FOREWORD TO THIS EDITION

An extraordinary decision in the High Court of Australia in Melbourne on December 15, 1998 led to the application you are about to read. That day Justice Hayne declared that Australia had domestic sovereignty but did not have international sovereignty, in other words we were still a colony. However, for the future of Australia the die was cast when Justice Hayne also declared in delivering his judgement that it was his task "to protect the system". There was no mention of justice, or truth, or historical fact, just legal opinion and "the system".

The "system" is the continued use of British law and authority in Australia.

Just six months later on June 23, 1999 the Full Bench of the High Court of Australia ruled that the United Kingdom was a "foreign power" for the purposes of Section 44 of the Commonwealth Constitution when the Constitution is the legislation of the Parliament of the United Kingdom alone. In other words, the High Court ruled that the United Kingdom is a foreign power under its own legislation. Little wonder that many observers think the main legal reference for the Australian courts is 'Alice in Wonderland'.

To anyone outside Australia the current system is unbelievable in a modern society. At the time of white settlement consisting of convicts and their military guards, the few bureaucrats were the colony's rulers. They were not "public servants" in the ordinary meaning of the words but "public masters". The attitudes created then among Australian bureaucracy persist even today.

In the words of eminent British authorities the sovereignty of the United Kingdom belongs jointly to the Crown, the House of Lords and the body of voters who elect the House of Commons. At the time of white settlement this body held legal sovereignty over Australia. But at the end of the 20th Century the British people no longer have any right to sovereignty over Australia. At whatever time Australia became a nation it ceased to owe allegiance or obedience to the British people through their parliament or crown. This could not have been later than 1945 when Australia presented itself as a nation to join the UN.

This break in legal continuity, which actually occurred in 1919 when sovereignty was transferred from the British people and parliament to the Australian people, has never been accepted or recognised by the legal profession or the governments. As a result, the Australian bureaucracy has never become the civil servant of the sovereign Australian people and has remained an arm of the British government.

Australia is the only OECD country which does not have a Bill of Rights in any form. On the basis that Australian civil rights are protected by common law Australian governments and their courts refuse to recognise in enforceable law fundamental human rights statements, such as the Universal Declaration of Human Rights 1947, and its successors the Convention on the Rights of the Child and the Covenant on Civil and Political Rights, all supposedly agreed to by Australia under international treaties.

Yet the same common law courts which don't recognise the break from British legal authority refuse to recognise and enforce the rights and freedoms which existed under British sovereignty. On February 25, 2000 the Full Bench of the Federal Court sitting in Brisbane ruled that the people's rights under Magna Carta, the 1688 Bill of Rights and the Petition of Right had no validity in Australia and could not be enforced in the courts. Australia's inherited "British" system would be unrecognisable in Britain.

This extraordinary document you are about to read was never intended to exist. No nation has ever filed such an application with the United Nations and if the Australian courts had acted honestly this document would not have been the first.

When the facts and official documents which form the bulk of this publication began to emerge, all the participants believed that when the legal problems were found to originate 80 years ago our current generation of lawyers and judges would examine the facts and begin the process of rectification through delivery of honest judgements.

We were wrong, not about the facts of history which show the rest of the world recognised Australian sovereignty back in 1919, but we were wrong about the honesty of current Australian lawyers, legal academics and judges. With few exceptions their only instinct has been to defend the status quo, their privileges and their income.

Luckily, lawyers and legal academics in the rest of the world instantly saw the absurdity of a nation still governed as a colony. The authors of the application wish to publicly acknowledge the generous assistance of the faculties and staff of the 14 major universities listed below who provided research assistance and copies of major public documents at a time when comparable Australian sources were concealing and denying the existence of the same documents.

The universities span nine countries: France, Italy, Switzerland, Spain, Belgium, Ireland, Germany, the United States and the United Kingdom itself.

They include the University of Lausanne, the University of Paris (the Sorbonne), the Humboldt University (Berlin), Trinity College of Dublin, the Italian University of La Sapienza (Rome), the Complutenso de Madrid in Spain, the British

Universities of Oxford, Cambridge and London, the University of Ghent (Belgium), the major American universities of Stanford, Cornell, California (Berkeley) and Harvard.

There are too many individuals to acknowledge separately but the breadth and depth of their knowledge of history and international law underpins every position in the application.

In Australia there have also been a large number of people who have contributed to the research. Sometimes it has been just a single document or a key fact but without their efforts the big picture would have never emerged. The principal research burden has been carried for over 20 years by senior researchers Frank Coningham, Geoffrey Skelton, and Ian Henke often working in an atmosphere of bitter opposition from the authorities, but the support runs to many hundreds of willing helpers inside and outside the legal profession.

Of course, there would have been nothing to research without the efforts of a group with special insight over 80 years ago who fought then to get Australia recognised as a nation by the rest of the world, in particular former Prime Minister William Morris Hughes, Navy Minister Sir Joseph Cooke and Solicitor General Sir Robert Garran, one of the authors of the 1900 Colonial Constitution of the Commonwealth and a principal advisor to Hughes in the lead up to the signing of the Treaty of Versailles.

Lastly, full tribute must be paid to Peter Batten who slaved day and night over the application for many months, often far beyond the call of duty. The months of cross-checking, of seeking out the extra document needed to give shape to an historical or legal fact, plus the final arduous task of printing and despatching copies individually to the delegations of 186 member states of the United Nations as well as to the Secretary General, the Security Council and the General Assembly, would not have been possible without the meticulous approach and dogged determination Peter brought to the task.

At the time of writing more than 80 of the recipient nations have indicated their support and not one country rejected the documents. More importantly, 11 nations, having carried out their own research to confirm the facts, have commenced action based on those facts.

At the UN the task of investigation was given to the Human Rights Commission, which, having verified the information supplied, is now probing the Commonwealth Government for its responses to difficult questions. Within months the process will become public and those who have worked to oppress our ordinary citizens are going to have to defend themselves and their actions in the interest of a foreign power.

Even the other "common law" countries, including the United Kingdom itself, have ensured their people now have defined legal civil rights. So, if the Australian people have no civil rights, on whose behalf are their authorities governing and why? It's time for answers.

DEDICATION

This book is dedicated to the men and women of Australia's armed forces during World War One whose fighting ability, courage, and endurance made them a legend wherever they fought. All of them were volunteers. Sixty one thousand, seven hundred and twenty of them died and are buried beneath the soil of France and Gallipoli. Over 155,000 of them were wounded. All carried the scars of war for life as a badge of honour.

However, these men and women won a far greater victory which has been hidden in history. They won Australia's independence and nationhood.

"... By this recognition Australia became a nation, and entered into a family of nations on a footing of equality. We had earned that, or, rather, our soldiers had earned it for us. In the achievement of victory they had played their part and no nation has a better right to be represented than Australia ..."

– Prime Minister of Australia William Morris Hughes
House of Representatives – September 10, 1919

On September 16, 1919 in the House of Representatives, and on October 1, 1919 in the Senate, unanimous votes recognised this superb achievement and cemented the diggers' place in history as the true fathers of our nation.

Application and Request

We, the Sovereign People of Australia, with due respect and humility, approach and present this submission to individual Member States of the United Nations.

This submission demonstrates that the federated peoples of Australia, which constitute the legal entity, the Commonwealth of Australia, is an independent sovereign nation.

This submission demonstrates that the six Australian State Governments as well as the Federal Government of Australia remain extensions of the United Kingdom Government.

This submission demonstrates that those exerting power through these governmental structures, as well as those individuals nominated to act on their behalf, are clearly definable as agents of a power foreign to the Commonwealth of Australia.

This submission demonstrates that individuals within Australia, in concert with the Government of the United Kingdom, have repeatedly acted to conceal the political and legal truth that the sovereign people constituting the Commonwealth of Australia have for almost 80 years been denied the right to self determination.

And, finally, the content of the correspondence presented in the final annexure (Annexure 35) to this submission clearly and decisively demonstrates that those assuming the role of the Australian Government, even in the face of the most extreme action which the sovereign people may take, refuse to take responsibility by responding in person.

Aware and informed citizens recognise that the long standing situation has now degenerated to a stage where a breakdown in law and order, with associated violence, is entirely predictable and that urgent corrective action is called for.

Having absolutely exhausted all possible domestic avenues of rectification it is now apparent that the only non violent action remaining open to the citizenry of Australia lies with this appeal to individual members of the international community who, being co-signatories to the Charter of the United Nations, guarantee the Commonwealth of Australia, under Articles 2, 4, 6, 102 and 103, as well as various resolutions, the right to self determination.

Therefore, a request is made, to all Member States to individually and collectively present and plead our cause before the General Assembly of the United Nations. We ask, through those same Member States, for the General Assembly:

1. To establish, within the territory of Australia, an International Tribunal to investigate, with the view to the confirmation of, the allegations contained in this submission and as a result have all Australian governments at all levels declared, under international law, invalid.

2. To establish within the territory of Australia an International Criminal Tribunal, to prosecute individuals named in the annexures of this report and any other individuals who have been seen to be aiding and abetting the continuing breach of international law through the application of United Kingdom law within the territory of the sovereign nation State, the Commonwealth of Australia.

3. To implement such other procedures as are seen as necessary to uphold the Charter of the United Nations.

4. To initiate and maintain procedures necessary to ensure the security of people residing, both individually and collectively, in the territory of the Commonwealth of Australia up to and until the successful implementation of a Constitution agreed to by way of a plebiscite conducted amongst all mature Australian citizens.

5. To declare Australia's representative at the United Nations to be persona non grata until such time as a representative is nominated by a Government which validly represents the sovereign and federated people of Australia, that is, the Commonwealth of Australia.

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FOREWORD TO THE ORIGINAL

This submission establishes that those exercising the power to govern over the Sovereign People of Australia do so without the authority of those same people. Instead, they govern through the application of a current Act of domestic law of the Parliament of the United Kingdom, a power foreign to Australia. This submission also establishes that those individuals exercising this power to govern have all individually sworn and signed an oath of allegiance to a Monarch in the sovereignty of that same foreign power, the United Kingdom.

The authors of this submission, being informed and concerned Australians, believed it reasonable to expect that politicians and members of the judiciary, after having been confronted with the facts of history and the demands of international law, would have declared it both necessary and urgent to create and install a valid instrument to bridge the 80 year legal void resulting from the 1919 change in sovereignty over Australia.

However, because of the outcomes of direct approaches to all high offices, including the entire court system, within Australia, it has become abundantly clear that that which would cause the Australian Government to become a legitimate member of the World Community of Governments is unattainable through civil action within Australia.

When it became clear that the necessary adjustments were "... not matters of municipal law but the law of nations and were not cognisable in (a) court(s) exercising jurisdiction under that sovereignty which is sought to be challenged" an application was made to the International Court of Justice. Despite the convincing argument presented, the sovereign Australian people submitting the application were not granted standing by that court.

Having absolutely exhausted all other possible avenues of rectification it is now apparent that the only non violent avenue remaining open to the citizenry of Australia lies with an appeal to the international community who, being co-signatories to the Charter of the United Nations, guarantee the Commonwealth of Australia, under Article 2, paragraphs 1 and 4, as well as various resolutions, the right to enjoy sovereignty over their affairs. That is, the right to self determination, which is the most fundamental of the principles of the United Nations.

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Telephone (03) 8796 3861, (03) 8796 3862

AUSTRALIA: THE CONCEALED COLONY!

A REPORT on the continuance of the application of British law within the territory of the independent sovereign nation Australia.

