL COUNCIL OF AUSTRALASIA  |             |                      |
| laws passed by  | 18          | (cl. 7)              |
| Acts repealing  | 61          | (n. 4)               |
| exercise of powers exercised only by  | 33          | (s. 51 (xxxviii))    |
| FEDERAL COUNCIL OF AUSTRALASIA ACT 1885, REPEAL OF                                  | 18          | (cl. 7)              |
| FEDERAL COURTS  | 40          | (s. 71)              |
| appeals from  | 41          | (s. 73(ii))          |
| Justices' appointment, tenure and remuneration                                      | 40, 41      | (s. 72)              |
| jurisdiction  | 42, 43      | (s. 77 (i), (ii))    |
| FEDERAL EXECUTIVE COUNCIL   | 37          | (ss. 62, 63)         |
| Ministers shall be members  | 37          | (s. 64)              |
| FEDERAL JUDICATURE  | 40-43       | (ss. 71-80)          |
| legislative power incidental to powers vested in                                    | 33          | (s. 51 (xxxix))      |
| <i>see also</i> courts  |             |                      |
| FEDERAL JURISDICTION, COURTS INVESTED WITH  | 40          | (s. 71)              |
| appeals from  | 41          | (s. 73(ii))          |
| judges  | 43          | (s. 79)              |
| legislative powers  | 43          | (s. 77 (ii, iii))    |
| FEDERAL PARLIAMENT, <i>SEE</i> PARLIAMENT   |             |                      |

|  | <i>Page</i> | <i>Section</i>      |
|--|-------------|---------------------|
| FEDERAL SUPREME COURT  | 40          | (s. 71)             |
| FEEs AND CHARGES   |             |                     |
| Bills containing provisions for  | 34          | (s. 53)             |
| inspection levies on goods   | 53          | (s. 112)            |
| by members of Parliament, for services rendered  | 31          | (s. 45(iii))        |
| FERMENTED LIQUIDS  | 53          | (s. 113)            |
| FINANCE  | 44-48       | (ss. 81-97)         |
|  | 50, 51      | (ss.105, 105A)      |
| audit  |             |                     |
| legislative powers relating to   | 33          | (s. 51 (xxxvi))     |
| provisional laws applying to   | 48          | (s. 95)             |
| <i>see also</i> expenditure, revenue   |             |                     |
| FINANCIAL AGREEMENTS WITH RESPECT TO STATE DEBTS   | 50, 51      | (s. 105A)           |
| FINANCIAL ASSISTANCE TO STATES   | 48          | (s. 96)             |
| FINANCIAL CORPORATIONS   | 32          | (s. 51 (xx))        |
| banks  | 32          | (s. 51 (xiii))      |
| FINES  |             |                     |
| Bills containing provisions for  | 34          | (s. 53)             |
| sitting in Parliament when disqualified  | 31          | (s. 46)             |
| FISHERIES  | 32          | (s. 51 (x))         |
| FOREIGN AFFAIRS AND RELATIONS  | 33          | (s. 51 (xxix, xxx)) |
| jurisdiction in matters relating to  | 42          | (s. 75 (i), (ii))   |
| FOREIGN CORPORATIONS   | 32          | (s. 51 (xviii))     |
| FOREIGN COUNTRIES  |             |                     |
| aliens from  | 32          | (s. 51 (xix))       |
| allegiance to or citizen of, disqualification for Parliament   | 30          | (s. 44 (i))         |
|  | 30, 31      | (s. 45)             |
| representatives of, jurisdiction in matters affecting  | 42          | (s. 75 (ii))        |
| Pacific islands, relations of Commonwealth with  | 33          | (s. 51 (xxx))       |
| States' relations with   | 81, 82      | (s. 2 (2))          |
| trade and commerce with  | 32          | (s. 51 (i))         |
| FREEDOM OF TRADE, COMMERCE AND INTERCOURSE AMONG STATES  | 47          | (s. 92)             |
| FUNCTIONS OF COLONIAL GOVERNORS VESTED IN EXECUTIVE GOVERNMENT   | 39          | (s. 70)             |
| FUNCTIONS OF GOVERNOR-GENERAL  | 20          | (s. 2)              |
| exercised by deputy  | 56          | (s. 126)            |
| vested in administrator  | 72          | (s. III (b))        |
| FUNCTIONS OF QUEEN AND GOVERNORS RESPECTING STATES   | 83          | (s. 7)              |
| FUNCTIONS OF QUEEN EXERCISED BY GOVERNOR-GENERAL   | 20          | (s. 2)              |
| <b>G</b>   |             |                     |
| GAZETTE, PUBLICATION OF APPOINTMENT OF GOVERNOR-GENERAL,<br>ADMINISTRATOR OF GOVERNMENT OR DEPUTY OF GOVERNOR-GENERAL IN | 74          | (s. VI)             |
| GENERAL ELECTIONS  | 26-28       | (ss. 24-33)         |
| disputed   | 31          | (s. 47)             |
| summoning Parliament after   | 21          | (s. 5)              |
| GOLD COIN  | 53          | (s. 115)            |
| GOLD MINING, AIDS TO OR BOUNTIES ON  | 47          | (s. 91)             |
| GOODS, BOUNTIES ON PRODUCTION OR EXPORT OF   | 46          | (s. 86)             |
| legislative powers   | 32          | (s. 51 (iii))       |
|  | 46, 47      | (s. 90))            |
| State powers   | 47          | (s. 91)             |
| transfer of property with transfer of State departments controlling  | 45          | (s. 85 (i))         |
| GOODS, INSPECTION CHARGES ON   | 53          | (s. 112)            |

|   | <i>Page</i> | <i>Section</i>    |
|---|-------------|-------------------|
| GOODS, RATE FOR CARRIAGE UPON RAILWAYS OF                         | 50          | (s. 104)          |
| GOODS PASSING AMONG STATES  | 47          | (ss. 92, 93)      |
| into Western Australia  | 48          | (s. 95)           |
| by railway  | 50          | (s. 104)          |
| GOVERNMENT OF COMMONWEALTH (EXECUTIVE GOVERNMENT)                 | 37-39       | (ss. 61-70)       |
| customs, excise and bounties passed to                            | 46          | (s. 86)           |
| departments transferred to  |             |                   |
| legislative powers in matters relating to                         | 34          | (s. 52(ii))       |
| officers subject to   | 44, 45      | (s. 84)           |
| legislative powers incidental to powers vested in                 | 33          | (s. 51 (xxxix))   |
| revenues or moneys raised or received by                          | 44          | (ss. 81, 82)      |
| GOVERNOR-GENERAL  | 37          | (ss. 61-63)       |
| appointment   | 20          | (s. 2)            |
| Commission for  | 71, 72      | (s. II)           |
| first   | 74          | (ss. VI, VII)     |
| oath or affirmation of allegiance                                 | 17          | (cl. 3)           |
| appropriation of revenues or money, recommendation of purpose by  | 73, 74      | (s. V)            |
| assent to Bills   | 35          | (s. 56)           |
| altering Constitution   | 36          | (ss. 58-60)       |
| limiting appeal to Privy Council                                  | 57, 58      | (s. 128)          |
| command in chief of forces  | 41, 42      | (s. 74)           |
| constitutional alterations submitted to electors by               | 38          | (s. 68)           |
| constitutional provisions relating to                             | 57, 58      | (s. 128)          |
| deputies  | 20          | (s. 4)            |
| disallowance of law by Queen made known by                        | 56          | (s. 126)          |
| dissolution of House of Representatives                           | 73, 74      | (ss. IV-VI)       |
| dissolution of Senate and House of Representatives simultaneously | 36          | (s. 59)           |
| executive power of Commonwealth exercisable by                    | 21          | (s. 5)            |
| joint parliamentary sittings convened by                          | 27          | (s. 28)           |
| Letters Patent Relating to Office                                 | 35          | (s. 57)           |
| Ministers' appointment and offices                                | 37          | (s. 61)           |
| parliamentary sessions, times for holding appointed by            | 35          | (s. 57)           |
| powers of Colonial Governors vested in                            | 71-74       |                   |
| prorogation of Parliament   | 37, 38      | (ss. 64, 65)      |
| salary  | 21          | (s. 5)            |
| Senate vacancy, notification to State Governor by                 | 21          | (s. 5)            |
| senators names certified by                                       | 20          | (s. 3)            |
| <i>see also</i> powers of Governor-General, State Governors       | 25          | (s. 21)           |
| GOVERNOR-GENERAL IN COUNCIL                                       | 21          | (s. 7)            |
| civil servants' appointment and removal                           | 37          | (s. 63)           |
| Inter-State Commissioners' appointment and removal                | 38          | (s. 67)           |
| Judges, appointment and removal                                   | 49          | (s. 103(i), (ii)) |
| departments established by  | 40, 41      | (s. 72)           |
| powers of Colonial Governors in Council vested in                 | 37          | (s. 64)           |
| writs for general elections                                       | 39          | (s. 70)           |
| GUARDIANSHIP OF INFANTS   | 28          | (ss. 32, 33)      |
|   | 32          | (s. 51 (xxii))    |
| <b>H</b>  |             |                   |
| HEALTH BENEFITS AND SERVICES                                      | 32, 33      | (s. 51 (xxiiiA))  |
| HER/HIS MAJESTY, <i>SEE</i> QUEEN                                 |             |                   |
| HER/HIS MAJESTY IN COUNCIL, <i>SEE</i> PRIVY COUNCIL              |             |                   |
| HIGH COURT OF AUSTRALIA   | 40-42       | (ss. 71-76)       |
| <i>see also</i> federal courts                                    |             |                   |
| federal jurisdiction, courts invested with                        |             |                   |



