

Notes

1. The Constitution as printed above contains all the alterations of the Constitution made up to 1 June 2003. Particulars of the Acts by which the Constitution was altered are as follows:

| Act | Number and year | Date of Assent |
|---|------------------------|-----------------------|
| <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 |

Table of Amendments

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 = repealed; rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|--------------------------------|
| 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 |

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 Covering Clause 7 – The following Acts have repealed Acts passed by the Federal Council of Australasia: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Pearl Fisheries Act 1952 (No. 8, 1952), s. 3 (*Pearl Fisheries Act 1952* repealed by *Continental Shelf (Living Natural Resources) Act 1968*, s. 3)

Service and Execution of Process Act 1901 (No. 11, 1901), s. 2 (s. 2 subsequently repealed by *Service and Execution of Process Act 1963*, s. 3).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> | (Still in force) |
| 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> | (Still in force) |
| 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> | (Still in force) |

| State | Number | Short title | How affected |
|-------------------|------------------|--|------------------------------|
| 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; see s. 5 |
| | No. 33, 1942 | <i>Commonwealth Powers Act 1942</i> | Expired; see s. 4 |
| | No. 18, 1943 | <i>Commonwealth Powers Act 1943</i> | Expired; see s. 4 |
| | No. 48, 1983 | <i>Commonwealth Powers (Meat Inspection) Act 1983</i> | (Still in force) |
| | No. 182, 1986 | <i>Commonwealth Powers (Family Law – Children) Act 1986</i> | (Still in force) |
| | No. 61, 1992 | <i>Mutual Recognition (New South Wales) Act 1992</i> | (Still in force) |
| | No. 104, 1992 | <i>Commonwealth Powers (State Banking) Act 1992</i> | (Still in force) |
| | No. 100, 1993 | <i>Commonwealth Powers (Poultry Processing) Act 1993</i> | (Still in force) |
| | No. 1, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | (Still in force) |
| | No. 114, 2002 | <i>Terrorism (Commonwealth Powers) Act 2002</i> | (Still in force) |
| Victoria | No. 3108 | <i>Commonwealth Powers (Air Navigation) Act 1920</i> | Repealed by No. 4502, 1937 |
| | No. 3658 | <i>Commonwealth Arrangements Act 1928</i> | Part III Repealed by No. 4502, 1937; Parts I & II Repealed by No. 6223 |
| | No. 4009 | <i>Debt Conversion Agreement Act 1931 (No. 2)</i> | (Still in force) |
| | No. 4950 | <i>Commonwealth Powers Act 1943</i> | Not proclaimed to come into operation and cannot now be so proclaimed |

| State | Number | Short title | How affected |
|------------------------|----------------------|---|------------------------------|
| <i>(Continued)</i> | | | |
| | 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> |
| | No. 59, 1996 | <i>Commonwealth Powers (Industrial Relations) Act 1996</i> | <i>(Still in force)</i> |
| | No. 6, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | <i>(Still in force)</i> |
| | No. 14, 2003 | <i>Terrorism (Commonwealth Powers) Act 2003</i> | <i>(Still in force)</i> |
| Queensland | 12 Geo. V. No. 30 | <i>The Commonwealth Powers (Air Navigation) Act 1921</i> | Repealed by 1 Geo. VI. No. 8 |
| | 22 Geo. V. No. 30 | <i>The Commonwealth Legislative Power Act 1931</i> | Repealed by No. 46, 1983 |
| | 7 Geo. VI. No. 19 | <i>Commonwealth Powers Act 1943</i> | Expired; <i>see s. 4</i> |
| | 14 Geo. VI. No. 2 | <i>The Commonwealth Powers (Air Transport) Act 1950</i> | <i>(Still in force)</i> |
| | No. 37, 1990 | <i>Commonwealth Powers (Family Law – Children) Act 1990</i> | <i>(Still in force)</i> |
| | No. 67, 1992 | <i>Mutual Recognition (Queensland) Act 1992</i> | <i>(Still in force)</i> |
| | No. 43, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | <i>(Still in force)</i> |
| | No. 79, 2002 | <i>Terrorism (Commonwealth Powers) Act 2002</i> | <i>(Still in force)</i> |
| South Australia | No. 1469, 1921 | <i>Commonwealth Powers (Air Navigation) Act 1921</i> | Repealed by No. 2352, 1937 |
| | No. 2061, 1931 | <i>Commonwealth Legislative Power Act 1931</i> | <i>(Still in force)</i> |
| | No. 3, 1943 | <i>Commonwealth Powers Act 1943</i> | Expired; <i>see s. 5</i> |
| | No. 89, 1986 | <i>Commonwealth Powers (Family Law) Act 1986</i> | <i>(Still in force)</i> |
| | No. 72, 1993 | <i>Mutual Recognition (South Australia) Act 1993</i> | <i>(Still in force)</i> |
| | No. 21, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | <i>(Still in force)</i> |
| | No. 50, 2002 | <i>Terrorism (Commonwealth Powers) Act 2002</i> | <i>(Still in force)</i> |