DEFINITION OF KEY WORDS

The Act: Refers to a current Act of the Parliament of the United Kingdom of Great Britain and Ireland entitled - An Act to Constitute the Commonwealth of Australia. Royal assent granted on July 9, 1900. (63 and 64 Victoria, Chapter 12)

The Constitution: Is the ninth clause of the Act and deals with the governing organisation of the Commonwealth. Section 128 of the Constitution permits the making of limited changes to the Constitution. The first eight clauses of the Act are conditional on the ninth, the Constitution. The Parliament of the United Kingdom alone has the power to change the first eight clauses.

ANNEXURE 1

Commonwealth of Australia: Refers to that community of individuals which is the ongoing political entity and the political partnership which has the right to hold supremacy over its affairs.

> "This definition, it will be observed, is a vague and technical one; the dominant words being 'as established under this Act'. For the true nature and primary meaning of the expression, the student is required to examine the first six clauses of the Act, which deal with the establishment of the new community. The Commonwealth is not in any way defined or explained by the Constitution itself; (The ninth clause of The Act) that deals only with the governing organisation of the Commonwealth.
>
> The first observation to be made is that the Commonwealth should not be confounded with the Constitution of the Government. The Commonwealth, as a political entity and a political partnership, is outside of and supreme over the Constitution; it is outside of and supreme over the Government provided by that Constitution. The Government of the Commonwealth, consisting of two sets of legislative, executive and judicial departments, central and provincial, does not constitute the community."

From 'The Annotated Constitution of the Australian Commonwealth.' Quick and Garran (Both instrumental in preparing the draft Constitution submitted to the UK Colonial Secretary) 1901 Edition reprinted by Legal Books Sydney 1995. page 366

Nation: The community of Australian people which has achieved the right to express sovereignty over its own affairs and destiny.

State: Two separate and distinctive meanings will be applied to this word.

1. A community of people occupying a designated territory who have come together in a political union that they may legitimately establish an executive authority to control all matters, including the power to enter into agreements and treaties with other such communities.

2. A colony of the United Kingdom which under clause 6 of 'The Act' became entitled "A State" and became a part of the Commonwealth.

Colony: A community and a territory, which is governed by an authority whose ultimate source of power is traceable to a sovereignty not possessed by that community.

Subject: An individual member of a colony.

Citizen: An individual member of a state as defined under '1' above (unless otherwise defined).

Australia: An abbreviated description of the community of people comprising the sovereign independent nation State of the Commonwealth of Australia and the designated territory, which under international law, that community controls. (Unless otherwise defined)

Letters Patent: The means by which a sovereign appoints a Vice-Regal representative, a Governor General or Governor capable of giving Royal Assent to Acts of Parliament and appointing officers of the Crown (ministers, judges, magistrates, police officers and members of the armed forces etc.) Under UK law the Queen of the United Kingdom can only issue Letters Patent to one of her subjects, a British citizen. And the instructions contained in those Letters Patent may only be applied to British citizens resident in the United Kingdom or its Territories – Letters Patent cannot be issued to or applied to foreigners.

GENERAL STATEMENT

There exists a situation in which international law is being offended through the continuing use of what are properly United Kingdom laws within the sovereign independent nation of the Commonwealth of Australia.

On a number of occasions this unsatisfactory situation has given rise to serious problems.

In an attempt to make what is a fundamentally invalid situation workable the government of one or, on some occasions, both countries have taken action through the enactment of subsidiary legislation.

No action has been taken to rectify the underlying defect.

The situation has deteriorated to a level where it has become necessary for Australian citizens to initiate direct action.

THE NATURE OF THE PROBLEM

The problem lies in the fact that as a legal entity the 'Commonwealth of Australia' owed its existence to an Act of the Parliament of the United Kingdom, namely, 'An Act to constitute the Commonwealth of Australia' (UK) 1900.

ANNEXURE 1

On the Parliament of the Commonwealth of Australia ratifying the signing of the Treaty of Versailles on October 1, 1919 the Commonwealth of Australia achieved sovereign independent nation status thus separating itself from the Act of British law, (An Act to Constitute the Commonwealth of Australia), the instrument that created it. This new status immediately gained international recognition.

Later both the United Kingdom and Australia became foundation members of the League of Nations and the International Labour Organisation.

In so doing both Australia and the United Kingdom accepted the authority of international law.

Amongst other things international law dictates that, in the absence of an international arrangement or a reciprocal treaty duly registered with and advertised by the League of Nations and, later, the United Nations, between Member States, the law of one Member State may not be used within the territory of the other Member State.

No such international arrangement or treaty between the United Kingdom and Australia was so created.

Thus, under international law, when Australia achieved independence the United Kingdom Act which created the legal entity, the 'Commonwealth of Australia' and provided the Constitution under which its governing organisation was created became, in the legal sense, redundant.

CHANGE OF SOVEREIGNTY

As a consequence valid sovereignty over the Commonwealth of Australia moved from the Queen (which actually means the Parliament because, under the terms of the 'Act of Settlement 1701' the Queen is appointed by, and therefore subordinate to, the Parliament) of the United Kingdom to the Australian people. That is, to the Commonwealth of Australia.

ANNEXURE 2

A change in sovereignty necessarily results in a break in legal continuity.

The politicians of the day failed to create the legal instrument necessary to bridge the legal void created through this change in sovereignty.

As a result, the internationally recognised sovereign nation, the Commonwealth of Australia has continued to be governed as if, in fact, no change had occurred.

The two sets (one State [Provincial] one Federal) of legislative, executive and judicial structures put in place because of the Constitution contained in the Act and controlled under the eight conditional clauses of that Act of British law, remain in place invalidly.

The States, existing only as administrative structures and being a creation of the Constitution Act ceased (along with their governments) to exist in the legal sense when, on gaining independence, that Constitution Act became redundant.

The federation of States along with the Federal Government, being products of that redundant Act of British law also ceased to exist in the legal sense.

EFFECTS RESULTING FROM A FAILURE TO CREATE A LEGAL BRIDGE TO ACCOMMODATE THE CHANGE IN SOVEREIGNTY

When sovereignty was achieved by the Australian People the Act was not repealed and replaced by a system of government belonging to the Australian people. As a consequence they have continued to be governed under exactly the same colonial law to which they were subjugated prior to independence. It is clear that over time direct day to day British influence has diminished but the powers of subjugation inherent in the Act have remained unaltered and have been assumed by Australian Governments, both Federal and State.

AUSTRALIAN GOVERNMENTS INVALID

Thus, from the time that the Commonwealth of Australia became a sovereign nation, the individuals assuming power in both the State (Provincial) and Federal Governments and within the judiciaries and bureaucracies have done so without being granted the necessary legitimate power, that is, the necessary authority, by the people.

Instead, they have continued to accept their appointment to positions of power, in accord with the terms, conditions and restrictions defined in the Act, from the Queen of the United Kingdom, that is, the Government of the United Kingdom.

EVERY AUSTRALIAN PARLIAMENTARY REPRESENTATIVE FORCED TO COMMIT ACT OF TREASON?

Before they may assume their seat in the Australian Parliament ever Member and Senator must swear an Oath or Affirmation to the Monarch in the sovereignty of the United Kingdom of Great Britain and Ireland. "There is no provision for any deviation from this constitutional requirement. No Member may take part in proceedings of the House until sworn in." (Parliament Research Office, June 10, 1999).

ANNEXURE 3

The Oath and Affirmation appear as the Schedule to clause nine of the Act, the Constitution, but because it lies outside the Constitution it may not be altered under the provisions of section 128 of the Constitution. The only authority which may, perhaps, have the power to alter this condition is the owner of the Act, the Parliament of the United Kingdom. However, there exists an argument that since the Act is actually legally redundant no authority may initiate any alteration whatsoever.

Attention was drawn to this unsatisfactory state of affairs when, on June 23, 1999 the Full Bench of the High Court of Australia ruled that the United Kingdom was a power foreign to Australia. This resulted in that Court ruling that Heather Hill, a candidate elected to the Senate, could not occupy a seat because she maintained an allegiance to that foreign power, the United Kingdom.

ANNEXURE 4

She had migrated to Australia as an 11-year-old child. She had been granted Australian citizenship but had failed to renounce her British citizenship. There is an irony associated with this. Heather Hill's replacement is, by law (S42 of the Constitution), required to swear and subscribe allegiance to that very same sovereignty, the United Kingdom!

Situations such as this arise, not only because the nation is attempting to function under the invalid Constitution contained in the Act but also because, at times, both the British and Australian governments have attempted to conceal problems through the initiation and invalid implementation of legislation subordinate to, or in addition to, the original Act. Such actions have effectively compounded the invalidity of the governmental structure and the laws being effected in Australia. Even the casual student will realise that the situation has now passed being ridiculous and has become ludicrous.

AUSTRALIAN RESIDENTS LOSE CIVIL RIGHTS

Colonial law, by definition, is a law of subjugation. The Act to Constitute the Commonwealth of Australia, being a colonial Act, does not contain any elements of sovereignty or of civil rights. Originally this did not present any undue problems since Australians enjoyed all the privileges of British Citizenship, including entitlement to protection of their civil rights under the full gambit of British law. This state of affairs tended to remain well after the definable date of Australia's independence. But in 1971-72 the situation altered dramatically when the United Kingdom, by way of its 'Immigration and Asylum Act', legislated to declare Australian citizens to be neither British citizens, British subjects, nor British residents and to have no entitlements under British law. However, the Act, devoid of civil rights, remained in place with the consequent result that at the level of governmental administration the bureaucracy has become even further inclined to summarily impose on and unduly regulate the actions of the individual Australian residents. In an endeavour to maintain a facade of legitimacy those controlling the politico/legal system have,

when under challenge, repeatedly resorted to inconsistency and irregularity in the application of justice.

By challenging and testing the system of government through the fullest possible use of the legal system which currently exists in Australia, it has become clear that those individuals who have assumed the responsibilities of high office, including the judiciary, will not initiate the actions necessary to ensure that the Australian people wrest from the United Kingdom complete and rightful sovereignty over their nation.

Many examples exist which illustrate that Australian courts are prepared to compromise truth and justice so that 'current practice' through precedent may be maintained.

SOVEREIGN PEOPLE OF AUSTRALIA SUBMIT APPLICATION TO INTERNATIONAL COURT OF JUSTICE

Having demonstrated that because the Australian government does not validly represent the sovereign people of Australia then representation in matters of State has therefore reverted directly to the people. Representatives in the name of the Sovereign People of Australia, acting as The State, submitted an Application and Petition to the International Court of Justice at The Hague.

This Application, dated June 9, 1999, was submitted under Article 36 of the Statute as, 'A Matter Between THE SOVEREIGN PEOPLE OF AUSTRALIA and THE PARLIAMENT AND GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND.'

ANNEXURE 5

As this submission was in its final stages of assembly news arrived that, despite the evidence presented establishing that the body masquerading as the Australian Government did not meet the requirements necessary to represent the Sovereign People of Australia, that is, the Commonwealth of Australia, the submitters of this matter were not granted standing by the ICJ.

THE AUTHORS OF, AND THE AUTHORITY SUBMITTING, THIS REPORT

The Commonwealth of Australia is an independent sovereign Nation State and, as such, is a Member State of the United Nations. As such, the United Kingdom cannot be Australia's colonial master. These facts cannot be questioned.