|  | <i>Page</i> | <i>Section</i>  |
|--|-------------|-----------------|
| HONORARIUM FOR SERVICES RENDERED BY MEMBER OF PARLIAMENT       | 31          | (s. 45(iii))    |
| HOSPITAL BENEFITS  | 32, 33      | (s. 51(xxiiiA)) |
| HOUSE OF REPRESENTATIVES                                       | 20          | (s. 1)          |
|  | 26-29       | (ss. 24-40)     |
| disagreement with Senate                                       | 35          | (s. 57)         |
| dissolution  | 21          | (s. 5)          |
|  | 27          | (s. 28)         |
|  | 35          | (s. 57)         |
| legislative power incidental to powers vested in               | 33          | (s. 51(xxxix))  |
| powers, privileges and immunities                              | 31          | (ss. 49, 50)    |
| representation of new States                                   | 55          | (s. 121)        |
| representation of States, Bills to alter                       | 57, 58      | (s. 128)        |
| representation of territories                                  | 55          | (s. 122)        |
| <i>see also</i> members of House of Representatives            |             |                 |
| <br>   |             |                 |
| <b>I</b>   |             |                 |
| IMMIGRATION  | 33          | (s. 51(xxvii))  |
| criminals  | 33          | (s. 51(xxviii)) |
| naturalization and aliens                                      | 32          | (s. 51(xix))    |
| IMMUNITIES, PARLIAMENTARY                                      | 31          | (ss. 49, 50)    |
| IMPORT INSPECTION CHARGES                                      | 53          | (s. 112)        |
| IMPRISONMENT   |             |                 |
| disqualification for Parliament                                | 30          | (s. 44(ii))     |
|  | 30, 31      | (s. 45)         |
| offenders against laws of Commonwealth                         | 54          | (s. 120)        |
| INCAPACITY   |             |                 |
| disqualification for Parliament                                | 30, 31      | (ss. 44-46)     |
| Governor-General, administration of Government in the event of | 72, 73      | (s. III)        |
| Inter-State Commissioners                                      | 49          | (s. 103(ii))    |
| Justices of High Court and of other federal courts             | 40          | (s. 72(ii))     |
| member of either House sitting in other                        | 30          | (s. 43)         |
| INCONSISTENCY OF COMMONWEALTH AND STATE LAWS                   | 18          | (cl. 5)         |
|  | 52          | (s. 109)        |
| INCORPORATION OF BANKS   | 32          | (s. 51(xiii))   |
| INDICTMENT, TRIAL ON   | 43          | (s. 80)         |
| INDUSTRIAL PROPERTY  | 32          | (s. 51(xviii))  |
| INDUSTRIAL DISPUTES  | 33          | (s. 51(xxx))    |
| INFANTS, CUSTODY AND GUARDIANSHIP OF                           | 32          | (s. 51(xxii))   |
| INJUNCTION AGAINST COMMONWEALTH OFFICERS                       | 42          | (s. 75(v))      |
| INSOLVENCY   |             |                 |
| disqualification for Parliament                                | 30          | (s. 44(iii))    |
|  | 31          | (s. 45(ii))     |
| legislative powers   | 32          | (s. 51(xvii))   |
| INSPECTION OF EXPORTS AND IMPORTS, STATE CHARGES FOR           | 53          | (s. 112)        |
| INSURANCE  | 32          | (s. 51(xiv))    |
| INTELLECTUAL PROPERTY  | 32          | (s. 51(xviii))  |
| INTERCOURSE AMONG STATES                                       | 47          | (s. 92)         |
| INTEREST   |             |                 |
| debts of States taken over by Commonwealth                     | 46          | (s. 87)         |
| agreements with respect to payment                             | 50          | (s. 105A(1)(c)) |
| direct or pecuniary, in agreement with Commonwealth            | 30          | (s. 44(v))      |
|  | 30, 31      | (s. 45)         |

|  | <b>Page</b> | <b>Section</b>          |
|--|-------------|-------------------------|
| INTERNATIONAL RELATIONS  | 33          | (ss. 51 (xxix, xxx))    |
| jurisdiction in matters relating to States                                     | 42          | (s. 75 (i), (ii))       |
| States   | 81          | (s. 2(2))               |
| INTERPRETATION OF CONSTITUTION   |             |                         |
| appeals to Privy Council   | 41, 42      | (s. 74)                 |
| High Court jurisdiction  | 42          | (s. 76(i))              |
| INTERPRETATION OF LAWS, HIGH COURT JURISDICTION                                | 42          | (s. 76)                 |
| INTERPRETATION ACT 1889, MEANING OF "COLONY"                                   | 79          | (s. 11)                 |
| INTER-STATE COMMISSION   | 49, 50      | (ss. 101-104)           |
| appeals from decisions   | 41          | (s. 73(iii))            |
| INTER-STATE INDUSTRIAL DISPUTES  | 33          | (s. 51 (xxxv))          |
| INTER-STATE TRADE AND COMMERCE   | 32          | (s. 51 (i))             |
|  | 48-50       | (ss. 98-104)            |
| INTOXICATING LIQUIDS   | 53          | (s. 113)                |
| INVALID PENSIONS   | 32          | (s. 51 (xxiii))         |
| INVALIDITY OF LAWS   |             |                         |
| about religion   | 53          | (s. 116)                |
| State, inconsistent with Commonwealth laws                                     | 18          | (cl. 5)                 |
|  | 52          | (s. 109)                |
| taxation, provisions dealing with other matters                                | 34, 35      | (s. 55)                 |
| trade and commerce   | 49          | (ss. 99, 100)           |
| INVASION, PROTECTION AGAINST   | 54          | (s. 119)                |
| INVENTIONS, PATENTS OF   | 32          | (s. 51 (xviii))         |
| IRRIGATION, RIGHTS TO REASONABLE USE OF RIVER WATERS FOR                       | 49          | (s. 100)                |
| <b>J</b>   |             |                         |
| JOINT SITTINGS OF SENATE AND HOUSE OF REPRESENTATIVES                          | 23-25       | (s. 15)                 |
|  | 35          | (s. 57)                 |
| standing orders  | 31          | (s. 50(ii))             |
| JUDGES   |             |                         |
| appointment, tenure and remuneration   | 40, 41      | (s. 72)                 |
| exercising federal jurisdiction  | 43          | (s. 79)                 |
| included in expression "court" in <i>Australia Act 1986</i>                    | 87          | (s. 16(1))              |
| laws binding upon  | 18          | (cl. 5)                 |
| <i>see also</i> Justices   |             |                         |
| JUDGMENTS  |             |                         |
| High Court, in appellate jurisdiction  | 41          | (s. 73)                 |
| included in expression "decision" in <i>Australia Act 1986</i>                 | 87          | (s. 16(1))              |
| State courts, execution of   | 33          | (s. 51 (xxiv))          |
| JUDICATURE   | 40-43       | (ss. 71-80)             |
| legislative power incidental to powers vested in                               | 33          | (s. 51 (xxxix))         |
| <i>see also</i> courts   |             |                         |
| JUDICIAL COMMITTEE ACT 1833, REPEAL OF   | 84          | (s. 11(2), (3))         |
| JUDICIAL COMMITTEE ACT 1844, REPEAL OF   | 84          | (s. 11(2), (3))         |
| JUDICIAL OFFICERS, INCLUDED IN EXPRESSION "COURT" IN <i>AUSTRALIA ACT 1986</i> | 87          | (s. 16(1))              |
| JUDICIAL POWER   | 40          | (s. 71)                 |
| JUDICIAL PROCEEDINGS   |             |                         |
| against Commonwealth or State  | 43          | (s. 78)                 |
| between States   | 42          | (s. 75 (iv))            |
| by or against Commonwealth   | 42, 43      | (ss. 75 (iii), (v), 78) |
| of States, recognition   | 33          | (s. 51 (xxv))           |
|  | 54          | (s. 118)                |

|   | <i>Page</i> | <i>Section</i>     |
|---|-------------|--------------------|
| JURISDICTION  |             |                    |
| Admiralty   | 42          | (s. 76(iii))       |
|   | 77          | (s. 6)             |
|   | 84          | (s. 11(2), (3))    |
| federal, courts invested with   | 40          | (s. 71)            |
|   | 43          | (s. 77(ii), (iii)) |
| federal courts  | 42, 43      | (s. 77(i), (ii))   |
| High Court  | 41, 42      | (ss. 73, 77(i))    |
| JURISDICTION OF COMMONWEALTH OVER PARTS OF STATES                             |             |                    |
| SURRENDERED TO COMMONWEALTH   | 53          | (s. 111)           |
| JURY TRIAL  | 43          | (s. 80)            |
| JUSTICES  | 40          | (s. 71)            |
| appointment, tenure and remuneration  | 40, 41      | (s. 72)            |
| exercising original jurisdiction of High Court, appeals from decisions        | 41          | (s. 73(i))         |
| <i>see also</i> Judges  |             |                    |
| <b>L</b>  |             |                    |
| LAWS  |             |                    |
| binding in operation  | 18          | (cl. 5)            |
| disallowance by Queen   | 36          | (s. 59)            |
| execution and maintenance   | 37          | (s. 61)            |
|   | 49          | (s. 101)           |
| control of forces for   | 32          | (s. 51(vi))        |
| extra-territorial operation   | 18          | (cl. 5)            |
| inconsistency of State laws with  | 18          | (cl. 5)            |
|   | 52          | (s. 109)           |
| jurisdiction in matters arising under   | 42          | (s. 76(ii))        |
| naturalization under, qualification for Parliament                            | 28          | (s. 34(ii))        |
| offences against  |             |                    |
| disqualification for Parliament   | 30          | (s. 44(ii))        |
|   | 30, 31      | (s. 45)            |
| detention and punishment  | 54          | (s. 120)           |
| trial by jury   | 43          | (s. 80)            |
| repugnant to <i>Australia Act 1986</i> or Statute of Westminster 1931         | 86          | (s. 15(2))         |
| State debt agreements binding, notwithstanding                                | 51          | (s. 105A(5))       |
| Statute of Westminster 1931, sections 4, 9(2), (3) and 10(2)                  |             |                    |
| repealed as far as part of  | 85          | (s. 12)            |
| validity with respect to English law  | 77          | (s. 2)             |
| <i>see also</i> Bills, colonies, legislative powers, Royal assent, State laws |             |                    |
| LAWS OF FEDERAL COUNCIL OF AUSTRALASIA  | 18          | (cl. 7)            |
| Acts repealing  | 61          | (n. 4)             |
| LAWS OF UNITED KINGDOM  |             |                    |
| extending legislative powers of Commonwealth Parliament                       | 63          | (n. 12)            |
| extension to Australia terminated   | 81          | (s. 1)             |
| extension to Commonwealth terminated  | 75-79       |                    |
| naturalization under, qualification for Parliament                            | 28          | (s. 34(ii))        |
| laws repugnant to   | 77          | (s. 2(2))          |
| State   | 82          | (s. 3(2))          |
| providing for appeals to Privy Council  | 84          | (s. 11)            |
| <i>see also</i> legislative powers of United Kingdom Parliament               |             |                    |
| LEGAL TENDER  | 53          | (s. 115)           |
| legislative powers  | 32          | (s. 51(xii))       |
| LEGISLATIVE POWERS  | 20          | (s. 1)             |
|   | 32-36       | (ss. 51-60)        |
| <i>Australia Act 1986</i> , repeal or amendment                               | 86          | (s. 15)            |
| Constitution's alteration   | 57, 58      | (s. 128)           |
|   | 86          | (s. 15(3))         |