| State | Number | Short title | How affected |
|-------------------|----------------------|--|----------------------------------|
| Western Australia | No. 4, 1943 | <i>Commonwealth Powers Act 1943</i> | Repealed by No. 58, 1965 |
| | No. 57, 1945 | <i>Commonwealth Powers Act 1945</i> | Repealed by No. 58, 1965 |
| | No. 30, 1947 | <i>Commonwealth Powers Act 1943, Amendment Act 1947</i> | Repealed by No. 58, 1965 |
| | No. 31, 1947 | <i>Commonwealth Powers Act 1945, Amendment Act 1947</i> | Repealed by No. 58, 1965 |
| | No. 73, 1947 | <i>Commonwealth Powers Act 1945, Amendment Act (No. 2) 1947</i> | Repealed by No. 58, 1965 |
| | No. 81, 1947 | <i>Commonwealth Powers Act 1945-1947, Amendment (Continuance) Act 1947</i> | Repealed by No. 58, 1965 |
| | No. 53, 1995 | <i>Mutual Recognition (Western Australia) Act 1995</i> | (Still in force) |
| | No. 7, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | (Still in force) |
| | No. 53, 2002 | <i>Terrorism (Commonwealth Powers) Act 2002</i> | (Still in force) |
| Tasmania | 11 Geo. V. No. 42 | <i>Commonwealth Powers (Air Navigation) Act 1920</i> | Repealed by 1 Geo. VI. No. 14 |
| | No. 46, 1952 | <i>Commonwealth Powers (Air Transport) Act 1952</i> | (Still in force) |
| | No. 62, 1966 | <i>Commonwealth Powers (Trade Practices) Act 1966</i> | Expired; see s. 2 |
| | No. 5, 1987 | <i>Commonwealth Powers (Family Law) Act 1987</i> | (Still in force) |
| | No. 33, 1993 | <i>Mutual Recognition (Tasmania) Act 1993</i> | (Still in force) |
| | No. 20, 1994 | <i>Commonwealth Powers (Family Law) Amendment Act 1994</i> | (Still in force) |
| | No. 39, 2001 | <i>Corporations (Commonwealth Powers) Act 2001</i> | (Still in force) |
| | No. 68, 2002 | <i>Terrorism (Commonwealth Powers) Act 2002</i> | (Still in force) |

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.”

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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

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

LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR-GENERAL OF THE COMMONWEALTH OF AUSTRALIA, DATED 21 AUGUST 1984, AS AMENDED

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, or in the event of the Governor-General having absented himself temporarily from office for any reason;
- (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, or in the event of the Governor-General having absented himself temporarily from office for any reason – 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, or in the event of the Governor-General having absented himself temporarily from office for any reason, 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, or the Governor-General has ceased to absent himself from office, 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

Note

The Letters Patent Relating to the Office of Governor-General contain the amendment made by the Amendment of Letters Patent dated 11 May 2003 and published in the Gazette S151 on 15 May 2003. The amendment omitted and substituted Clause III.

Statute of Westminster Adoption Act 1942

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*.¹

Commencement

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

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

4.²

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

- 9.² (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

- 10.² (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.

NOTES

1. Act No. 56, 1942; assented to 9 October 1942.

2. Sections 4, 9(2) and 13 and 19(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:

| Australia | United Kingdom |
|---|----------------------------|
| <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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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.

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