ANNEXURE 6

However, those claiming to represent the State, and hence, possess the power of government of and over the Australian people rely for that power on a current Act of domestic law of the Parliament of the United Kingdom of Great Britain (An Act to Constitute the Commonwealth of Australia) which, under international law, (Charter of the United Nations Article 2, paras, 1 & 4, and resolutions 2131 [XX] 1965, and 2625 [XXV] 1970), cannot be validly applied in a sovereign independent Australia.

ANNEXURE 7

ANNEXURE 3

Additionally, those same individuals have each sworn and subscribed an oath of allegiance to Queen Elizabeth II in the Sovereignty of the United Kingdom of Great Britain and Ireland.

The conclusion which must therefore be reached is that, under the UN Charter and various Resolutions, valid and legal government does not exist in Australia.

Under such circumstances international law rules that the expression of government and representation of the State reverts directly to the citizenry, the sovereign people.

Accordingly, this report has been prepared and presented by Australian citizens who rightfully represent the sovereign Nation State of the Commonwealth of Australia.

THIS REPORT CONSTITUTES A COMPLAINT

That: The United Kingdom Government is breaching international law.

No legal instrument exists or has existed, under the doctrine known as the law of State succession, to enable the continued unmodified application of British colonial law within the internationally recognised borders of the sovereign Nation State of the Commonwealth of Australia. The Government of the United Kingdom, in consenting to and assisting the invalid Government of Australia to retain power through the use of unmodified British colonial law – and to continue to create what are properly United Kingdom laws for application in a non British sovereignty over non British subjects – is acting in breach of international law;

And that,

The people of the Commonwealth of Australia are being victimised.

When the invalid and flawed British colonial law being affected on the people of Australia is challenged in the courts created under that same invalid and flawed law, those invalidly entrusted with the power to adjudicate matters contested between individuals and the Government prostrate themselves before the Executive of the Government and, through abuse of the very rules, procedures and laws they have undertaken to uphold, deny individuals their right to such natural justice as may be contained within these same laws.

Events have amply demonstrated that these Magistrates and Judges have moved from merely acting as agents for a foreign power who enforce the laws of that power, to behaving as free self-serving individuals who, through the abuse of those very same laws, vainly attempt to deflect the exposure of the crimes that they, and the government/s that appointed them, have committed against the people of Australia.

POLITICAL CHRONOLOGY OF AUSTRALIA

The historical development of government is as follows:

1. Stage One, 1788 to 1823. Government by absolute decree of the Governor of the Colony.

2. Stage Two, 1823 -1842. Governor of Colony assisted by nominated legislature with advisory powers only.

3. Stage 3. 1842-1856. Two thirds of legislature elected by freeholders (ie. landowners) plus a few others. Colonial constitutions introduced.

All three eastern colonies attained colonial self government by legislature in 1856 with constitutions

for New South Wales, Victoria, and Tasmania created by the Imperial Parliament. South Australia's colonial constitution was passed in South Australia under direction from the British Government. Victoria was divided from New South Wales in 1851 to form a separate colony. Queensland was separated from New South Wales in 1859.

4. In the late 1850s the British Government attempted to create a federation. The attempt foundered because of distrust between the colonies.

5. During the 1890s the governments of the six self-governing colonies finally agreed to a formula under which federation might occur. A draft Constitution and a proposition to federate was put to a people's referendum on June 3 and 4, 1900. Granting of limited franchise and other factors resulted in less than about seven per cent of the people registering an expressed desire.

6. Draft Constitution transmitted to London, amended by the Colonial Office and enacted by the Imperial Parliament on July 9, 1900 as 'An Act to Constitute the Commonwealth of Australia'. Section 1 of the Act allows a short title to be used 'The Commonwealth of Australia Constitution Act' without altering the colonial nature of the legislation. The Act was proclaimed on January 1,1901.

I.M. Cumpston, Emeritus Reader in Commonwealth History, University of London (History of Australian Foreign Policy 1901-1991)

7. "The Commonwealth of Australia, as a colony of the UK - the word Dominion did not come into use until the passing of a resolution at the 1911 Imperial Conference - had limited internal self government in 1901."

8. January 22, 1901, death of Queen Victoria. Under Bill of Rights 1689 and other British law all writs of the Sovereign, including Letters Patent, die with the sovereign. Queen Victoria died on January 22, 1901. Thus new Letters Patent were required for continuation of the role of Governor General of Australia. Research has revealed that no such document was issued by the new Monarch, the King.

9. 1914. King George V declares war on Germany on behalf of Great Britain and its colonies including Australia.

10. October 1, 1918. Turkish troops in Damascus defeated by ANZAC forces refuse to surrender to colonial forces. Formal surrender had to wait until British officers arrived several weeks later.

11. The British Dominion of the Commonwealth of Australia, a colony of the United Kingdom, as a member of the British Empire contingent, joins the peace conference at Versailles on January 13, 1919 with Prime Minister William Hughes and his deputy Sir Joseph Cook as its representatives.

12. Supported by the 1917 Imperial War Conference resolution (Article IX) and argument by the President of the United States, Australia, through William Morris Hughes and Sir Joseph Cook, gained independent representation and signed the Peace Treaty of Versailles on June 28, 1919. "Australia is now a nation by virtue of God and the British Empire" said Hughes after signing the treaty.

13. Prime Minister Hughes, by way of a motion that the Parliament ratify the Treaty of Versailles, addressed Federal Parliament on September 10, 1919 "Australia has now entered into a family of nations on a footing of equality." THE PARLIAMENT COMPLETED THIS PROCESS OF RATIFICATION ON OCTOBER 1, 1919. THUS THE PROCESS OF ESTABLISHING AUSTRALIA'S INDEPENDENCE WAS COMPLETED.

14. The actions of Hughes and Cook were written into Australian law through the unanimously approved Treaty of Peace Act of October 28, 1919.

15. On January 10, 1920 the League of Nations becomes part of international law with Australia as one of the 29 original Member States. Thus Australia's sovereign nation status and political independence was guaranteed in international law under Article X of the League's Covenant.

The British Dominion, the colony of the Commonwealth of Australia, had ceased to exist in law. The right to self determination of the Nation State, the Commonwealth of Australia had been guaranteed by all League of Nations Covenant signatory Member States.

16. Sir Geoffrey Butler KBE, MA and Fellow, Librarian and Lecturer in International Law and Diplomacy of Corpus Christi College, Cambridge, author of 'A Handbook to the League of Nations' used as a reference to the League by all nations at that time, pronounced in reference to Article I of the Covenant of the League of Nations: "It is arguable that this article is the Covenant's most significant single measure. By it the British Dominions, namely, New Zealand, Australia, South Africa, and Canada, have their independent nationhood established for the first time. There may be friction over small matters in giving effect to this internationally acknowledged fact, but the Dominions will always look to the League of Nations Covenant as their Declaration of Independence."

17. The League of Nations confirmed Australia's mandated territories of Nauru and German New Guinea on December 17, 1920. The mandates are confirmed in the name of the nation of Australia as a Member State of the League.

18. 1921 Imperial Conference. Prime Minister of the United Kingdom makes declaration:

> "In recognition of their services and achievements in the war the British Dominions have now been accepted fully into the comity of nations of the whole world. They are signatories to the Treaty of Versailles and of all other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League. In other words, they have achieved full nation status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even more clear to their own communities and to the world at large, we shall be glad to have them put forward at this Conference ."

W.M. Hughes
Australian House of Representatives
Hansard Sept 30, 1921, p1131.
ANNEXURE 8

19. Official seal set on new relationship between British Commonwealth Nations.

> "In these words, the Prime Minister of Britain, the President of the Conference, set out in clear unambiguous language the concept of a partnership of free nations, all equal in dignity and responsibility, to which the Conference subsequently and officially set its seal."

20. Sir Joseph Cook became the first Australian High Commissioner to be appointed as 'Ambassador' to the United Kingdom. This occurred on November 11, 1921. The United Kingdom further recognised the sovereignty of Australia through the acceptance of his credentials. During the ceremony King George V welcomed "the representative of our ex-colony, the newly independent nation of Australia."

21. G.F. Pearce represented Australia at the Washington conference from November 12, 1921 to February 6, 1922 resulting in the signing of the Treaties of Washington, which were written into Australian law by way of the Treaties of Washington Act 1922 on August 30, 1922.

22. 1923. Imperial Conference confirmed that individual Member Nations of the Commonwealth of Nations had absolute power to make international treaties.

23. 1924. Compulsory voting in Commonwealth elections introduced by way of a private Members Bill.

24. 1926. Inter-Imperial Relations Committee of the 1926 Imperial Conference issued a declaration on the absolute equality of the Dominions with the United Kingdom. This predated Statute of Westminster by five years.

25. On June 26, 1945 Australia became a foundation Member State of the United Nations. The Charter of the United Nations written into Australian law via the 'Charter of the United Nations Act 1945', on September 14, 1945. Australia's sovereign nation status guaranteed by the Charter of the United Nations. (Article 2 paragraphs 1 and 4 plus various resolutions).

26. In the Namibia Case of 1971 (ref 1CJ1971,16) the International Court of Justice ruled that all Member States of the United Nations have accepted a legal obligation under Articles 55 and 56 of the United Nations Charter to recognise and implement all the human rights obligations in the Charter, the Universal Declaration of Human Rights 1948 and under other UN instruments.

27. 1973. Royal Styles and Titles Act passed by Commonwealth Parliament – reserved for signature by the Queen. This Act removes the status of Queen of the United Kingdom in Australia and substitutes the title 'Queen of Australia'. As the 1900 Constitution only recognises the Queen of the United Kingdom (Section 2 of the Constitution Act) this effectively removed the Queen from executive power in Australia. The 1973 Act has no power to alter the Constitution as no referendum was held.

28. 1975. On dismissal of the Whitlam government by Governor-General Kerr, Speaker Scholes sought direction from the Queen. The reply confirms she no longer has power in Australia.

29. 1984. New Letters Patent issued for appointment of Governor General by the Queen of Australia. Under the Constitution which remains United Kingdom law the representative of the 'Queen of Australia' has no executive power or legal position since the Queen of Australia has no legal position in United Kingdom law. And the Constitution only recognises the Monarch existing in the sovereignty of the United Kingdom.

30. 1986. Australia Act passed by Commonwealth Parliament. This Act claims to repeal Acts of a foreign country's parliament, the United Kingdom, in contravention of international law, and Articles 2.(1) and 2.(4) of the United Nations Charter.

The Act passed by the United Kingdom Parliament claims to make laws for application in Australia. This is also in contravention of international law – Articles 2.(1) and 2.(4) of the UN Charter.

31. On February 14, 1986 Queen Elizabeth of the United Kingdom issued separate sets of Letters Patent to Constitute the Office of Governor in the separate States. They were signed by 'Oulton' Permanent

Secretary in the Lord Chancellor's Office of the UK Government. Each of these sets of instructions was designated to come into operation at the same time as the Australia Acts.

32. In 1997 the British Government stated and has provided documentation with regard to the legislative powers of the Parliament of the United Kingdom.

> **"No act of the Parliament of the United Kingdom or act that looks to the Parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom, International Law and the Charter of the United Nations."**

33. When asked specifically about the validity of the following items, the British Government referred to their previous reply as stated above.

a. The Commonwealth of Australia Constitution Act 1900, UK.

b. The Westminster Act 1931, UK.

c. All Australian "State" constitutions relating to UK legislation.

d. The Australia Bill 1986, UK.

e. Letters of Patent from a British Monarch containing instructions to individuals and purporting to authorise an action to be taken by a representative of the Monarch in a Member State of the United Nations other than the United Kingdom.