|  | <i>Page</i> | <i>Section</i>     |
|--|-------------|--------------------|
| courts   |             |                    |
| creation and investiture of federal jurisdiction             | 40          | (s. 71)            |
| definition of jurisdiction                                   | 42, 43      | (s. 77)            |
| remuneration and retiring age of Justices                    | 40, 41      | (s. 72)            |
| customs, excise and bounties                                 | 32          | (s. 51(ii), (iii)) |
|  | 46          | (s. 87)            |
|  | 47          | (ss. 93, 94)       |
| exclusive  | 46, 47      | (s. 90)            |
| electoral divisions  |             |                    |
| House of Representatives                                     | 27          | (s. 29)            |
| Senate   | 21          | (s. 7)             |
| elections  |             |                    |
| disputed   | 31          | (s. 47)            |
| House of Representatives                                     | 28          | (s. 31)            |
| Senate   | 22          | (ss. 9, 10)        |
| electors' qualifications                                     | 22          | (s. 8)             |
|  | 27, 28      | (s. 30)            |
| English law  |             |                    |
| Imperial Acts extending                                      | 63          | (n. 12)            |
| validity over  | 77          | (s. 2)             |
| extra-territorial  | 77          | (s. 3)             |
| fisheries within Australian waters                           | 32          | (s. 51(x))         |
| Governor-General's salary                                    | 20          | (s. 3)             |
| High Court decisions, limitation of appeals to Privy Council | 41, 42      | (s. 74)            |
| High Court jurisdiction                                      |             |                    |
| appellate  | 41          | (s. 73)            |
| original   | 42          | (s. 76)            |
| High Court Justices  |             |                    |
| number   | 40          | (s. 71)            |
| remuneration and retiring age                                | 40, 41      | (s. 72)            |
| House of Representatives                                     |             |                    |
| elections  | 27          | (s. 29)            |
| electorates  | 27          | (s. 29)            |
| quorum   | 29          | (s. 39)            |
| vacancies  | 31          | (s. 47)            |
| Inter-State Commission                                       |             |                    |
| members' remuneration  | 49          | (s. 103(iii))      |
| powers   | 49          | (s. 101)           |
| judges   |             |                    |
| number exercising federal jurisdiction                       | 43          | (s. 79)            |
| remuneration and retiring age                                | 40, 41      | (s. 72)            |
| members of House of Representatives                          |             |                    |
| allowances   | 31          | (s. 48)            |
| alteration of number of                                      | 27          | (s. 27)            |
| number for each electoral division                           | 27          | (s. 29)            |
| penalty for sitting when disqualified                        | 31          | (s. 46)            |
| qualifications   | 28          | (s. 34)            |
|  | 31          | (s. 47)            |
| quorum   | 29          | (s. 39)            |
| Ministers  | 38          | (ss. 65, 66)       |
| new States   | 55          | (s. 121)           |
| offenders against Commonwealth laws                          | 54          | (s. 120)           |
| Privy Council, limitation of appeals                         | 41, 42      | (s. 74)            |
| property   |             |                    |
| Commonwealth, State taxation of                              | 53          | (s. 114)           |
| transferred departments, compensation for                    | 45          | (s. 85(iii))       |
| religion   | 53          | (s. 116)           |
| rights to proceed against Commonwealth or States             | 43          | (s. 78)            |
| seat of Government   | 56          | (s. 125)           |
| exclusive  | 34          | (s. 52(i))         |

|  | <i>Page</i> | <i>Section</i>               |
|--|-------------|------------------------------|
| Senate   |             |                              |
| elections  | 21          | (s. 7)                       |
| electorates  | 21          | (s. 7)                       |
| quorum   | 26          | (s. 22)                      |
| vacancies  | 31          | (s. 47)                      |
| senators   |             |                              |
| allowances   | 31          | (s. 48)                      |
| alteration of number   | 21          | (s. 7)                       |
|  | 23          | (s. 14)                      |
| method of election   | 22          | (s. 9)                       |
| penalty for sitting when disqualified                                      | 31          | (s. 46)                      |
| qualifications   | 28          | (s. 34)                      |
|  | 31          | (s. 47)                      |
| State defence forces   | 53          | (s. 114)                     |
| State financial assistance   | 48          | (s. 96)                      |
| State inspection laws  | 53          | (s. 112)                     |
| State limits   | 55          | (s. 123)                     |
| State matters  | 78          | (s. 9(1))                    |
| referred by States   | 33          | (s. 51 (xxxvii))             |
|  | 64-66       | (n. 15)                      |
|  | 81          | (preamble)                   |
| State public debts   | 50, 51      | (ss. 105, 105A(2), (3), (5)) |
| State taxation of Commonwealth property                                    | 53          | (s. 114)                     |
| Statute of Westminster 1931, repeal or amendment                           | 86          | (s. 15)                      |
| territories' government and representation in Parliament                   | 55          | (s. 122)                     |
| trade and commerce   | 32          | (s. 51(i))                   |
|  | 48, 49      | (ss. 98-102)                 |
| LEGISLATIVE POWERS OF SENATE AND HOUSE OF REPRESENTATIVES                  | 34          | (s. 53)                      |
| LEGISLATIVE POWERS OF STATE PARLIAMENTS                                    | 78          | (s. 9(1))                    |
|  | 81, 82      | (ss. 2-6)                    |
| bounties   | 47          | (s. 91)                      |
| continuation after admission to Commonwealth                               | 52          | (s. 107)                     |
| inspection charges   | 53          | (s. 112)                     |
| intoxicating liquids   | 53          | (s. 113)                     |
| reference of matters to Commonwealth Parliament                            | 33          | (s. 51 (xxxvii))             |
|  | 64-66       | (n. 15)                      |
| request or concurrence in Commonwealth legislation                         | 33          | (s. 51 (xxxviii))            |
|  | 81          | (preamble)                   |
|  | 86          | (s. 15)                      |
| saving of  | 52          | (s. 107)                     |
| within concurrent power  | 52          | (s. 108)                     |
| Senate elections   | 22          | (s. 9)                       |
|  | 61, 62      | (n. 6)                       |
| State laws respecting  | 82          | (s. 6)                       |
| LEGISLATIVE POWERS OF UNITED KINGDOM PARLIAMENT                            |             |                              |
| exercise of powers exercised only by                                       | 33          | (s. 51 (xxxviii))            |
| legislative powers of State Parliaments include                            | 81, 82      | (s. 2(2))                    |
| termination for Australia  | 81          | (s. 1)                       |
| LETTERS PATENT RELATING TO THE OFFICE OF THE GOVERNOR-GENERAL OF AUSTRALIA | 71-74       |                              |
| LEVIES FOR INSPECTION OF GOODS   | 53          | (s. 112)                     |
| LICENCES, BILLS CONTAINING PROVISIONS FOR FEES FOR                         | 34          | (s. 53)                      |
| LIFE OF HOUSE OF REPRESENTATIVES   | 27          | (s. 28)                      |
| LIGHTHOUSES AND LIGHTSHIPS   |             |                              |
| legislative powers   | 32          | (s. 51 (vii))                |
| transfer of State departments responsible for                              | 38          | (s. 69)                      |
| LIQUIDS, INTOXICATING  | 53          | (s. 113)                     |

|   | <i>Page</i> | <i>Section</i>   |
|---|-------------|------------------|
| LOANS   |             |                  |
| Commonwealth-State agreements                                       | 50          | (s. 105A(1) (f)) |
| legislative powers  | 32          | (s. 51 (iv))     |
| <i>see also</i> State debts taken over                              |             |                  |
| <br><b>M</b>  |             |                  |
| MAIL SERVICES   |             |                  |
| legislative powers  | 32          | (s. 51 (v))      |
| transfer of State departments responsible for                       | 38          | (s. 69)          |
| MAINTENANCE OF CONSTITUTION AND LAWS                                | 37          | (s. 61)          |
| control of forces to  | 32          | (s. 51 (vi))     |
| relating to trade and commerce                                      | 49          | (s. 101)         |
| MANDAMUS SOUGHT AGAINST COMMONWEALTH OFFICERS                       | 42          | (s. 75 (v))      |
| MANUFACTURE, BOUNTIES ON  | 46          | (s. 86)          |
| legislative powers  | 32          | (s. 51 (iii))    |
| State powers  | 46, 47      | (s. 90)          |
| transfer of property with transfer of State departments controlling | 47          | (s. 91)          |
| transfer of property with transfer of State departments controlling | 45          | (s. 85 (i))      |
| MARITIME JURISDICTION OF HIGH COURT                                 | 42          | (s. 76 (iii))    |
| MARRIAGE  | 32          | (s. 51 (xxi))    |
| MATERNITY ALLOWANCES  | 32, 33      | (s. 51 (xxiiiA)) |
| MATRIMONIAL CAUSES  | 32          | (s. 51 (xxii))   |
| MEASURES  | 32          | (s. 51 (xv))     |
| MEDICAL SERVICES  | 32, 33      | (s. 51 (xxiiiA)) |
| MELBOURNE, PARLIAMENTARY SITTINGS AT                                | 56          | (s. 125)         |
| MEMBERS OF HOUSE OF REPRESENTATIVES                                 |             |                  |
| absence from House  | 29          | (s. 38)          |
| allowance   | 31          | (s. 48)          |
| disqualification  | 30, 31      | (ss. 44-46)      |
| election  | 28          | (ss. 31-33)      |
| Ministers not senators or   | 37          | (s. 64)          |
| number  | 26, 27      | (ss. 24-27)      |
| laws to alter proportionate or minimum representation of States     | 57, 58      | (s. 128)         |
| oath or affirmation of allegiance                                   | 30          | (s. 42)          |
| qualifications  | 59          | (schedule)       |
| determination of questions respecting                               | 28          | (s. 34)          |
| determination of questions respecting                               | 31          | (s. 47)          |
| quorum  | 29          | (s. 39)          |
| resignation   | 29          | (s. 37)          |
| senators incapable of being chosen or sitting as                    | 30          | (s. 43)          |
| Speakers cease to hold office if cease to be                        | 28, 29      | (s. 35)          |
| voting in House by  | 29          | (s. 40)          |
| MERCHANT SHIPPING ACT 1894, SECTIONS 735 AND 736                    |             |                  |
| reference to Legislature of British possession                      | 77          | (s. 5)           |
| repealed in so far as part of State law                             | 82          | (s. 4)           |
| MESSAGES OF GOVERNOR-GENERAL  | 35          | (s. 56)          |
|   | 36          | (ss. 58-60)      |
| MESSAGES OF SENATE REQUESTING AMENDMENT OF MONEY BILL               | 34          | (s. 53)          |
| METALS, AIDS TO OR BOUNTIES ON MINING FOR                           | 47          | (s. 91)          |
| METEOROLOGICAL OBSERVATIONS   | 32          | (s. 51 (viii))   |
| MILITARY DEFENCE, <i>SEE</i> DEFENCE                                |             |                  |
| MINING, AIDS TO OR BOUNTIES ON                                      | 47          | (s. 91)          |
| MINISTERS   | 37, 38      | (ss. 64-66)      |
| office of profit disqualification not applicable                    | 30          | (s. 44)          |