34. February, 1998, International Law Commission of the United Nations issues the following ruling:

> **"No laws of a Member State of the United Nations are valid within the sovereign territory of another Member State unless via a reciprocal treaty agreed between the two member states. The treaty may not infringe the sovereignty of either Member State."**

AUSTRALIAN CONSTITUTION IS BRITISH LAW

The Commonwealth of Australia Constitution Act was, is, and remains an Act of the Imperial Parliament of the United Kingdom

THE CREATION OF THE AUSTRALIAN CONSTITUTION AND FEDERATION

From about 1850 the United Kingdom had desired for its six Australian colonies, along with their New Zealand colony, to federate. It was considered that such an arrangement would expedite matters of administration, trade and defence.

During the 1890s the governments of the six self governing British colonies occupying the land mass known as Australia finally agreed to a formula under which they were prepared to federate.

After a series of Constitution Convention debates a draft constitution and a proposition to federate was put, by referendum, to the people of the six colonies. The draft of the Constitution Bill was then submitted to the British Colonial Secretary, Joseph Chamberlain.

There exists a perpetuating myth that the Commonwealth Constitution is the 'expression of the will of the people', voted for, in a referendum by a majority of the Australian people.

In fact, this assertion will not stand examination. Only a small percentage of Australians actually cast a vote in favour of the draft Constitution (approximately 10 per cent). The vast majority of the population, ie. most aboriginals, most women and many men, were denied a franchise and thus not even permitted to vote in the referendum. Franchise was property based, and individuals were permitted multiple votes, some as many as six. However, it is argued that:

> "... what matters is less the statistics and more the mechanism. The making of the Constitution was neither representative nor inclusive of the Australian people generally. It was drafted by a small, privileged, section of society. Whole sections of the community were excluded from the Conventions and from voting for the draft Constitution."

'Human Rights Under the Constitution' George Williams, 1999, Oxford, ISBN 0 19 551059 3,

The draft Constitution Bill was duly submitted to Colonial Secretary Chamberlain. History records that the Law Officers of the Crown in England scrutinised the Convention Debates as thoroughly as they did the Australian Constitution Bill and were so alarmed by certain sections of the Bill that they persuaded Chamberlain to insert additional wording to reassert the paramount authority of imperial legislation in Australia.

The Bill was further amended during its passage through the Parliament. In the final outcome, the people of Australia have never voted for, or agreed to, the final political and legal system under which they are governed. At most they expressed a limited will to federate.

EARLY INFLUENCE OF BRITISH COMMERCIAL AND POLITICAL INTERESTS

It is reported that years later Colonial Secretary Chamberlain was under such enormous pressure from banking, insurance and shipping companies based in the City of London to preserve their access to Privy Council appeals that he advanced the most controversial of his several amendments while at the same time 'trading off' and amending the wording of others. These manoeuvres served to defeat the Constitution framers' intention that Australia have the power to enter into international treaties and of prohibiting all appeals from the proposed High Court of Australia to the Judicial Committee of the Privy Council.

It is clear that the British law makers, along with commercial interests, were not about relinquishing Britain's control over Australia. In point of fact, Australian delegates finally found it expedient to go to great lengths to assure these people that the Australian Constitution framers had not the slightest intention of limiting the United Kingdom Parliament's paramountcy.

The British law makers through conditional Clause 8 of the 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." This effectively affirmed the assertions of the Australian Constitution makers while at the same

time putting to rest any doubts held by British interests.

The Bill that was finally enacted into law by the United Kingdom Parliament was substantially different to that which was drafted in Australia. The most that can be said for the 1898 referendum is that it was a referendum for the federation of six colonies to form a single colony, voted on by an unrepresentative minority of British Citizens resident in those six Australian colonies.

The Commonwealth of Australia was to be a British colony.

The people of Australia were to remain subjects of the United Kingdom.

THE PEOPLE UNITED: THE COMMONWEALTH OF AUSTRALIA CREATED

On July 9, 1900, as a result of the enacting of 'An Act to constitute the Commonwealth of Australia', by the Parliament of the United Kingdom, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania became united in a Federal Commonwealth under the name of the Commonwealth of Australia. Provision was made for the people of Western Australia to agree, at a later date, to also become united with the other named peoples.

This agreement occurred prior to the date of proclamation which was January 1, 1901. This unification of the people of the six colonies occurred under clause 3 of the Act:

> "It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation 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."

Covering clause 2 of the Act: "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". Along with Covering clause 8, "After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which became a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of the Act. This firmly ended the desires of those who would have Australia become an independent nation.

The following quotations express the clear understanding of the founding fathers of the Constitution that they had neither sought nor been granted independence . . .

1. Alfred Deakin: "There is no pretence of claiming the power of peace or war, or exercising power outside our territories".

2. Samuel Griffith: "We do not take anything away from the Parliament of Great Britain".

3. John Forrest: "If we were founding an independent nation it might be a very appropriate term. That, however, is not the case". John Forrest was objecting to using the name 'The Commonwealth of Australia'.

4. Henry Parkes: "Federation is not independence. It is a chance for the colonies more effectively to unite with the Mother-country in forming an Empire such as has never yet been formed".

5. Charles Kingston: "The Federation must be consistent with allegiance to the Crown and the power of the Imperial Parliament to legislate for the whole of the Empire if it chose".

6. Dr. J.Quick & R.R. Garran: Authors of 'The Annotated Constitution of the Australian Commonwealth' written in 1901. Both played major roles in the actual drafting of the Commonwealth of Australia Constitution Act. The work was reprinted by Legal Books in 1995.

The quote is taken from page 367:

> "Imperial Relationship: By the preamble the Commonwealth is declared to be 'Under the Crown'; it is constitutionally a subordinate, and not an independent Sovereign community, or state. But its population is so great, its territory so vast, the obvious scope and intention of the scheme of union are so comprehensive, whilst its political organisation is of such a superior type, that it is entitled to a designation which, whilst not conveying the idea of complete sovereignty and independence, will serve to distinguish it from an ordinary provincial society".

The source of most of these quotations is a series of documents recording the proceedings of com-

mittees in 1900 prior to the dispatch of the draft constitution to the United Kingdom plus 'The Annotated Constitution of the Australian Commonwealth' published in 1901.

Yet the myth that the Act of 1900 gave Australia independence remains wide spread and even now continues to be espoused by some within the academic and judicial community.

> "The Constitution is section 9 of an Act of the British Parliament, the Commonwealth of Australia Constitution Act. Australia comprised six colonies in the British Empire when the Constitution was drafted and action by the British Parliament was necessary to give it legal force. Australia became an independent nation in 1901. Since the passage of the Australia Acts in 1986, it has been clear that Britain can no longer legislate for Australia, even if Australia asked it to do so. However, no changes have been made to the Commonwealth Constitution to mark these developments." (1)
>
> "On the inauguration of the Commonwealth on January 1, 1901, British hegemony over the Australia colonies ended and the Commonwealth of Australia emerged as an independent sovereign nation in the community of nations. From then, the British Parliament had no legislative authority over Australia." (2)

(1) The Australian Constitution' ISBN O 9586908 1 2, Prof. Cheryl Saunders, Deputy Chair of the Constitutional Foundation and Director of the Centre for Comparative Constitutional Studies at the University of Melbourne 1997 Page 17.

(2)High Court of Australia, Murphy J, in Kirmani v Captain Cook Cruises Pty. Ltd. (1985) 159 CLR 351 at 383

The content of this submission demonstrates that such 'academic' pronouncements are historical and legal nonsense. The motives of those promulgating such misinformation must be questioned. This becomes particularly pertinent when it is appreciated that some such individuals are people of 'standing' and influence in the community.

The federation of the people to form the legal entity the Commonwealth of Australia was an act which united the peoples of the six self governing colonies to form a single self governing colony of the United Kingdom.

AUSTRALIAN CONSTITUTION REMAINS BRITISH LAW

That the Australian Constitution remains a current Act of British law is in fact, confirmed by :

ANNEXURE 9

1. The Lord Chancellor, who, in answer to a question, reported to have been July 1995, in the House of Commons stated;

> "The Commonwealth of Australia Constitution Act (UK) 1900 is an Act of the United Kingdom Parliament. The right to repeal this Act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations . . ."

ANNEXURE 9

Accuracy of this statement confirmed December 11, 1997.

ANNEXURE 10

2. The Foreign and Commonwealth Office of the United Kingdom Government has stated in reply (dated December 11, 1997) to written questions directed to the Lord Chancellor: "The Commonwealth of Australia Constitution Act was enacted in the United Kingdom . . . There are at present no plans to repeal the Constitution Act . . . The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made."

3. Office of the Australian Attorney-General (October 21, 1997):

> ". . . 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 deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australian people. Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed."

TITLE OF 'DOMINION' DID NOT ALTER COLONIAL STATUS

In 1911 Australia, along with Canada, New Zealand and South Africa was given the new title of 'Dominion' to distinguish them from Britain's other smaller colonies. This action by Britain did not alter, in any legal sense, Australia's colonial status.

This fact was amply illustrated when King George V, in 1914, declared war on Germany on behalf of Great Britain and its colonies and Australia and Australians found themselves at war.

Thousands of Australians volunteered and went off to fight in the Middle East and Europe. But a large proportion of the population of Irish background, mindful of the activities of British troops in Ireland, protested and refused to volunteer. An attempt by Labor Prime Minister, William Morris Hughes, to introduce conscription via referendum failed on two occasions – in 1916 and 1917.

This precipitated a political turmoil which tore the Australian Labor Party apart resulting in Hughes switching sides to become a non Labor Prime Minister leading a pro-British government in a move which has had profound consequences, the reverberations of which are still being felt today.

ANNOUNCEMENT: DOMINIONS TO BE GRANTED INDEPENDENCE

While these events were unfolding in Australia the Imperial War Conference of 1917 was taking place in London at which the British Government announced a decision, on the basis of the contribution made to the war effort by Australia, Canada, South Africa, New Zealand and Newfoundland, to have all five colonies become independent sovereign nations but remaining within "an Imperial Commonwealth".

It was decided and recorded by resolution IX of this conference that:

> "The Imperial War Conference are of the opinion that the readjustment of constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the War and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities. They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based on a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth . . ."

Australia, along with the other Dominions, was granted separate representation at the Peace Conference of 1919. This not only involved the co-operation of the British Government but also foreign powers. The Imperial War Cabinet agreed, and the allied powers accepted, that the Dominions should have separate representation equivalent to that of the non-major powers. In addition, the Dominions were represented through and by a panel system on the delegation of the British Empire which was one of the five powers "with general interests" that could attend all sessions and committees. Thus, with the approval of the allied powers and the world community of nations the newly emerging nations' concerns and interests were able to be expressed and considered at the highest levels of mediation.

Despite the achievement of independent sovereign nation status the Australian Constitution being part of an unrepealed Act of the United Kingdom Parliament remains British domestic law. Both United Kingdom and international law dictate that the right to repeal the Australian Constitution must remain solely with the Parliament of the United Kingdom.

AUSTRALIA AN INDEPENDENT SOVEREIGN NATION

AUSTRALIA signs Treaty of Versailles and achieves international personality and becomes a foundation Member State of the League of Nations.

On June 28, 1919 Australia along with the other Dominions signed the Peace Treaty – the Treaty of Versailles – and became one of the 29 foundation members of the League of Nations.