|   | <i>Page</i> | <i>Section</i>      |
|---|-------------|---------------------|
| MISBEHAVIOUR  |             |                     |
| Inter-State Commissioners   | 49          | (s. 103(ii))        |
| Justices of High Court and of other federal courts                          | 40          | (s. 72(ii))         |
| MONEY   |             |                     |
| appropriation   | 44          | (ss. 81, 83)        |
| Bills   | 34, 35      | (ss. 53-54, 56)     |
| currency, coinage and legal tender  | 32          | (s. 51(xii))        |
|   | 53          | (s. 115)            |
| issue of paper money  | 32          | (s. 51(xiii))       |
| <i>see also</i> revenue   |             |                     |
| MONEY, BORROWING OF   |             |                     |
| Commonwealth-State agreements   | 50          | (s. 105A(1)(f))     |
| legislative powers  | 32          | (s. 51(iv))         |
| <b>N</b>  |             |                     |
| NATIONAL CAPITAL (SEAT OF GOVERNMENT)                                       |             |                     |
| legislative powers  | 56          | (s. 125)            |
|   | 34          | (s. 52(i))          |
| NATURALIZATION  |             |                     |
| legislative powers  | 32          | (s. 51(xix))        |
| members of Parliament   | 25          | (s. 16)             |
|   | 28          | (s. 34(ii))         |
| NAVAL DEFENCE, <i>SEE</i> DEFENCE   |             |                     |
| NAVIGATION, <i>SEE</i> SHIPS AND SHIPPING                                   |             |                     |
| NEW SOUTH WALES   |             |                     |
| references in <i>Australia Act 1986</i> in relation to Parliament of a      |             |                     |
| State include legislature   | 87          | (s. 16(3))          |
| seat of Government within   | 56          | (s. 125)            |
| NEW STATES  | 55          | (ss. 121)           |
| formation   | 55          | (s. 124)            |
| NORTHERN TERRITORY  | 18          | (cl. 6)             |
| NUMBER OF ELECTORS, MAJORITIES REQUIRED TO ALTER CONSTITUTION               | 57, 58      | (s. 128)            |
| NUMBER OF HIGH COURT JUSTICES   | 40          | (s. 71)             |
| NUMBER OF JUDGES EXERCISING FEDERAL JURISDICTION OF ANY COURT               | 43          | (s. 79)             |
| NUMBER OF MEMBERS OF HOUSE OF REPRESENTATIVES                               | 26, 27      | (ss. 24-27)         |
| Bills to alter minimum representation of States                             | 57, 58      | (s. 128)            |
| quorum  | 29          | (s. 39)             |
| NUMBER OF MINISTERS   | 38          | (s. 65)             |
| NUMBER OF SENATORS  | 21          | (s. 7)              |
|   | 26          | (s. 24)             |
| regularity in rotation, when altered  | 23          | (s. 14)             |
| <b>O</b>  |             |                     |
| OATH OF ALLEGIANCE  |             |                     |
| Administrator   | 72          | (s. III(d))         |
|   | 73, 74      | (s. V)              |
| deputies of Governor-General  | 73, 74      | (ss. IV(b)(iii), V) |
| Governor-General  | 72          | (s. II(b))          |
|   | 73, 74      | (s. V)              |
| members of Parliament   | 30          | (s. 42)             |
|   | 59          | (schedule)          |
| OBEDIENCE TO FOREIGN POWER ACKNOWLEDGED,<br>DISQUALIFICATION FOR PARLIAMENT | 30          | (s. 44(i))          |
|   | 30, 31      | (s. 45)             |

|   | <i>Page</i>  | <i>Section</i>         |
|---|--------------|------------------------|
| OFFENCES AGAINST COMMONWEALTH AND STATE LAWS,<br>DISQUALIFICATION FOR PARLIAMENT  | 30<br>30, 31 | (s. 44(ii))<br>(s. 45) |
| OFFENCES AGAINST COMMONWEALTH LAWS  |              |                        |
| detention and punishment for  | 54           | (s. 120)               |
| trial by jury   | 43           | (s. 80)                |
| OFFICE OF PROFIT UNDER CROWN, DISQUALIFICATION FOR PARLIAMENT   | 30<br>30, 31 | (s. 44(iv))<br>(s. 45) |
| OFFICERS  |              |                        |
| appointment and removal   | 38           | (s. 67)                |
| of departments transferred to Commonwealth  | 44, 45       | (s. 84)                |
| judicial, included in expression "court" in <i>Australia Act 1986</i>   | 87           | (s. 16(1))             |
| legislative power incidental to powers vested in  | 33           | (s. 51 (xxxix))        |
| Ministers   | 30<br>37, 38 | (s. 44)<br>(ss. 64-66) |
| religious test as qualification   | 53           | (s. 116)               |
| writ of Mandamus or prohibition or injunction sought against  | 42           | (s. 75(v))             |
| OFFICIAL GAZETTE, PUBLICATION OF APPOINTMENT OF GOVERNOR-GENERAL,<br>ADMINISTRATOR OF GOVERNMENT OR DEPUTY OF GOVERNOR-GENERAL IN | 74           | (s. VI)                |
| OLD-AGE PENSIONS  | 32           | (s. 51 (xxiii))        |
| ORIGINAL JURISDICTION OF HIGH COURT   | 42           | (ss. 75, 76)           |
| ORIGINAL STATES   | 18           | (cl. 6)                |
| members of House of Representatives representing  | 26           | (s. 24)                |
| in first Parliament   | 27           | (s. 26)                |
| senators representing   | 21<br>61     | (s. 7)<br>(n. 5)       |
| OVERSEAS COUNTRIES, <i>SEE</i> FOREIGN COUNTRIES  |              |                        |
| <b>P</b>  |              |                        |
| PACIFIC ISLANDS, RELATIONS OF COMMONWEALTH WITH   | 33           | (s. 51 (xxx))          |
| PAPER MONEY, ISSUE OF   | 32           | (s. 51 (xiii))         |
| PARENTAL RIGHTS   | 32           | (s. 51 (xxii))         |
| PARLIAMENT  | 20-36        | (ss. 1-60)             |
| powers, privileges and immunities   | 31           | (ss. 49, 50)           |
| sitting at Melbourne  | 56           | (s. 125)               |
| <i>see also</i> House of Representatives, legislative powers, Senate, State Parliaments   |              |                        |
| PARLIAMENT OF UNITED KINGDOM, <i>SEE</i> LAWS OF UNITED KINGDOM   |              |                        |
| legislative powers of United Kingdom Parliament, parliamentary  |              |                        |
| procedure, manner and form of making State laws for   | 82           | (s. 6)                 |
| PARLIAMENTARY REPRESENTATION  |              |                        |
| Bills to alter, in any State  | 57, 58       | (s. 128)               |
| House of Representatives  | 26-28        | (ss. 24-34)            |
| new States  | 55           | (s. 121)               |
| Senate  | 21-25        | (ss. 7-16)             |
| territories   | 55           | (s. 122)               |
| PARLIAMENTARY SESSIONS  | 21           | (ss. 5, 6)             |
| absence of parliamentarians during  | 25<br>29     | (s. 20)<br>(s. 38)     |
| PARTS OF STATES   |              |                        |
| Commonwealth not to give preference to  | 49           | (s. 99)                |
| surrendered to Commonwealth   | 53<br>55     | (s. 111)<br>(s. 122)   |
| taxation laws may not discriminate between  | 32           | (s. 51 (ii))           |
| PARTS OF COMMONWEALTH, GOVERNOR-GENERAL'S DEPUTIES FOR  | 56           | (s. 126)               |
| PARTY MEMBERSHIP OF SENATORS FILLING CASUAL VACANCIES   | 23-25        | (s. 15)                |



|   | <i>Page</i> | <i>Section</i>            |
|---|-------------|---------------------------|
| PATENTS   | 32          | (s. 51 (xviii))           |
| PAYMENT OF BOUNTIES   | 46          | (s. 86)                   |
| legislative powers  | 32          | (s. 51 (iii))             |
|   | 46, 47      | (s. 90)                   |
| State powers  | 47          | (s. 91)                   |
| transfer of property with transfer of State departments controlling               | 45          | (s. 85 (i))               |
| PAYMENT OF DEBTS  |             |                           |
| legal tender  | 53          | (s. 115)                  |
| State, agreements with respect to   | 50, 51      | (s. 105A)                 |
| PAYMENT OF EXPENDITURE  |             |                           |
| customs and excise duty revenue applied to  | 46          | (s. 87)                   |
|   | 46          | (s. 89 (ii))              |
|   | 47          | (s. 93 (ii))              |
| revenue applied to, in first instance   | 44          | (s. 82)                   |
| <i>see also</i> revenue   |             |                           |
| PAYMENT OF INTEREST ON STATE DEBTS TAKEN OVER BY COMMONWEALTH                     | 46          | (s. 87)                   |
| agreements with respect to payment  | 50          | (s. 105A(1) (c))          |
| PAYMENT OF SURPLUS REVENUE TO STATES  | 46          | (s. 87)                   |
|   | 46          | (s. 89 (iii))             |
|   | 47          | (ss. 93 (ii), 94)         |
| PENALTIES   |             |                           |
| Bills containing provisions for pecuniary sitting in Parliament when disqualified | 34          | (s. 53)                   |
|   | 31          | (s. 46)                   |
| PENSIONS  |             |                           |
| payable during pleasure of Crown, disqualification for Parliament                 | 30          | (s. 44 (iv))              |
|   | 30, 31      | (s. 45)                   |
| officers, on transfer of departments to public service of Commonwealth            | 44, 45      | (s. 84)                   |
| legislative powers  | 32, 33      | (s. 51 (xxiii), (xxiiiA)) |
| PEOPLE  |             |                           |
| acquisition of property from  | 33          | (s. 51 (xxxi))            |
| Bills increasing charge or burden on laws binding upon                            | 34          | (s. 53)                   |
|   | 18          | (cl. 5)                   |
| races disqualified from voting by State laws                                      | 26          | (s. 25)                   |
| races for whom necessary to make special laws                                     | 33          | (s. 51 (xxvi))            |
| PEOPLE OF A STATE   |             |                           |
| disability or discrimination in other States                                      | 54          | (s. 117)                  |
| jurisdiction in matters involving different States                                | 42          | (s. 75 (iv))              |
| laws of Parliament binding upon   | 18          | (cl. 5)                   |
| members of House of Representatives in proportion to                              | 26          | (s. 24)                   |
| right to reasonable use of river waters for conservation or irrigation            | 49          | (s. 100)                  |
| right to vote   | 29          | (s. 41)                   |
| senators chosen by  | 21          | (s. 7)                    |
| PHARMACEUTICAL BENEFITS   | 32, 33      | (s. 51 (xxiiiA))          |
| PLACE OF TRIAL FOR OFFENCES AGAINST COMMONWEALTH LAW                              | 43          | (s. 80)                   |
| PLACES ACQUIRED FOR PUBLIC PURPOSES   | 34          | (s. 52 (i))               |
| POLITICAL PARTY MEMBERSHIP OF SENATORS FILLING CASUAL VACANCIES                   | 23-25       | (s. 15)                   |
| POPULATION, <i>SEE</i> PEOPLE   |             |                           |
| POSTAL SERVICES   |             |                           |
| legislative powers  | 32          | (s. 51 (v))               |
| transfer of State departments responsible for                                     | 38          | (s. 69)                   |
| POWERS, LEGISLATIVE, <i>SEE</i> LEGISLATIVE POWERS                                |             |                           |
| POWERS OF COLONIAL GOVERNORS VESTED IN EXECUTIVE GOVERNMENT                       | 39          | (s. 70)                   |
| POWERS OF COMMONWEALTH  |             |                           |
| appeals against   | 42          | (s. 76 (i))               |
| appeals to Queen in Council as to limits of termination                           | 41, 42      | (s. 74)                   |
|   | 84          | (s. 11)                   |

|   | <i>Page</i> | <i>Section</i>  |
|---|-------------|-----------------|
| executive   | 37          | (s. 61)         |
| judicial  | 40          | (s. 71)         |
| legislative   | 20          | (s. 1)          |
| POWERS OF GOVERNOR-GENERAL  | 20          | (s. 2)          |
|   | 37          | (s. 61)         |
| exercised by deputy   | 56          | (s. 126)        |
| vested in administrator   | 72          | (s. III(b))     |
| POWERS OF HOUSE OF REPRESENTATIVES                                  | 31          | (ss. 49, 50)    |
| legislative   | 34          | (s. 53)         |
| legislative power of Parliament incidental to                       | 33          | (s. 51 (xxxix)) |
| quorum needed to exercise   | 29          | (s. 39)         |
| POWERS OF QUEEN   |             |                 |
| deputies of Governor-General  | 56          | (s. 126)        |
| disallowance of laws  | 36          | (s. 59)         |
| exercised by Governor-General                                       | 20          | (s. 2)          |
|   | 37          | (s. 61)         |
| prerogative to grant special leave of appeal to Privy Council       | 41, 42      | (s. 74)         |
| in respect of States  | 83          | (s. 7)          |
| POWERS OF SENATE  | 31          | (ss. 49, 50)    |
| legislative power incidental to                                     | 33          | (s. 51 (xxxix)) |
| Money Bills   | 34          | (s. 53)         |
| quorum to exercise  | 26          | (s. 22)         |
| POWERS OF STATE GOVERNORS IN RESPECT OF STATES                      | 83          | (s. 7)          |
| POWERS OF STATES, APPEALS TO PRIVY IN COUNCIL AS TO LIMITS          | 41, 42      | (s. 74)         |
| termination   | 84          | (s. 11)         |
| <i>see also</i> legislative powers of State Parliaments             |             |                 |
| PREFERENCE, BY STATES AS TO RAILWAYS                                | 49          | (s. 102)        |
| PREFERENCE FORBIDDEN, BY COMMONWEALTH BETWEEN STATES                |             |                 |
| taxation  | 32          | (s. 51 (ii))    |
| trade, commerce or revenue  | 49          | (s. 99)         |
| PRESIDENT OF SENATE   | 25          | (ss. 17, 18)    |
| notification of vacancy by  | 25          | (s. 21)         |
| voting by   | 26          | (s. 23)         |
| PRISONS, DETENTION OF OFFENDERS AGAINST COMMONWEALTH LAWS IN        | 54          | (s. 120)        |
| PRIVILEGES, PARLIAMENTARY   | 31          | (ss. 49, 50)    |
| PRIVY COUNCIL   |             |                 |
| appeals from Australian courts                                      | 41          | (s. 73)         |
| termination   | 84          | (s. 11)         |
| appeals from High Court   | 41, 42      | (s. 74)         |
| laws limiting   | 67          | (n. 17)         |
| approval to rules of Court of Admiralty                             | 77          | (s. 6)          |
| PROCESS, SERVICE AND EXECUTION OF                                   | 33          | (s. 51 (xxiv))  |
| PROCLAMATION OF COMMONWEALTH  | 17          | (cl. 3)         |
|   | 61          | (n. 2)          |
| text  | 69, 70      |                 |
| PROCLAMATIONS OF GOVERNOR-GENERAL                                   | 21          | (s. 5)          |
|   | 36          | (ss. 59, 60)    |
|   | 38          | (s. 69)         |
| PRODUCTION BOUNTIES   | 46          | (s. 86)         |
| legislative powers  | 32          | (s. 51 (iii))   |
| exclusive power over  | 46, 47      | (s. 90)         |
| State powers  | 47          | (s. 91)         |
| transfer of property with transfer of State departments controlling | 45          | (s. 85(i))      |
| PROHIBITION SOUGHT AGAINST COMMONWEALTH OFFICERS                    | 42          | (s. 75(v))      |
| PROMISSORY NOTES  | 32          | (s. 51 (xvi))   |

|   | <i>Page</i> | <i>Section</i>  |
|---|-------------|-----------------|
| PROPERTY  |             |                 |
| acquisition   | 33          | (s. 51 (xxxix)) |
| places for public purposes  | 34          | (s. 52(i))      |
| State taxation of   | 53          | (s. 114)        |
| PROPERTY OF STATES  |             |                 |
| not to be taxed by Commonwealth   | 53          | (s. 114)        |
| transfer to Commonwealth, with transfer of departments                          | 45          | (s. 85)         |
| PROPORTIONAL REPRESENTATION OF STATES   |             |                 |
| alteration  | 57, 58      | (s. 128)        |
| House of Representatives  | 26, 27      | (ss. 24-27)     |
| Senate  | 21          | (s. 7)          |
| PROPOSED LAWS   | 34-36       | (ss. 53-60)     |
| to alter Constitution   | 57, 58      | (s. 128)        |
| <i>see also</i> Royal assent  |             |                 |
| PROROGATION OF PARLIAMENT   | 21          | (s. 5)          |
| PROTECTION OF STATES FROM INVASION AND VIOLENCE                                 | 54          | (s. 119)        |
| PUBLIC ACTS AND RECORDS OF STATES, RECOGNITION OF                               | 33          | (s. 51 (xxv))   |
|   | 54          | (s. 118)        |
| PUBLIC DEBTS OF STATES TAKEN OVER BY COMMONWEALTH                               | 50, 51      | (ss. 105, 105A) |
| interest on   | 46          | (s. 87)         |
| PUBLIC PURPOSES, LEGISLATIVE POWERS WITH RESPECT TO PLACES<br>ACQUIRED FOR      | 34          | (s. 52(i))      |
| PUBLIC SERVANTS   |             |                 |
| appointment and removal   | 38          | (s. 67)         |
| of departments transferred to Commonwealth                                      | 44, 45      | (s. 84)         |
| PUBLIC SERVICE, INTEREST IN AGREEMENTS WITH,<br>DISQUALIFICATION FOR PARLIAMENT | 30          | (s. 44(v))      |
|   | 30, 31      | (s. 45)         |
| PUBLIC SERVICE DEPARTMENTS, <i>SEE</i> DEPARTMENTS                              |             |                 |
| <b>Q</b>  |             |                 |
| QUALIFICATION FOR OFFICE OR PUBLIC TRUST  | 53          | (s. 116)        |
| QUALIFICATION OF ELECTORS   | 29          | (s. 41)         |
| House of Representatives elections  | 27, 28      | (s. 30)         |
| referenda to alter Constitution   | 57, 58      | (s. 128)        |
| Senate elections  | 22          | (s. 8)          |
| QUALIFICATIONS OF PARLIAMENTARIANS  |             |                 |
| determination of questions respecting   | 31          | (s. 47)         |
| members of House of Representatives   | 28          | (s. 34)         |
| senators  | 25          | (s. 16)         |
| QUARANTINE  |             |                 |
| legislative powers  | 32          | (s. 51 (ix))    |
| transfer of State departments responsible for                                   | 38          | (s. 69)         |
| QUEEN   | 20          | (s. 1)          |
| administrator of Government appointed by  | 20          | (s. 4)          |
| appeals to  | 87          | (s. 16(1))      |
| Bills presented to Governor-General for assent of                               | 36          | (s. 58)         |
| Bills reserved for assent   | 36          | (s. 60)         |
| disallowance of laws by   | 36          | (s. 59)         |
| State laws  | 83          | (s. 8)          |
| executive power vested in   | 37          | (s. 61)         |
| heirs and successors  | 17          | (cl. 2)         |
| power to authorise Governor-General to appoint deputies                         | 56          | (s. 126)        |
| powers respecting States  | 83          | (s. 7)          |
| representative of   | 20          | (s. 2)          |
| in each State   | 83          | (s. 7(1))       |

|  | <i>Page</i> | <i>Section</i>          |
|--|-------------|-------------------------|
| Royal Prerogative to grant special leave to appeal to Privy Council                              | 41, 42      | (s. 74)                 |
| termination  | 84          | (s. 11)                 |
| suspension of State laws   | 83          | (s. 8)                  |
| territories placed under authority of Commonwealth by<br><i>see also</i> Crown, Governor-General | 55          | (s. 122)                |
| <b>QUEEN IN COUNCIL</b>  |             |                         |
| appeals from Australian courts   | 41          | (s. 73)                 |
| termination  | 84          | (s. 11)                 |
| appeals from High Court  | 41, 42      | (s. 74)                 |
| laws limiting  | 67          | (n. 17)                 |
| approval to rules of Court of Admiralty  | 77          | (s. 6)                  |
| <b>QUEEN'S PLEASURE</b>  |             |                         |
| appointment of administrator of Government during  | 72, 73      | (s. III)                |
| appointment of Governor-General during   | 20          | (s. 2)                  |
| <b>QUEEN'S PLEASURE, BILLS RESERVED FOR</b>  | 36          | (s. 58)                 |
| limiting matters in which leave may be asked to appeal from<br>High Court to Queen in Counsel    | 41, 42      | (s. 74)                 |
| <b>QUEEN'S PLEASURE, SIGNIFICATION ON BILLS</b>  | 36          | (s. 60)                 |
| relating to admiralty jurisdiction   | 77          | (s. 6)                  |
| <b>QUEEN'S PLEASURE, SIGNIFICATION ON STATE BILLS</b>  |             |                         |
| Acts not subject to suspension of operation pending  | 83          | (s. 8)                  |
| laws or instruments requiring reservation of Bill for  | 83          | (s. 9(2))               |
| <b>QUEEN'S SUBJECTS</b>  |             |                         |
| members of Parliament must be  | 25          | (s. 16)                 |
|  | 28          | (s. 34(i))              |
| resident in States, rights against disability or discrimination                                  | 54          | (s. 117)                |
| <b>QUEENSLAND</b>  |             |                         |
| Constitution Act 1867-1978, amendment by <i>Australia Act 1986</i>                               | 85          | (s. 13)                 |
| Senate electorates   | 21          | (s. 7)                  |
| <b>QUORUM</b>  |             |                         |
| House of Representatives   | 29          | (s. 39)                 |
| Senate   | 26          | (s. 22)                 |
| <b>QUOTA OF REPRESENTATION</b>   | 26          | (s. 24)                 |
| <br><b>R</b>   |             |                         |
| <b>RACE, PEOPLE OF ANY</b>   |             |                         |
| disqualified from voting at State elections  | 26          | (s. 25)                 |
| for whom necessary to make special laws  | 33          | (s. 51 (xxvi))          |
| <b>RAILWAYS</b>  |             |                         |
| legislative powers   | 33          | (s. 51 (xxxii)-(xxxiv)) |
| trade and commerce   | 48, 49      | (ss. 98, 102)           |
| rates for carriage of goods  | 50          | (s. 104)                |
| <b>RECORDS OF STATES, RECOGNITION OF</b>   | 33          | (s. 51 (xxv))           |
|  | 54          | (s. 118)                |
| <b>REFERENCES BY STATE PARLIAMENTS TO PARLIAMENT</b>   | 33          | (s. 51 (xxxvii))        |
|  | 81          | (preamble)              |
| <b>REFERENDA</b>   |             |                         |
| to alter Constitution  | 57, 58      | (s. 128)                |
| to alter State limits  | 55          | (s. 123)                |
| <b>REJECTION OF BILL BY SENATE</b>   | 35          | (s. 57)                 |
| <b>RELIGION</b>  | 53          | (s. 116)                |
| <b>REMOVAL FROM OFFICE</b>   |             |                         |
| civil servants   | 38          | (s. 67)                 |
| Inter-State Commissioners  | 49          | (s. 103(ii))            |
| Governor-General, administration of Government in the event of                                   | 72, 73      | (s. III)                |