> ". . . at the request from the Dominion governments the full powers to sign were issued by the King on the advice of the Imperial government through the Secretary of State for Foreign Affairs."

Professor Zines, 'The Growth of Nationhood and its Effect on the Powers of the Commonwealth', p 27 'Commentaries on the Australian Constitution' ANNEXURE 11

The 'Full Powers' documents presented by Prime Minister and Attorney-General, William Morris Hughes and his Deputy and Minister for the Navy Sir Joseph Cook, were signed by the Sovereign and sealed with the Great Seal. After the signing of the Treaty of Versailles there ensued a series of cables from the British government to the Governor-General urging that the resultant treaty be ratified, without delay, by the Australian Parliament. The process of ratification was not only necessary to give effect to the treaty but also to confirm Australia's status as a sovereign nation which could then act internationally. The process of ratification was completed on October 1, 1919.

Professor O'Brien, Head of the Department of International law, Stanford University. Information confirmed via documents extracted from Parliamentary debates Sept/Oct 1919 and Commonwealth Parliamentary Papers 1920-21 ANNEXURE 11

It is clear that the persistent agitations of the Dominions resulted in their colonial master, Great Britain, choosing to use the Treaty of Versailles as the instrument through which the Dominions were to be given full international personality.

After signing the Treaty William Morris Hughes said: "Australia is now a nation by virtue of God and The British Empire."

That this was so was confirmed through the official statement made by Lord Milner, at the time Secretary of War in the United Kingdom Government:

> "The Peace Treaty recently made in Paris was signed on behalf of the British Empire by Ministers of the self-governing Dominions as well as by the British Ministers. They were all equal plenipotentiaries of His Majesty the King, who was the 'High Contracting Party' for the whole Empire. This procedure illustrates the new constitution of the Empire, which has been gradually growing up for many years past. The United Kingdom and the Dominions are partner nations not yet indeed of equal power, but for good and all of equal status."

In 1919 General Smuts, during the debate in the South African Parliament on the ratification of the Peace Treaty, set out the new status of the Dominions in language no less clear and precise:

> "The Union Parliament stands on exactly the same basis as the British House of Commons, which has no legislative power over the Union...Where in the past British Ministers could have acted for the Union (in respect of foreign affairs), in future Ministers of the Union will act for the Union. The change is a far reaching one which will alter the whole basis of the British Empire . . . We have received a position of absolute equality and freedom not only among other States of the Empire, but among the other Nations of the World."

These quotes taken from 'A Splendid Adventure by Right Hon.W.M. Hughes, formally Prime Minister of Australia, London - Earnest Benn Limited 1929 printed in Great Britain - First Edition pp. 234, 235, 236.

While Sir Robert Borden, in his speech to the Canadian Parliament in 1919, set out the position of the Dominion representatives in the Imperial Council Chamber in terms equally clear and comprehensive:

> " We meet here on terms of equality under the presidency of the First Minister of the United Kingdom . . . Ministers from six nations around the council-board, all of them responsible to their respective Parliaments and to the people of the countries they represent. Each nation has its voice upon questions of common concern; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility to its own electorate."

W.M. Hughes Australian House of Representatives Hansard 30th Sept. 1921 at p. 11631) ANNEXURE 12

At a slightly later date Australia's status (as well as that of Canada, New Zealand, South Africa and Newfoundland) was totally and thoroughly confirmed when in his opening speech to the 1921 Imperial Conference in London the British Prime Minister Lloyd George said:

> "In recognition of their services and achievements in the war the British Dominions

have now been accepted fully into the comity of nations of the whole world. They are signatories to the Treaty of Versailles and of all other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League; in other words, they have achieved full nation status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even more clear to their own communities and to the world at large, we shall be glad to have them put forward at this Conference ."

In these words, the Prime Minister of Britain, the President of the Conference, set out in clear unambiguous language the concept of a partnership of free nations, all equal in dignity and responsibility, to which the Conference subsequently and officially set its seal.

Australia demonstrated the achievement of this new status by immediately proceeding to become, as an independent sovereign State, a foundation member of the International Labor Organisation. Australia also confirmed the achievement of independence through the signing of Treaties of Peace with Austria, Bulgaria and Hungary, as well as the 1922 Washington Naval Treaties. Each of these Treaties were duly ratified by the Australian Parliament, and subsequently written into Australian law via various Acts of the Parliament. The terms of Washington Disarmament Treaty was acceded to when, on April 12, 1924, *HMAS Australia* was sunk with full honours off Sydney Heads.

The capacity of members of the Commonwealth of Nations to act in an unrestrained and fully independent manner was further illustrated on March of 1923 when Canada entered into the 'Halibut Fisheries Treaty' with the United States. Its signatories acted with plenary powers which were issued independently of the King of the United Kingdom, King George V. In 1925 this Treaty was formally registered with the League of Nations under Article 18 of the Covenant.

It is also of interest to note that in 1934 the Union of South Africa expressed its unrestrained independence by choosing to pass its own law removing the right to British citizenship from citizens of South Africa.

AUSTRALIA, IN ITS OWN RIGHT, BECOMES A COLONIAL POWER

The World Community of Nations further confirmed their acceptance of Australia's new status through the granting, via the League of Nations, of mandates over Nauru and German New Guinea on December 17, 1920. The mandates were confirmed in the name of the nation of Australia. Thus Australia, in its own right, became a Colonial Power.

The sovereignty of the Australian people was again recognised by its old colonial master, when on November 11, 1921, Sir Joseph Cook presented his credentials and became the first Australian High Commissioner to the United Kingdom to carry the status of Ambassador. During the ceremony King George welcomed "the representative of our ex-colony, the newly independent nation of Australia.".

As this was happening G.F. Pearce was representing Australia at the earlier mentioned Washington conference from November 12, 1921 to February, 1922 resulting in the signing of the Treaties of Washington.

CONTEMPORARY SCHOLAR CONFIRMS INDEPENDENT NATIONHOOD

On July 14, 1996, investigators working in the archives to the League of Nations, held in Geneva by the Swiss Government, found the original copy of the League of Nations Covenant. Interspersed among the text is a commentary in italics by Sir Geoffrey Butler, KBE Fellow in international law and diplomacy at Corpus Christy College, Cambridge University.

The discovery of the original copy of the Covenant revealed Sir Geoffrey's commentaries had been part of this crucial document from the beginning, not added later as some historians had believed.

Full significance of Article I of the Covenant has never been widely understood by the people of Australia, whose future was irrevocably altered by the Treaty of Versailles of June 28, 1919.

Sir Geoffrey Butler's comments went to the heart of the events. His commentary on Article I states:

"It is arguable that this article is the Covenant's most significant measure. By it, the British Dominions, namely New Zealand, Australia, South Africa and Canada have their independent nationhood established for the first time. There may be friction over small matters in giving effect this internationally acknowledged fact, but the Dominions will always look back to the League of Nations Covenant as their Declaration of

Independence. That the change has come silently about and has been welcomed in all corners of the British Empire is the final vindication of the United Empire Loyalists."

AUSTRALIAN PRIME MINISTER ADVISES AUSTRALIAN PEOPLE OF THE ACHIEVEMENT OF NATIONHOOD

On his return to Australia, fresh from the Peace Conference and the setting of his signature to the Treaty of Versailles, Prime Minister, William Morris Hughes, reported to the people of Australia by way of a motion to have the Parliament approve the Treaty of Peace signed at Versailles. An examination of Hansard reveals that throughout his address to the Australian Parliament he was clearly aware of the magnitude of what had been achieved for and on behalf of the people of Australia:

> "It was abundantly evident to my colleague" (The deputy Prime Minister Sir Joseph Cook) "and to myself, as well as the representatives of other Dominions, that Australia must have separate representation at the Peace Conference. Consider the vastness of the Empire and the diversity of interests represented. Look at it geographically, industrially, politically, or how you will, and it will be seen that no one can speak for Australia but those who speak as representatives of Australia herself. Great Britain could not, in the very nature of things, speak for us. Britain has very many interests to consider besides ours, and some of those interests do not always coincide with ours. It was necessary, therefore – and the same applies to other Dominions – that we should be represented. Not as at first suggested, in a British panel, where we would take our place in rotation, but with separate representation like other belligerent nations. Separate and direct representation was at length conceded to Australia and to every other self-governing Dominion." (It was President Woodrow Wilson of the United States of America who formally proposed that the Dominions represent themselves).
>
> "By this recognition Australia became a nation, and entered into a family of nations on a footing of equality. We had earned that, or, rather, our soldiers had earned it for us. In this achievement of Victory they had played their part, and no nation had a better right to be represented than Australia. This representation was vital to us, particularly when we consider that at this world Conference 32 nations and over 1,000,000,000 people were directly represented. It was a conference of representatives of the people of the whole world, excepting only Germany, the other enemy powers, Russia, and a few minor nations."

ANNEXURE 13

ANNEXURE 8

As set out above, Hughes reinforced this in his September 30th 1921 speech to the Australian Parliament after his return from the 1921 Imperial Conference.

ANNEXURE 13

TERMS OF TREATY OF VERSAILLES INCLUDING COVENANT OF THE LEAGUE OF NATIONS WRITTEN INTO AUSTRALIAN LAW

Hughes' motion became a Bill through which his and his deputies' actions in establishing the right for Australia to be represented independently and thus become a nation signatory to the Treaty of Versailles and a Member State of the League of Nations, was agreed to unanimously by the Australian Parliament.

History clearly records that, in international law, Australia moved from being a British colony/Dominion under the sovereignty of the Monarch of the United Kingdom of Great Britain and Ireland and that this occurred on October 1, 1919. The Covenant of the League of Nations became part of international law on January 10, 1920 with Australia as one of the 29 foundation Member States. Australia's sovereign nation status was guaranteed under article X of the League's Covenant. The Treaty of Versailles and hence the Covenant of the League of Nations was written into Australian law via the Treaty of Peace Act.

SOVEREIGN NATION STATUS ACHIEVED: LEGAL INSTRUMENT NECESSARY TO BRIDGE BREAK IN LEGAL CONTINUITY NOT CREATED. GOVERNMENTAL INDEPENDENCE DENIED.

All theories of sovereignty hold that any change in sovereignty is necessarily accompanied by a break in legal continuity. Examination of historical records reveal that it is abundantly clear that those individuals directly involved were fully conscious of the momentous events that were precipitating as a result of the 'Great War'.

However, what is clear, some 79 years after that event, is that the hard won sovereignty achieved for,

and by, the people of Australia has been betrayed. This has occurred through a failure to replace the instrument of government, the Constitution, which is the property of the United Kingdom with a constitution which belongs to the sovereign people of Australia.

The statesmen of the day were clearly aware that the alteration in sovereignty required constitutional adjustments to bridge the resultant break in legal continuity.

Resolution IX of the 1917 Imperial War Conference not only signalled the intention to recognise the Dominions as "autonomous nations" it also recorded:

> ". . . The readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the war, and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities".

Geoffrey Sawer page 203 'Australian federal Politics and Law 1901- 1929' Melbourne University Press 1956 Reprint 1972. ISBN 0 522 84033 7

It was pragmatically evident that when the colony of Australia became a nation in its own right the manifest change in sovereignty demanded adjustments to the political and legal structure then in use. The severed dependency on the Parliament, the Judiciary and the Monarchy of the United Kingdom needed to be replaced by a system agreed to, and belonging to, the sovereign people of the Commonwealth of Australia.

During the Parliament, 1919-22:

> "The most interesting lapsed measure from a political point of view was the Constitutional Convention Bill introduced in the House of Representatives by Hughes in December, 1921. At the election, Hughes had pledged both himself and his party to the calling of such a convention, and during 1920 he frequently repeated the promise. The Country Party leader, Earle Page, had likewise frequently advocated such a course."

The Labor Party was opposed to a convention maintaining that it should be the parliament which decided constitutional amendment proposals.

> "As time went on, the enthusiasm of Hughes' colleagues for constitutional reform rapidly declined . . . When Hughes finally introduced his Bill in December, 1921, he was in the humiliating position of having to admit his proposals did not have a friend in the house. The Bill provided for a convention consisting partly of elected members representing the people in the same proportions as they were represented in the House and partly of members nominated in equal numbers by State Parliaments."

Earl Page and no doubt others "while still advocating constitutional reform" could not agree on the composition of, and manner in which, the convention should be conducted. The Bill was introduced at the 'fag end' of a session when in any event there was not time to deal with it properly.

> 'When it became plain that the second reading would be defeated, Hughes withdrew the Bill and announced that the government would instead bring proposals for amending the Constitution directly before the house".

As British interests were determined in 1900 not to lose control over political and economic affairs in Australia so was the case in 1919-20 and thereafter!

'Trick or Treaty? Commonwealth Power to Make and Implement Treaties pp. 48, 49, paras. 4.12, 4.13, 4.15: ISBN 0 642 24418 9 : See extract Annexure 13

History records that in the 1920s 'secret' conservative organisations which held distinctly pro-British interests were established. These included highly influential right wing political organisations as well as paramilitary groups such as the New Guard and the 'White Army'.

These organisations were highly successful in propagandising and manipulating issues to create what now is seen as an unseemly loyalty to all things British.

The distortion of historic realities and the manipulation of public opinion had, and still has, an enormous effect on the attitudes Australian citizens carry in relation to their country.

While the manipulation of public opinion is in no way unique to Australia, such practice, when applied in conjunction with a statute which requires compulsory voting under a system which is dominated by political parties and is devoid of civil rights, results in a form of democracy which is unique to Australia.

Compulsory voting in Commonwealth elections was introduced by way of a private Members Bill on July 31, 1924. Compulsory voting in all State Government elections was introduced soon after.

AUSTRALIAN PARLIAMENT CONFIRMS DATE OF ACHIEVEMENT OF SOVEREIGN NATION STATUS

Despite the undoubted manipulation of the general populous in relation to internal politics it has been necessary that those assuming the power to govern over the Australian people project Australia's true status into the International arena. That the 'Government' has continually recognised Australia's independent sovereign nation status is manifest in the myriad of International Treaties that its plenipotentiaries have signed.

As recently as November, 1995 the Australian Parliament through the release of a report by the 'Senate Legal and Constitutional References Committee' restated the historical events leading up to the achievement of independence. Citing, in the process, the 1917 Imperial War Conference resolution, the 1919 Peace Conference and confirmations arising during the 1923 Imperial Conference. The report states at paragraph 4.13:

> "Australia became an independent member of the League of Nations and the International Labour Organisation in 1919 . . ." and at 4.14 ". . . This admission to the league and the International Labour Organisation involved recognition by other countries that Australia was now a sovereign nation with the necessary 'international personality' to enter into international relations."

UNITED KINGDOM GOVERNMENT RETAINS CONTROL OF AUSTRALIA'S AFFAIRS

The Government of Australia remained subordinate to the Government of the United Kingdom.

The Act of Settlement of 1701 removed the automatic hereditary right to succession to the throne of the United Kingdom. The 1701 Act requires that the Monarch be appointed by the Parliament of the United Kingdom. The Act of Settlement has not been incorporated into any other Act, has not been repealed and has not been amended. Although originally an English law it was incorporated into UK law by the Act of Union of 1706. In short, the UK Parliament is not subject to the Monarch of the UK, rather the Monarch is subject to the Parliament. Thus, contrary to popular belief, ultimate sovereignty over Australia has always been held by the Parliament of the United Kingdom and not the Monarch of that Kingdom.

It is also significant to note that the Sovereign of the United Kingdom is a British citizen subject to the laws of the United Kingdom and the Treaties entered into by the Parliament and Government of the UK.

However, when the Queen is not acting as the Sovereign she is in fact a German citizen by descent from the Princess Sophia, Electress of Hanover. This arrangement was deliberately put in place so that any one of the Princes of Hanover, descended from Sophia, could be anointed to the throne of England/United Kingdom.

Being a British subject and subject to British law the myth that the Monarch is above the law is a straight denial of the mechanisms by which she holds the throne. Sovereignty over the Australian Constitution lies not with the Queen but with the United Kingdom government.

ANNEXURE 2

Concealed forces, in a manner signalled prophetically by Sir Geoffrey Butler through a section of his comment under article XXVI in the same, original copy, of the League of Nations Covenant, ensured that Australia continued to be governed as if it had remained a colony of the United Kingdom.

> "There is a chance that the mass of men may rally to a constructive Internationalism which preserves and not destroys the tradition of the nation state. It is wise neither to talk, nor to pitch our hopes, too high. The new diplomacy is bounded with the same limits as the old. The men who will serve the new diplomacy are certainly not wiser than the men who served the old; they certainly have less experience of international affairs. Capitalist greed and mob ignorance have at times informed the foreign policy of states ever since man gave way to gregarious instinct . . ."

The historical truth is that the Commonwealth of Australia achieved the status of an independent sovereign nation in 1919. This was confirmed in the Australian Parliament as early as 1919 and as late as 1995.

Knowledge of the legal realities and the necessity for adjustments has been concealed from the Australian people.

THE CONSTITUTION: OFFICIAL ATTITUDES

CURRENT 'official' attitudes towards validity of the Australian Constitution and the Monarchy

AUSTRALIA: FOUNDATION MEMBER STATE OF THE UNITED NATIONS. INDEPENDENT SOVEREIGN NATION STATUS CONFIRMED AND GUARANTEED

H.V. Evatt and F.M.Forde represented Australia at the 50 nation United Nations Conference on International Organisation in San Francisco from April 25, 1945 through June 26, 1945. Australia signed the United Nations Charter as a foundation Member State on June 26, 1945. The United Nations Organisation replaced the League of Nations which was terminated in 1946.

ANNEXURE 14

Historical facts which clearly demonstrate Australia's achievement of independent sovereign nation status were confirmed in correspondence, from the Acting Director and Deputy to the Under-Secretary-General, Office of the Legal Counsel of the United Nations, Paul C. Szasz, dated December 19, 1997, stating:

> "In relation to your question we note that the Charter of the United Nations entered into force on October 24, 1945 and that Australia was an original Member of the United Nations, having signed the Charter on June 26, 1945. Australia's status as of that date was obviously that of a sovereign State".

ANNEXURE 6

The Charter of the United Nations was enacted into Australian law on September 14, 1945 by way of the 'Charter of the United Nations Act 1945'. An Australian citizen, Dr H.V. Evatt served as the Inaugural Secretary-General of the United Nations.

ANNEXURE 15

THAT THE AUSTRALIAN CONSTITUTION REMAINS UNITED KINGDOM LAW CONFIRMED

It was reported that, in reply to a Parliamentary question in July, 1995, the chief law officer of the United Kingdom, the Lord Chancellor, stated:

> "The Commonwealth of Australia Constitution Act (UK) 1900 is an Act of the United Kingdom Parliament. The right to repeal this Act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to another country or Member State of the United Nations. Indeed, the United Nations Charter itself precludes any such action."

A request for confirmation of the correctness of the above statement was addressed to the Office of the Lord Chancellor. On December 11, 1997 the Foreign and Commonwealth Office of the United Kingdom Government responded on behalf of the Lord Chancellor:

> "The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation . . . The continuing role of the Australian Constitution Act as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act. The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Act if a request to that effect were made by the Government of Australia. To date no such request has been made."

ANNEXURE 9

THE AUTHORITY OF THE MONARCHY IN THE AFFAIRS OF AUSTRALIA

On July 17, 1997 the Private Secretary to Queen Elizabeth II and the United Kingdom High Commissioner to Australia were asked a series of questions relating to the role of the Monarchy in the affairs of Australia. He chose to ask the Governor-General of Australia to respond. He, in turn, asked the Attorney-General of Australia to respond. The Attorney-General seems to have avoided responsibility for the answers by having, under the title of the 'Office of the Attorney-General', required a researcher provide the answers over her own signature.

Question: "As Queen of Australia does Queen Elizabeth II head an institution which is separate and independent from the Monarchy of the United Kingdom?"

Reply: " The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of New Zealand)."

Question: "Under the laws of the United Kingdom is it permissible for the sovereign to issue letters patent to non British subjects?"

Reply: "I am afraid I cannot say whether the Queen, when acting in her capacity as Queen of the United Kingdom, can issue Letters Patent to non-British subjects."

Question: "I have been advised that the Letters Patent of 1984 were issued by the Queen of Australia under the Great Seal of Australia and that the Keeper of the Royal Seals, Lord Huntington, has advised that only the Queen of the United Kingdom can issue Letters Patent covering the Constitution of the Commonwealth of Australia."

Reply: "The Queen of Australia, when acting in relation to Australia, acts on the advice of the Australian Government. I have not seen and therefore cannot comment on any advice from the 'Keeper of the Royal Seals' to the effect that the Queen of Australia cannot issue Letters Patent in relation to the office of the Governor-General on the Advice of the Australian Government."

ANNEXURE 10

THE ENACTMENT OF VALID LAWS UNDER THE CURRENT SYSTEM OF GOVERNMENT IN AUSTRALIA IS NOT POSSIBLE

As unsatisfactory as these replies are they do confirm that the Queen of Australia is considered to be a legal entity separate from the Queen of the United Kingdom. It is pertinent to mention that there exists a strong argument that the 'Queen of Australia' possesses no legal authority whatsoever. However, let it be assumed that that office does possess power. Then serious questions present themselves when it is pointed out that the Queen of Australia has been created to be the Executive Head of the Government of the Commonwealth of Australia while at the same time the Queen of the United Kingdom remains the Executive Head of the separate States which constitute the Federal Commonwealth of Australia.

The Queen of Australia has been created and installed as the Executive Head of the Commonwealth of which the fundamental law, the Constitution, remains part of a current Act of the Parliament of the United Kingdom which, it has been confirmed, is the only authority which can repeal the Act. This is compounded by the fact that the only Monarchy that the Act, and thus the Constitution, recognises is the Monarchy in the sovereignty of the United Kingdom. The result of this is that the Governor-General, who is appointed by a Queen of Australia, cannot give assent to any law created under the Constitution.

AUSTRALIAN ATTORNEY-GENERAL'S OFFICE IGNORES IMPLICATIONS OF INTERNATIONAL LAW

When questions pertaining to the validly of the continuing application of the Australian Constitution are asked of the Commonwealth Attorney-General the standard reply is:

> "You will be aware that the Commonwealth Constitution was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.
>
> "However, during the course of this century Australia has become an independent nation and the character of the Constitution as the fundamental law is now seen as deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the people.
>
> "Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed."

ANNEXURE 16

When this approach is aligned with the fact that conditional clause 8 of the Act states, in part, that the Commonwealth shall be taken to be a self-governing colony for the purposes of the Act. And clause 2 defines the Act as functioning in the Monarchy of the United Kingdom it will be recognised that Australia's chief law officer is either inept or is attempting to be deceptive.