|  | <i>Page</i> | <i>Section</i>   |
|--|-------------|------------------|
| Justices of High Court and other federal courts                              | 40          | (s. 72(ii))      |
| President of Senate  | 25          | (s. 17)          |
| Speaker of House of Representatives  | 28, 29      | (s. 35)          |
| REMUNERATION AND SALARIES  |             |                  |
| Administrator  | 20          | (s. 4)           |
| Governor-General   | 20          | (s. 3)           |
| Inter-State Commissioners  | 49          | (s. 103(iii))    |
| Justices of High Court and other federal courts                              | 40          | (s. 72(iii))     |
| members of Parliament  | 31          | (s. 48)          |
| Ministers  | 38          | (s. 66)          |
| REPEAL OF CONCURRENT STATE LAWS  | 52          | (s. 108)         |
| REPEAL OF CONSTITUTIONAL LAW   |             |                  |
| power to, not affected by Statute of Westminster 1931                        | 86          | (s. 15)          |
| by State Acts  | 78          | (s. 8)           |
|  | 82          | (s. 5(b))        |
| REPEAL OF ENGLISH LAW  |             |                  |
| power of Parliament  | 77          | (s. 2(2))        |
| powers of State Parliaments  | 82          | (s. 3(2))        |
| REPEAL OF FEDERAL COUNCIL OF AUSTRALASIA ACT 1885                            | 18          | (cl. 7)          |
| REPRESENTATION IN PARLIAMENT   |             |                  |
| Bills to alter   | 57, 58      | (s. 128)         |
| House of Representatives   | 26-28       | (ss. 24-34)      |
| new States   | 55          | (s. 121)         |
| Senate   | 21-25       | (ss. 7-16)       |
| territories  | 55          | (s. 122)         |
| REPUGNANCY OF ACTS, LAWS   |             |                  |
| Commonwealth Acts, to English law  | 76          | (s. 2(2))        |
| State Acts   |             |                  |
| to constitutional law of Commonwealth  | 82          | (s. 5(b))        |
| to English law   | 82          | (s. 3(2))        |
| RESERVATION OF BILLS   |             |                  |
|  | 36          | (s. 58)          |
|  | 36          | (s. 60)          |
| limiting appeals to Privy Council  | 41, 42      | (s. 74)          |
| relating to admiralty jurisdiction   | 77          | (s. 6)           |
| RESERVATION OF STATE BILLS   | 83          | (s. 9(2))        |
| RESIDENTS OF COMMONWEALTH, MEMBERS OF PARLIAMENT MUST BE                     |             |                  |
|  | 25          | (s. 16)          |
|  | 28          | (s. 34(i))       |
| RESIDENTS OF STATES  |             |                  |
| disability or discrimination in other States                                 | 54          | (s. 117)         |
| jurisdiction in matters involving different States                           | 42          | (s. 75(iv))      |
| rights to reasonable use of river waters for conservation or irrigation      | 49          | (s. 100)         |
| RESIGNATIONS   |             |                  |
| Justices of federal courts   | 40, 41      | (s. 72)          |
| member of House of Representatives   | 29          | (s. 37)          |
| President of Senate  | 25          | (s. 17)          |
| senators   | 25          | (s. 19)          |
| Speaker of House of Representatives  | 28, 29      | (s. 35)          |
| RETIREMENT OF JUDGES   | 40, 41      | (s. 72)          |
| RETIRING ALLOWANCE OF OFFICERS TRANSFERRED TO<br>COMMONWEALTH PUBLIC SERVICE |             |                  |
|  | 44, 45      | (s. 84)          |
| REVENUE  |             |                  |
| appropriation  | 44          | (ss. 81, 82)     |
|  | 34          | (s. 54)          |
|  | 44          | (s. 83)          |
| Bills  | 34, 35      | (ss. 53, 54, 56) |
| customs and excise duties  | 46          | (s. 87)          |
|  | 46          | (s. 89)          |
|  | 47          | (ss. 93(ii), 94) |
| laws   | 49          | (s. 99)          |

|   | <i>Page</i> | <i>Section</i>  |
|---|-------------|-----------------|
| <i>see also</i> expenditure   |             |                 |
| REVENUE, AUDIT OF   |             |                 |
| legislative powers relating to  | 33          | (s. 51 (xxxvi)) |
| provisional laws applying   | 48          | (s. 97)         |
| RIGHTS  |             |                 |
| against disability or discrimination                                  | 54          | (s. 117)        |
| officers on transfer to public service of Commonwealth                | 44, 45      | (s. 84)         |
| parental  | 32          | (s. 51 (xxii))  |
| to proceed against Commonwealth or State                              | 43          | (s. 78)         |
| reasonable use of river waters for conservation or irrigation         | 49          | (s. 100)        |
| religious   | 53          | (s. 116)        |
| to vote   | 29          | (s. 41)         |
| RIVER WATERS, RIGHTS TO REASONABLE USE FOR CONSERVATION OR IRRIGATION | 49          | (s. 100)        |
| ROTATION OF SENATORS  | 22, 23      | (ss. 13, 14)    |
|   | 62          | (n. 8)          |
| ROYAL ASSENT  | 36          | (ss. 58-60)     |
| admiralty jurisdiction, laws relating to                              | 77          | (s. 6)          |
| appeals to Queen in Council, laws limiting                            | 41, 42      | (s. 74)         |
| State laws  | 83          | (ss. 8, 9)      |
| ROYAL PREROGATIVE TO GRANT SPECIAL LEAVE OF APPEAL TO PRIVY COUNCIL   |             |                 |
| from Australian court decisions                                       | 84          | (s. 11(1))      |
| from High Court decisions   | 41, 42      | (s. 74)         |
| <br><b>S</b>  |             |                 |
| SALARIES AND REMUNERATION   |             |                 |
| administrator of Government   | 20          | (s. 4)          |
| Governor-General  | 20          | (s. 3)          |
| Inter-State Commissioners   | 49          | (s. 103(iii))   |
| Justices of High Court and other federal courts                       | 40          | (s. 72(iii))    |
| members of Parliament   | 31          | (s. 48)         |
| Ministers   | 38          | (s. 66)         |
| SEAT OF GOVERNMENT  | 56          | (s. 125)        |
| legislative powers  | 34          | (s. 52(i))      |
| SECURITY, <i>SEE</i> DEFENCE  |             |                 |
| SENATE  | 20          | (s. 1)          |
|   | 21-26       | (ss. 7-23)      |
| disagreement with House of Representatives                            | 35          | (s. 57)         |
| legislative power incidental to powers vested in                      | 33          | (s. 51 (xxxix)) |
| legislative powers  | 34          | (s. 53)         |
| powers, privileges and immunities                                     | 31          | (ss. 49, 50)    |
| representation of new States  | 55          | (s. 121)        |
| representation of States, Bills to alter                              | 57, 58      | (s. 128)        |
| representation of territories   | 55          | (s. 122)        |
| SENATORS  | 21          | (s. 7)          |
| absence from Senate   | 25          | (s. 20)         |
| allowance   | 30          | (s. 48)         |
| casual vacancies  | 23, 24      | (s. 15)         |
|   | 62, 63      | (n. 9)          |
| disqualification  | 30, 31      | (ss. 44-46)     |
| election  | 22          | (ss. 9-12)      |
| State Acts relating to  | 61, 62      | (n. 6)          |
| members of House of Representatives incapable of                      |             |                 |
| being chosen or sitting as  | 30          | (s. 43)         |
| Ministers not members of House of Representatives or                  | 37          | (s. 64)         |
| oath or affirmation of allegiance                                     | 30          | (s. 42)         |
|   | 59          | (schedule)      |
| Presidents cease to hold office if cease to be                        | 25          | (s 17)          |