However, when the realities of the consequences deriving from the fact that Australia has, through its 'Treaty of Peace Act 1919' and its 'Charter of the United Nations Act 1945', effectively written International law into Australian domestic law, the reasoning contained in such responses borders on the bizarre.

When the Attorney-General's continual avoidance of the implications and responsibilities under international law is summarised, as it is in his July 27, 1999 response to the notification of the intent to file this submission requesting an ICT, a policy of shear contempt is displayed.

ANNEXURE 35

> ". . . Australia is now a fully independent nation . . . but this does not mean that Imperial law ceased to have any force . . .
>
> ". . . the High Court has decided that international law which affects or creates rights or imposes obligations on individuals is not applicable to Australians unless domestic legislation is passed implementing those agreements which affect or create individual rights or obligations. The Charter of the United Nations Act 1945 (Cth) to which you refer, merely approves the Charter without binding Australians as part of the law of the Commonwealth and therefore cannot be relied upon as a justification for otherwise unjustifiable executive acts."

Since gaining independence the people of Australia have, at no time, been given the opportunity to accept the Constitution, and even if they had been, being an inseparable part of an Act of the United Kingdom Parliament, there is no way under either British or International law that it could be transferred to a now independent Australia.

Equally, the people of Australia have never been provided with an opportunity to devise and agree to be governed under a constitution of their own.

THEORY OF PROGRESSIVE SOVEREIGNTY FAILS TO RESOLVE DILEMMA

ANNEXURE 30

This same July 27 letter continues to promote the unsatisfactory, and in many ways dangerous, theory of progressive sovereignty: "Although Australia is now a fully independent nation, this has been achieved through an evolutionary process throughout this century."

Callinan J., one of the dissenting judges in 'Sue v Hill' commented at paras. 290 and 291:

> "The evolutionary theory is, with respect, a theory to be regarded with great caution . . . The great concern about an evolutionary theory of this kind is the doubt to which it gives rise with respect to peoples' rights, status and obligations as this case shows . . . In reality, a decision of this court upon that basis would change the law by holding that, notwithstanding that the Constitution did not treat the United Kingdom as a foreign power at Federation and for sometime thereafter, it may and should do so now."

Despite such pronunciations, for the purpose of argument let it be assumed that, contrary to all theories of sovereignty, it is somehow possible, as held by the Australian Attorney-General and most High Court Judges, for the colony of the Commonwealth of Australia to gradually and progressively become an independent nation. Then upon such a supposition it may be possible to argue that United Kingdom law could continue to be used in Australia up to and until the claimed indefinable time that Australia became a sovereign nation.

But at one minute after Australia achieved sovereignty, British, Australian and International law all dictate that the United Kingdom was a power foreign to Australia and that, as such, its colonial laws may no longer be legitimately applied to the Australian people. For the situation to be otherwise constitutes an affront to the principle of independence and self determination.

Clearly at the instant when Australia achieved independence any, and all, Imperial law relating to Australia, including the Constitution Act, became 'frozen' into redundancy. Such law does not even need to be repealed, it just 'died'.

As Callinan J. points out, a ". . . ruling that the evolutionary process is complete . . . would change the law." Resulting in adjustments and modifications "with respect to peoples' rights, status and obligations". Clearly, irrespective of when it was that the peoples of Australia achieved independence, at that time they gained the status of a free peoples and a right to self determination. A right which has been denied by those who were and are, even now, under an obligation to effect the principle of self determination on the people's behalf.

That this has not happened has clearly resulted in a continuing act of political aggression on the people of Australia which is (under Article 2 Paragraphs 1 and 4 of the UN Charter, strengthened by resolutions 2131 [XX] of December 21, 1965 and 2625 [XXV] of October 24, 1970), an offence under international law.

ANNEXURE 17

It is abundantly clear that the political and legal system currently operating in Australia is not only aggressive to the sovereignty of the Australian people but is totally offensive to international law. It is offensive to the right of the Australian people to enjoy self-determination, the fundamental principle on which the United Nations has been established. And since the Charter of the United Nations has been written into Australian law, those assuming power to govern the nation do so in deference to not only international law, but also the laws of their own land.

THE CONCEALED COLONY

CONSERVATIVE forces and United Kingdom Government act to conceal the continuing application of colonial law in Australia

An examination of the correspondence submitted in annexures 9, 10, 11, 20, 16, 22 & 35 will adequately confirm that people assuming high office adopt a policy calculated to confuse issues in an endeavour to conceal the fact that those same people do not legitimately hold office and that, by continuing to exert political influence in the affairs of Australia, the United Kingdom Government is in contravention of international law. The correspondence is evasive, misleading and contradictory.

A citizen cannot know of the pressures that may have been applied, or indeed, the reasons for their application, to cause the internal affairs of Australia to be administered in a way which is fundamentally not in the primary interests of the people of Australia.

Through even a cursory examination of historical fact, together with the recent correspondence referred to above, it becomes manifestly clear that the United Kingdom Government continues to choose not to relinquish its control over those assuming the power to govern over the Australian people. Equally, those assuming that power have resorted to deceit and deception so that they may, in turn, retain their positions of power.

Those assuming the power to govern over the Australian people can rightly be described as agents of a power foreign to Australia. Clearly, they too choose not to relinquish power.

CHICANERY EVIDENT FROM THE BEGINNING

Because it is so significant, the opening speech to the 1921 Imperial Conference in London by the British Prime Minister Lloyd George is again quoted:

> "In recognition of their services and achievements in the war the British Dominions have now been accepted fully into the comity of nations of the whole world. They are signatories to the Treaty of Versailles and of all other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League; in other words, they have achieved full nation status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even more clear to their own communities and to the world at large, we shall be glad to have them put forward at this Conference".

ANNEXURE 3

And, associated with a declaration issued by the Inter-Imperial Relations Committee at the 1926 Imperial Conference:

> " . . . There is, however one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development, we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined . . . They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".

Thus confirming that the absolute equality of the Dominions with the United Kingdom along with their attainment of nationhood was unquestionably understood. That action was not, and is not being, taken by the United Kingdom Government through the repealing of existing colonial law points to an unpardonable chicanery which was further extended some five years later through the enactment of the Statute of Westminster.

The Statute of Westminster Act 1931 was passed by the United Kingdom Parliament some 12 years after Australia had become independent. By virtue of the terms of the Covenant of the League of Nations (Article X), Britain could no longer validly enact legislation designed for application within, and to affect the internal affairs of, a sovereign Australia, a foundation Member State of the League.

ANNEXURE 18

The only means whereby respectability could be given to the United Kingdom's continuing interference in the internal affairs of a now independent Australia was through the creation of an international arrangement or treaty in accordance with Article 18 of the Covenant. No such Treaty or Arrangement was made.

That the Parliament of Australia, in 1942, passed The Statute of Westminster Adoption Act 1942 with retrospectivity to 1939, points to a further attempt to give some semblance of respectability to the continuing use of the colonial law, 'An Act to Constitute Commonwealth of Australia (UK) 1900'. This occurred after Australia, without a formal declaration, was at war with Germany, and at the time when a new Prime Minister was declaring war on Japan. Thus it may well be interpreted that, through this action, those exercising power in Australia were acting in the interests of the United Kingdom and in collusion with powers foreign to Australia without possessing the legitimate authority of the Australian people to do so.

The Statute of Westminster Act 1931 (UK) and the Statute of Westminster adoption Act 1942 (Commonwealth) constitute reciprocal arrangement between the United Kingdom and Australia. Because these arrangements were not registered in accordance with Article 18 of the Covenant of the League of Nations or the appropriate Article of the Charter of the United Nations they cannot be presented in an international forum. The same can be said of 'An Act to Constitute the Commonwealth of Australia.'

ANNEXURE 19

EX-PRIME MINISTER REVEALS UK LEGISLATION NOT IN BEST INTERESTS OF AUSTRALIA: STATUTE OF WESTMINSTER 1931.

Ex-Australian Prime Minister, Gough Whitlam, said of this legislation:

> "Australia's relations with Britain are regulated by the Statute of Westminster, 1931. The compact originally included not only Australia and Canada but South Africa and Ireland, which have gone their own ways; Newfoundland, which has been incorporated into Canada; and New Zealand, a Unitary Unicameral state. Of those countries only Australia and Canada are still not yet absolutely independent of Britain . . .
>
> "The Statute of Westminster is no longer an instrument of Canadian and Australian independence" (Quite clearly it never was!) "but an impediment to it. It is begging the question to say, as the late British Secretary of State for Foreign and Commonwealth Affairs said in the House of Commons on December 21, 1976, that 'The United Kingdom Government for their part would not stand in the way of any changes that command the agreement of all concerned in Australia'."
>
> "It is precisely when our Federal and State Governments do not agree that Britain is involved . . . Under the present system Britain will be brought into Australian controversies whenever State Governments believe that they can use their colonial status to frustrate their own national government . . . Australia should no longer accept the Dominion status that other British colonies have cast off. It would suit the dignity of both British (Britain) and Australia if the Statute of Westminster were repealed."

'Towards a Republic', chapter 12 in 'The Truth of the Matter' 2nd edn, Penguin, Ringwood, Victoria, 1983, pp. 175-185

Ex-Prime Minister Whitlam, through his writings, seems to make it clear that those assuming high office have knowingly and perhaps willingly been prepared to continue to serve in the interest of the Government of the United Kingdom:

> "The standard conservative response to a republic is that the present system is working well enough. It is said that Australia is to all intents and purposes an independent country and a republic would make no useful difference. In fact, to take just one of these points, Australia is not a wholly independent country at all. All state governors, for example, are British officials appointed by a British head of State on the recommendation of the British government; all state honours are awarded in the name of a defunct Empire and by the British Head of State on the recommendations of British ministers; all state courts operating under state laws are subject to veto by a court in another country."

'The Truth of the Matter' Gough Whitlam pp 181, 182

While it is that Whitlam wrote this after he was forced from office in November of 1975, he was clearly aware of the anomalous situation which existed. While he was Prime Minister, his Government chose to not rectify the situation but, instead, to further compound it.

THE CHICANERY CONTINUES: PERSISTENT ATTEMPTS TO CONCEAL THE TRUTH WRITES THE BRITISH MONARCHY OUT OF AUSTRALIAN LAW AND RENDERS THE INVALID CONSTITUTION DUMB

The Royal Styles and Titles Act 1973, obliterated the Australian Constitution.

The compounding occurred thus: Australia's enrolment as a foundation Member State of the United Nations emphasised its status as a sovereign nation resulting in the questioning of the capacity of the Parliament of the United Kingdom to continue to bestow titles on the Queen with respect to Australia as well as the other the ex-Dominions.

Accordingly, the UK Government advised the governments of her ex-Dominions that if they wished to retain a link with the Monarchy they had to pass their own legislation since the UK could not legally do so.

Since Australia's fundamental law, the Constitution, remained part of an Act of British law which, under clause 2 of the Act, recognised only the Monarch of the United Kingdom, Prime Minister Sir Robert Menzies and his government had to either face the truth of the situation and produce a new Constitution or to frame and pass what became the 'Royal Styles and Titles Act 1953'.

This Act bestowed on Her Majesty the titles of 'Queen of the United Kingdom' and 'Queen of Australia'. Thus occurred another attempt to squeeze a little more life from a redundant, a dead Act of United Kingdom law.

However, this was frustrated and complicated when, in 1971 the United Kingdom Parliament passed their 'Immigration and Asylum Act' (amended in 1972 and 1973). The effect of this was to deprive Australians of British citizenship and/or designation as British Subjects. Thus Australians became 'aliens' and not entitled to privileges under British law.