|   | <i>Page</i> | <i>Section</i>           |
|---|-------------|--------------------------|
| proportionate representation of States, Bills to alter            | 57, 58      | (s. 128)                 |
| qualifications  | 25          | (s. 16)                  |
| determination of questions respecting                             | 31          | (s. 47)                  |
| quorum  | 26          | (s. 22)                  |
| resignation   | 25          | (s. 19)                  |
| rotation  | 22, 23      | (ss. 13, 14)             |
| voting in Senate by   | 26          | (s. 23)                  |
| SENTENCING FOR OFFENCE, DISQUALIFICATION FOR PARLIAMENT           | 30          | (s. 44(ii))              |
|   | 30, 31      | (s. 45)                  |
| SERVICE OF PROCESS AND JUDGMENTS OF STATE COURTS                  | 33          | (s. 51(xxiv))            |
| SERVICES, FEES FOR  |             |                          |
| Bills containing provisions for                                   | 34          | (s. 53)                  |
| rendered by members of Parliament                                 | 31          | (s. 45(iii))             |
| SERVICES OF GOVERNMENT, BILLS APPROPRIATING REVENUE OR MONEYS FOR | 34          | (ss. 53, 54)             |
| SESSIONS OF PARLIAMENT  | 21          | (s. 5, 6)                |
| absence of parliamentarians during                                | 25          | (s. 20)                  |
|   | 29          | (s. 38)                  |
| SHIPS AND SHIPPING  |             |                          |
| Admiralty and maritime jurisdiction                               | 42          | (s. 76(iii))             |
|   | 77          | (s. 6)                   |
|   | 84          | (s. 11(2), (3))          |
| British, Commonwealth laws in force on                            | 18          | (cl. 5)                  |
| Colonial Court of Admiralty Act 1890                              |             |                          |
| sections 4 and 7  | 77          | (s. 6)                   |
| section 6   | 84          | (s. 11(2), (3))          |
| inter-state   | 47          | (s. 92)                  |
| legislative powers  | 48          | (s. 98)                  |
| lighthouses, lightships, beacons and buoys                        | 32          | (s. 51(vii))             |
|   | 38          | (s. 69)                  |
| merchant  | 77          | (s. 5)                   |
| SICKNESS BENEFITS   | 32, 33      | (s. 51(xxiiiA))          |
| SILVER COIN   | 53          | (s. 115)                 |
| SILVER MINING, AIDS TO OR BOUNTIES ON                             | 47          | (s. 91)                  |
| SIMULTANEOUS ELECTIONS  | 63          | (n. 10)                  |
| SINKING FUNDS FOR STATE DEBTS                                     | 50          | (s. 105A(1)(c))          |
| SITTINGS OF PARLIAMENT  | 21          | (s. 5, 6)                |
| absence of parliamentarians during                                | 25          | (s. 20)                  |
|   | 29          | (s. 38)                  |
| joint   | 35          | (s. 57)                  |
| SOCIAL WELFARE POWERS   | 32, 33      | (s. 51(xxiii), (xxiiiA)) |
| SOUTH AUSTRALIA   | 18          | (cl. 6)                  |
| SPEAKER OF HOUSE OF REPRESENTATIVES                               | 28, 29      | (ss. 35, 36)             |
| voting by   | 29          | (s. 40)                  |
| writs for general elections issued by                             | 28          | (s. 33)                  |
| STANDING ORDERS   | 31          | (s. 50)                  |
| STATE AUTHORITIES, PREFERENCE OR DISCRIMINATION AS TO RAILWAYS BY | 49          | (s. 102)                 |
| STATE BANKING   | 32          | (s. 51(xiii))            |
| STATE COINAGE   | 53          | (s. 115)                 |
| STATE CONSTITUTIONS   |             |                          |
| amendment by <i>Australia Act 1986</i>                            | 85, 86      | (ss. 13, 14)             |
| continuation of   | 52          | (s. 106)                 |
| debt agreements with Commonwealth binding, notwithstanding        | 51          | (s. 105A(5))             |
| STATE COURTS  |             |                          |
| appeals from  | 41          | (s. 73)                  |
| to Privy Council  | 84          | (s. 11)                  |

|  | <i>Page</i> | <i>Section</i>      |
|--|-------------|---------------------|
| laws of Parliament binding upon  | 18          | (cl. 5)             |
| recognition of proceedings   | 33          | (s. 51 (xxv))       |
|  | 54          | (s. 118)            |
| service and execution of process and judgments                               | 33          | (s. 51 (xxiv))      |
| STATE COURTS INVESTED WITH FEDERAL JURISDICTION                              | 40          | (s. 71)             |
| appeals from   | 41          | (s. 73 (ii))        |
| judges   | 43          | (s. 79)             |
| legislative powers   | 43          | (s. 77 (ii), (iii)) |
| STATE DEFENCE FORCES   | 53          | (s. 114)            |
| STATE ELECTORS' RIGHT TO VOTE  | 29          | (s. 41)             |
| STATE GOVERNORS  |             |                     |
| assent to Bills  | 83          | (ss. 8, 9)          |
| powers and functions respecting States                                       | 83          | (s. 7)              |
| provisions of <i>Australia Act 1986</i> referring to                         | 87          | (s. 16(1))          |
| provisions of Constitution referring to                                      | 52          | (s. 110)            |
| Senate election writs issued by  | 22          | (s. 12)             |
| Senate vacancies   |             |                     |
| appointment to fill by   | 23-25       | (s. 15)             |
|  | 62, 63      | (n. 9)              |
| notification to  | 25          | (s. 21)             |
| senators' names certified by   | 21          | (s. 7)              |
|  | 23-25       | (s. 15)             |
| STATE INSPECTION OF GOODS CHARGES  | 53          | (s. 112)            |
| STATE INSURANCE  | 32          | (s. 51 (xiv))       |
| STATE JUDGES, LAWS OF PARLIAMENT OF COMMONWEALTH BINDING UPON                | 18          | (cl. 5)             |
| STATE LAWS   |             |                     |
| audit, application to  | 47          | (s. 93)             |
| Commonwealth laws binding, notwithstanding                                   | 18          | (cl. 5)             |
| Commonwealth laws, inconsistency with  | 18          | (cl. 5)             |
|  | 52          | (s. 109)            |
| continuance in force within concurrent powers                                | 52          | (s. 108)            |
| customs, excise, and bounties  | 46, 47      | (ss. 90, 91)        |
| debt agreements with Commonwealth binding, notwithstanding                   | 51          | (s. 105A(5))        |
| electoral matters, application to  | 22          | (s. 10)             |
|  | 27, 28      | (ss. 30, 31)        |
| elections  |             |                     |
| House of Representatives   | 27          | (s. 29)             |
|  | 63          | (n. 11)             |
| Senators   | 22          | (s. 9)              |
|  | 61, 62      | (n. 6)              |
| English law, validity with respect to  | 82          | (s. 3(2))           |
| English law not part of  | 81          | (s. 1)              |
| High Court jurisdiction relating to subject-matters claimed under            | 42          | (s. 76 (iv))        |
| disqualifying all persons of any race from voting                            | 26          | (s. 25)             |
| High Court original jurisdiction   | 42          | (s. 76 (iv))        |
| inspection of goods  | 53          | (s. 112)            |
| intoxicating liquids passing into State subject to                           | 53          | (s. 113)            |
| naturalization under, qualification for Parliament                           | 28          | (s. 34 (ii))        |
| not subject to disallowance or suspension of operation                       | 83          | (s. 8)              |
| not subject to withholding assent or reservation                             | 83          | (s. 9)              |
| Parliaments' constitution, powers or procedures                              | 82          | (s. 6)              |
| recognition  | 33          | (s. 51 (xxv))       |
|  | 54          | (s. 118)            |
| repealing, amending or repugnant to Commonwealth constitutional law          | 82          | (s. 5(b))           |
| revenue and expenditure  | 48          | (s. 97)             |
| Statute of Westminster 1931, sections 4, 9(2) and (3) and 10(2)              |             |                     |
| repealed as far as part of   | 85          | (s. 12)             |
| <i>see also</i> legislative powers of State Parliaments, State Constitutions |             |                     |



|   | <i>Page</i> | <i>Section</i>   |
|---|-------------|------------------|
| STATE LIMITS  |             |                  |
| alteration  | 55          | (s. 123)         |
|   | 57, 58      | (s. 128)         |
| industrial disputes extending beyond                                    | 33          | (s. 51 (xxxv))   |
| State banking extending beyond  | 32          | (s. 51 (xiii))   |
| State insurance extending beyond  | 32          | (s. 51 (xiv))    |
| STATE PARLIAMENTS   |             |                  |
| new States, consent to formation of                                     | 55          | (s. 124)         |
| Senate casual vacancies filled by                                       | 23-25       | (s. 15)          |
|   | 62, 63      | (n. 9)           |
| State limits, consent to alteration of                                  | 55          | (s. 123)         |
| territory surrendered to Commonwealth by                                | 53          | (s. 111)         |
|   | 55          | (s. 122)         |
| <i>see also</i> legislative powers of State Parliaments                 |             |                  |
| STATE PREMIERS  | 83          | (s. 7(5))        |
| STATE PRISONS, DETENTION OF OFFENDERS AGAINST COMMONWEALTH LAWS IN      | 54          | (s. 120)         |
| STATE PROPERTY  |             |                  |
| acquisition   | 33          | (s. 51 (xxxix))  |
| not to be taxed by Commonwealth   | 53          | (s. 114)         |
| transfer to Commonwealth on transfer of departments                     | 45          | (s. 85)          |
| STATE RAILWAYS  |             |                  |
| legislative powers  | 33          | (s. 51 (xxxiii)) |
|   | 48, 49      | (ss. 98, 102)    |
| rates for carriage of goods   | 50          | (s. 104)         |
| STATE SUPREME COURTS  |             |                  |
| appeals from judgments, decrees, orders and sentences                   | 41          | (s. 73)          |
| STATES  | 18          | (cl. 6)          |
|   | 52-55       | (ss. 106-124)    |
| appeals to Privy Council  | 41, 42      | (s. 74)          |
| termination   | 84          | (s. 11)          |
| <i>Australia Act 1986</i> references to                                 | 87          | (s. 16(1))       |
| Colonial Boundaries Act 1895, application of                            | 19          | (cl. 8)          |
| debts taken over by Commonwealth  | 50, 51      | (ss. 105, 105A)  |
| interest on   | 46          | (s. 87)          |
| departments transferred to Commonwealth                                 | 34          | (s. 52(ii))      |
|   | 38          | (s. 69)          |
|   | 44, 45      | (ss. 84, 85)     |
| defence of  | 32          | (s. 51 (vi))     |
|   | 54          | (s. 119)         |
| financial assistance  | 48          | (s. 96)          |
| jurisdiction in matters between   | 42          | (s. 75 (iv))     |
| laws binding on   | 18          | (cl. 5)          |
| majority required, in referenda to alter Constitution                   | 57, 58      | (s. 128)         |
| members of House of Representatives representing                        | 26-28       | (ss. 24-34)      |
| new   | 55          | (s. 121)         |
|   | 55          | (s. 124)         |
| no preference to one  | 49          | (s. 99)          |
| not included in expression "Colony" in United Kingdom Acts              | 79          | (s. 11)          |
| parts surrendered to Commonwealth                                       | 53          | (s. 111)         |
|   | 55          | (s. 122)         |
| payment to, before and after imposition of uniform customs duties       | 46          | (s. 89)          |
|   | 47          | (ss. 93(ii), 94) |
| powers and functions of Queen and Governors                             | 83          | (s. 7)           |
| public Acts and records, recognition throughout Commonwealth            | 33          | (s. 51 (xxv))    |
|   | 54          | (s. 118)         |
| proceedings against   | 43          | (s. 78)          |
| Queen's representatives   | 83          | (s. 7(1))        |
| railway construction and extension in                                   | 33          | (s. 51 (xxxiv))  |
| rights to reasonable use of river waters for conservation or irrigation | 49          | (s. 100)         |
| senators representing   | 21-25       | (ss. 7-16)       |
| number  | 61          | (n. 5)           |

|   | <i>Page</i> | <i>Section</i>   |
|---|-------------|------------------|
| taxation laws may not discriminate between or between parts of trade and commerce among               | 32          | (s. 51(ii))      |
|   | 32          | (s. 51(i))       |
|   | 47          | (s. 92)          |
|   | 48-50       | (ss. 98-104)     |
| trials for offences against Commonwealth law  | 43          | (s. 80)          |
| United Kingdom Government's responsibility for government   | 83          | (s. 10)          |
| United Kingdom Parliament's power to legislate for  | 81          | (s. 1)           |
| <i>see also</i> Colonies, Original States, people of a State, residents of States, territory of State |             |                  |
| STATES, UNION OF  | 55          | (s. 124)         |
| STATISTICS  | 32          | (s. 51(xi))      |
| STATUTE OF WESTMINSTER 1931   | 76-79       |                  |
| interpretation of   | 87          | (s. 16(1))       |
| adoption  | 75          | (s. 3)           |
| method of repeal or amendment   | 86          | (s. 15)          |
| repeal of sections 4, 9(2) and (3) and 10(2)  | 85          | (s. 12)          |
| State Act may not repeal, amend or be repugnant to  | 82          | (s. 5(b))        |
| STATUTE OF WESTMINSTER ADOPTION ACT 1942  | 75-79       |                  |
| STUDENT BENEFITS  | 32, 33      | (s. 51(xxiiiA))  |
| SUBJECT-MATTER (SAME) CLAIMED UNDER LAWS OF DIFFERENT STATES, JURISDICTION IN                         | 42          | (s. 76(iv))      |
| SUBJECTS OF FOREIGN POWERS DISQUALIFIED FOR PARLIAMENT  | 30          | (s. 44(i))       |
|   | 30-31       | (s. 45)          |
| SUBJECTS OF QUEEN   |             |                  |
| members of Parliament must be   | 25          | (s. 16)          |
|   | 28          | (s. 34(ii))      |
| resident in States, rights against disability or discrimination                                       | 54          | (s. 117)         |
| SUMMONING PARLIAMENT  | 21          | (s. 5)           |
| SUPREME COURT   | 40          | (s. 71)          |
| <i>see also</i> State Supreme Courts  |             |                  |
| SURPLUS REVENUE, PAYMENT TO STATES  | 46          | (s. 87)          |
|   | 46          | (s. 89(iii))     |
|   | 47          | (ss. 93(ii), 94) |
| SUSPENSION OF OPERATION OF STATE LAWS   | 83          | (s. 8)           |
| <i>see also</i> disallowance of laws  |             |                  |
| SYDNEY, DISTANCE OF SEAT OF GOVERNMENT FROM   | 56          | (s. 125)         |
| <br><b>T</b>  |             |                  |
| TAXATION  |             |                  |
| Commonwealth property, by States  | 53          | (s. 114)         |
| Bills   | 34          | (ss. 53, 55)     |
| legislative powers  | 32          | (s. 51(ii))      |
| State property, by Commonwealth   | 53          | (s. 114)         |
| <i>see also</i> customs duties, excise duties   |             |                  |
| TELEGRAPHIC AND TELEPHONIC SERVICES   |             |                  |
| legislative powers  | 32          | (s. 51(v))       |
| transfer of State departments responsible for   | 38          | (s. 69)          |
| TERM OF SERVICE (TERM OF OFFICE)  |             |                  |
| Inter-State Commissioners   | 49          | (s. 103(ii))     |
| Justices of any federal court   | 40, 41      | (s. 72)          |
| Ministers not senators or members   | 37          | (s. 64)          |
| senators  | 21          | (s. 7)           |
| after first meeting and first meeting following dissolution   | 22, 23      | (s. 13)          |
| TERMINATION OF APPOINTMENT  |             |                  |
| State Governors   | 78          | (s. 7(3))        |
| <i>see also</i> removal from office   |             |                  |

|  | <i>Page</i> | <i>Section</i>         |
|--|-------------|------------------------|
| TERRITORIAL LIMITS, <i>SEE</i> EXTRA-TERRITORIAL LEGISLATIVE POWER                       |             |                        |
| State limits   |             |                        |
| TERRITORIES  | 18          | (cl. 6)                |
| electors qualified to vote at referenda to alter Constitution                            | 57, 58      | (s. 128)               |
| government   | 55          | (s. 122)               |
| Governor-General's visits to, not absence out of Australia                               | 73          | (s. III(f))            |
| representation in Parliament   | 55          | (s. 122)               |
| seat of Government   | 56          | (s. 125)               |
| legislative powers   | 34          | (s. 52(i))             |
| Statute of Westminster 1931, sections 4, 9(2) and (3) and 10(2)                          |             |                        |
| repealed as far as part of law of  | 85          | (s. 12)                |
| United Kingdom Parliament's power to legislate for terminated                            | 81          | (s. 1)                 |
| TERRITORY OF STATE   |             |                        |
| alteration   | 55          | (s. 123)               |
| railway rates for development  | 50          | (s. 104)               |
| TERRITORY SEPARATED FROM STATE (NEW STATE)   | 55          | (s. 124)               |
| TERRITORY SURRENDERED BY STATES  | 53          | (s. 111)               |
|  | 55          | (s. 122)               |
| TRADE AND COMMERCE   | 49, 50      | (ss. 99-104)           |
| legislative powers   | 32          | (s. 51(i))             |
|  | 48, 49      | (ss. 98, 102)          |
| TRADE MARKS  | 32          | (s. 51(xviii))         |
| TRADING CORPORATIONS   | 32          | (s. 51(xx))            |
| TRANSPORT  | 33          | (s. 51(xxxii)-(xxxiv)) |
| <i>see also</i> railways, ships and shipping   |             |                        |
| TREASON ATTAINTED, DISQUALIFICATION FOR PARLIAMENT                                       | 30          | (s. 44(ii))            |
|  | 30, 31      | (s. 45)                |
| TREASURY, MONEY DRAWN FROM   | 44          | (s. 83)                |
| TREATIES   |             |                        |
| external affairs powers  | 33          | (s. 51(xxix))          |
| jurisdiction in matters arising under  | 42          | (s. 75(i))             |
| TRIAL BY JURY  | 43          | (s. 80)                |
| <b>U</b>   |             |                        |
| UNEMPLOYMENT BENEFITS  | 32, 33      | (s. 51(xxiiiA))        |
| UNIFORM BOUNTIES   | 32          | (s. 51(iii))           |
| UNIFORM DUTIES OF CUSTOMS  | 46-48       | (ss. 88-95)            |
| UNIFORM METHOD OF CHOOSING SENATORS  | 22          | (s. 9)                 |
| UNIFORM TAXATION   | 32          | (s. 51(ii))            |
| UNION OF FEDERAL COMMONWEALTH  | 17          | (preamble)             |
| UNION OF TWO OR MORE STATES  | 55          | (s. 124)               |
| UNITED KINGDOM, FEDERATION UNDER CROWN OF  | 17          | (preamble)             |
| UNITED KINGDOM GOVERNMENT, TERMINATION OF RESPONSIBILITY<br>IN RELATION TO STATE MATTERS | 83          | (s. 10)                |
| UNITED KINGDOM PARLIAMENT, LAWS OF   |             |                        |
| extending legislative powers of Commonwealth Parliament                                  | 63          | (n. 12)                |
| extension to Australia terminated  | 81          | (s. 1)                 |
| extension to Commonwealth terminated   | 75-79       |                        |
| naturalization under, qualification for Parliament                                       | 28          | (s. 34(ii))            |
| laws repugnant to  | 77          | (s. 2(2))              |
| State  | 82          | (s. 3(2))              |
| providing for appeals to Privy Council   | 84          | (s. 11)                |

|   | <i>Page</i> | <i>Section</i>    |
|---|-------------|-------------------|
| UNITED KINGDOM PARLIAMENT, LEGISLATIVE POWERS OF                  |             |                   |
| exercise of powers exercised only by                              | 33          | (s. 51 (xxxviii)) |
| legislative powers of State Parliaments include                   | 81          | (s. 2(2))         |
| termination for Australia   | 81          | (s. 1)            |
| <br>  |             |                   |
| <b>V</b>  |             |                   |
| VACANCIES IN EITHER HOUSE   |             |                   |
| determination of questions respecting                             | 31          | (s. 47)           |
| on disqualification   | 30, 31      | (s. 45)           |
| VACANCIES IN HOUSE OF REPRESENTATIVES                             | 28, 29      | (ss. 33, 37, 38)  |
| VACANCIES IN SENATE   | 25          | (ss. 19-21)       |
| casual  | 23-25       | (s. 15)           |
|   | 62, 63      | (n. 9)            |
| by rotation   | 22, 23      | (ss. 13, 14)      |
| VACANCY OF OFFICE OF PRESIDENT OF SENATE                          | 25          | (s. 17)           |
| VACANCY OF OFFICE OF SPEAKER OF HOUSE OF REPRESENTATIVES          | 28, 29      | (s. 35)           |
| VALIDITY OF LAWS MADE BY PARLIAMENT                               | 77          | (s. 2)            |
| VALIDITY OF LAWS MADE BY STATE PARLIAMENTS                        | 82          | (s. 3)            |
| VICTORIA  |             |                   |
| Parliamentary sittings at Melbourne                               | 56          | (s. 125)          |
| VIOLENCE, PROTECTION OF STATES AGAINST DOMESTIC                   | 54          | (s. 119)          |
| VOTING  |             |                   |
| in House of Representatives                                       | 29          | (s. 40)           |
| at joint sittings   | 35          | (s. 57)           |
| in Senate   | 26          | (s. 23)           |
| VOTING AT ELECTIONS   |             |                   |
| House of Representatives  | 27, 28      | (ss. 30, 31)      |
| right to  | 29          | (s. 41)           |
| Senate  | 22          | (ss. 8, 9)        |
|   | 61          | (n. 6)            |
| VOTING AT REFERENDA TO ALTER CONSTITUTION, MAJORITIES REQUIRED    | 57, 58      | (s. 128)          |
| VOTING BY STATE HOUSE OF PARLIAMENT TO FILL CASUAL SENATE VACANCY | 23, 24      | (s. 15)           |
| <br>  |             |                   |
| <b>W</b>  |             |                   |
| WATER FROM RIVERS, RIGHTS TO REASONABLE USE FOR                   |             |                   |
| CONSERVATION OR IRRIGATION  | 49          | (s. 100)          |
| WATERS, AUSTRALIAN, FISHERIES BEYOND TERRITORIAL LIMITS           | 32          | (s. 51(x))        |
| WEATHER OBSERVATIONS  | 32          | (s. 51(viii))     |
| WEIGHTS AND MEASURES  | 32          | (s. 51(xv))       |
| WESTERN AUSTRALIA   |             |                   |
| Constitution Act 1889   |             |                   |
| amendment by <i>Australia Act 1986</i>                            | 85, 86      | (s. 14)           |
| included in expression "a law made by that Parliament" in         |             |                   |
| s. 6 (manner and form of making laws) and s. 9 (withholding       |             |                   |
| of assent or reservation) of <i>Australia Act 1986</i>            | 87          | (s. 16(2))        |
| customs duties  | 45          | (s. 95)           |
| WIDOWS' PENSIONS  | 32, 33      | (s. 51 (xxiiiA))  |
| WRITS FOR ELECTIONS   |             |                   |
| House of Representatives  | 28          | (ss. 32, 33)      |
| Senate  | 22          | (s. 12)           |
| WRITS OF MANDAMUS OR PROHIBITION SOUGHT AGAINST                   |             |                   |
| COMMONWEALTH OFFICERS   | 42          | (s. 75(v))        |