It was recognised that the Queen of the United Kingdom could not rule over 'aliens'. Australians, having lost their British citizenship could no longer be ruled over by the Queen of the United Kingdom.

The government of Australia had no choice but to repeal the 'Royal Styles and Titles Act of 1953'. In its stead Prime Minister Gough Whitlam and his government drafted and passed the 'Royal Styles and Titles Act 1973'.

ANNEXURE 20

This Act specifically removes the title 'Queen of the United Kingdom' and simply bestows on Queen Elizabeth the II the title of 'Queen of Australia'.

However, Section 2 of the Constitution Act reads: "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".

The 1973 Act had no power to alter the Constitution as no referendum, in accord with the provisions of section 128 of the Constitution, was conducted. And in any case the Act's conditional Clause 2 defining the Monarchy for the purposes of the Act and hence the Constitution, as "in the sovereignty of the United Kingdom" cannot be altered by any authority other than the Parliament of the United Kingdom.

Thus, Whitlam's actions effectively removed the 'Queen of the United Kingdom' from executive power in Australia. Such an office does not now exist in Australian law.

HOWEVER, (as an 'aside'):

The Royal Assent to this 1973 Royal Styles and Titles Act was applied personally by Queen Elizabeth II on the occasion of a 'State' visit to Australia. Serious questions could be raised in relation to this and subsequent actions of this British citizen for she has assumed a role and continues to exercise powers which she patently did not, and does not possess, to alter and continue to influence the political affairs of the sovereign nation of Australia, as well as the governments of the separate States that constitute the nation.

Despite this 'aside' the fact remains, the Constitution Act and hence the Constitution cannot recognise any Monarch other than the Monarch in the sovereignty of the United Kingdom therefore all Australian legislation, if not before, cannot be deemed to be valid after July 31, 1973.

Quite clearly if it can possibly be argued that it wasn't so before, the Australian Constitution certainly became defunct in 1973! In point of fact Prime Minister Whitlam's action effectively obliterated a Constitution which was already invalid.

THE EXECUTIVE DICTATORSHIP

THE CONTINUING use of an invalid and now defunct Constitution invites people assuming power to adopt dictatorial behaviour . . .

PRECEDENT ESTABLISHED

Effectively the Commonwealth of Australia Constitution is a document for dictatorship. For instance, it allows an appointed Governor-General to govern without a parliament and with ministers solely appointed by him/her for as long as the Governor-General may wish. The Governor-General is also commander in chief of the armed forces.

That this is so was amply demonstrated in 1975.

In November of that year Australian politics was thrown into turmoil when the Governor-General, Sir John Kerr, through a spectacular application of the 'Royal prerogative', dismissed a popularly elected government (albeit by way of the compulsory voting system) and its leader the Prime Minister. Kerr called and installed the minority opposition to govern. When the artificially generated situation which he used as the reason for the dismissal of the Whitlam Government was, within hours, resolved, Governor-General Kerr refused to dismiss the individual he had installed as Prime Minister who was unable to command the respect of the House. Kerr would not reinstate the former Prime Minister in which the House clearly had confidence, as had the Australian people through the election process.

In the aftermath of the November, 1975 dismissal of Prime Minister Whitlam and his Government, by Governor-General Kerr, and the subsequent refusal by Kerr to reinstate Whitlam, the Speaker of the House (Scholes) sought direction of the Queen. The reply from the Queen's private secretary confirmed she no longer had power in Australia.

> "As we understand the situation here, the Australian constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and the Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution."

The validity of this advice will not stand even cursory examination for the Constitution does not grant prerogative powers to a Governor-General as the representative of 'The Queen of Australia'. Conditional clause 2 of the Act states: "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" and since, outside the UK Parliament, no provision exists to alter this clause then all references to the Queen in clause 9, the Constitution, refer to the Queen of the United Kingdom.

(The legality of this whole situation is thrown further into turmoil when it is recognised that Governor-General Kerr was installed under the October 29, 1900 Letters Patent which had been issued by Queen Victoria and which, according to British law were interred with her after her death on January 22, 1901. No new Letters Patent were issued until 1984.)

OFFICES NOT IN POSSESSION OF VALID AUTHORITY APPOINT AUSTRALIAN GOVERNOR-GENERAL

Those 'New' Letters Patent constituting the Office of Governor-General were issued by 'The Queen of Australia' over the signature of the Prime Minister. Neither of these Offices is recognised by the Act and hence the Constitution either. Since neither can exert any authority under the Constitution, a Governor-General appointed by the powerless 'Queen of Australia' can only occupy a purely honorary position created within a small elite 'club' involved with power games. 'I'll make you the Prime Minister if you will make me the Governor-General!'

So, evidenced once again, is a continuation of the chicanery which has been perpetuated, (for nearly 80 years), in an attempt to give a superficial appearance that the basis for the government of Australia remains valid.

ANNEXURE 21

The fact is that, for legislation of the Australian Parliament to become law, it must receive 'Royal Assent'. Under normal circumstances this function is delegated to, and carried out by, the Governor-General. The fact that the Governor-General's Office and personal Commission were created, issued and sealed by an authority not recognised by the Constitution then legislation created under that Constitution

cannot be given valid assent by a Governor-General appointed in such a manner.

However, the continuing fact is that British interests, from the United Kingdom government down, actually maintain control through the agency of a de facto Australian government which draws its power, via 'the Queen', from the government of the United Kingdom.

In relation to the 1975 'coup' commentators around the world were dismayed at how live a force a claimed royal prerogative could still represent in late twentieth century power politics.

CONSTITUTION POWERLESS TO PROTECT CONVENTION AND DEMOCRATIC PRINCIPLES

Robert Lacey asked the question: "Can these powers with royal origin be credibly exercised by a non-royal nominee?" And: "If Governors-General are to exercise presidential powers, what role is left for the monarchy?"

After the event, deposed Prime Minister, constitutionalist at heart, eminent scholar and lawyer, Gough Whitlam, commented thus:

> "No instructions and no constitutions can long survive if indeed they embody the contradictions, paradoxes and absurdities implied by Sir John Kerr's actions and his interpretation of the Australian Constitution. According to the new dispensation these are things a governor-general can do without his government's advice, irrespective of his government's advice, or against his government's advice: He can dismiss the government. He can appoint and dismiss individual ministers. He can decide which department each minister is to administer. He can dissolve the House of Representatives. If, for instance, the Senate refuses to vote on a Budget, he can dissolve the House of Representatives and if, after a fresh election for the House of Representatives, the Senate still refuses to vote on the Budget, he can again dissolve the House of Representatives. He can call or prorogue both houses. He need not grant a double dissolution although the government asks for it. He need not call a joint sitting if the Houses still disagree after a double dissolution. He need not assent to a bill or to bills passed at any such joint sitting. He need not submit to the electors a bill to alter the Constitution which has twice been passed by one House and rejected by the other, even if he is advised to do so by the government. He need not in fact assent to a bill to alter the Constitution even if it has been approved by the electors. He need not assent to any bills which are passed by both Houses. He could even refuse to take the advice of his minister to send a message to Parliament asking for grants money.
>
> "The actual events of November 1975, the conduct of Mr Fraser" (the leader of the opposition installed as Prime Minister and not dismissed by G-G Kerr when he failed to gain the confidence of the House of Representatives, that is, the House of government) "and his followers, the Chief Justice and State Premiers, ratified by Sir John Kerr and enshrined in the Kerr interpretation of the Constitution, lead inexorably to a collapse of the system."

Australian people continue to be governed as if they remain colonial subjects. However, because they have been deprived of British citizenship they do not enjoy access to the civil rights protection afforded by way of British law.

It follows then that, if they choose to conform to the rule of law and order, they will continue to lack the power to express their rightful sovereignty over their affairs and so be deprived of the power to legitimise the system of government.

The 1975 incident has demonstrated just how easily the nominal democratic right permitted by the invalid Constitution in use in Australia can be totally abused.

AUSTRALIAN GOVERNMENT RIGHTLY DESCRIBED AS AN EXECUTIVE DICTATORSHIP

When all aspects of the events leading up to and following the 1975 dismissal of the popularly elected government (again, albeit via a system of compulsory voting) are examined it becomes clear that Australia, since 1920, has, with the assistance of the government and Monarchy of the United Kingdom, been Governed by Executive Dictatorships.

This fact had hitherto been camouflaged behind a charade of democracy.

POWERLESS 'QUEEN OF AUSTRALIA' APPOINTS HONORARY GOVERNOR-GENERAL TO ASSENT TO LAWS MADE UNDER A DEFUNCT CONSTITUTION

It would seem that the 1973 Royal Styles and Titles Act in removing the title 'Queen of the United Kingdom' with respect to Australian law together with the 1975 ruling from the Palace on Speaker Scholes request for direction, resulted in Prime Minister Hawke visiting the Queen at her Balmoral Castle in 1984 that she might sign new Letters Patent for the constitution of the Office of Governor-General.

(Up until that time Governors-General had been appointed under an obsolete set of Letters Patent issued by Queen Victoria and which were not replaced by the Monarch who ascended to the throne on her demise on January 22, 1901. Nor by any subsequent Monarch)

ANNEXURE 21

Thus on August 24, 1984 New Letters Patent, over the signature of Prime Minister Hawke, were issued under the Great Seal of Australia for appointment of the Governor-General by the 'Queen of Australia'.

By this action it could be argued that Queen Elizabeth II contravened conditional clause 3 of the Act, which concludes "But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth." 'The Queen,' by definition, (clause 2 of the Act) can only be the Queen of the United Kingdom.

In fact it may be argued that the Queen, not being above the law of the United Kingdom (1701 Act of Settlement) has contravened a current law of the United Kingdom.

It may also be argued that, as a British subject, her presumption to grant authority to an individual to call himself a Governor-General and to suggest that through her he has the power to assent to laws and to repeat any or all of those dictatorial/autocratic actions precented by the late Sir John Kerr was, in fact, to commit an offence under international law.

Whatever may be projected, what is evident through both the 1975 reply to Speaker Scholes and the issuing of these Letters Patent is that Queen Elizabeth II has been, even if unwittingly, a persistent perpetrator of the chicanery which has been necessary to permit the governing of Australia by persons definable as agents of a power foreign to Australia.

The fact is, the 1984 Letters Patent solved nothing. They only served to further compound the invalidity of the political/judicial system operating in Australia.

A further analysis to illustrate just how ludicrous the situation has become . . .

ANOTHER REASON WHY THE CONSTITUTION IS INVALID.

The United Kingdom law, 'An Act to Constitute the Commonwealth of Australia', remained in use after Australia achieved independence.

However, Clause 2 of the Act rules that, for the purposes of the Act all references to the Queen lie in the Monarchy of the United Kingdom of Great Britain and Ireland.

The Anglo-Irish Treaty of December, 1921 was ratified on January 15, 1922. It brought into existence the Irish Free State. In 1937 the Irish Free State became the Republic of Eire. Ireland ceased to exist as a legal entity on January 15, 1922.

At that same time the sovereignty of The United Kingdom of Great Britain and Ireland ceased to exist. The establishment of the new sovereignty of the United Kingdom of Great Britain and Northern Ireland was formalised through the United Kingdom Parliament's 'Royal and Parliamentary Titles Act 1927'.

The United Kingdom would constitute an international joke if, in 1999, it masqueraded as still existing in the 70 year defunct Sovereignty of Great Britain and Ireland!

But, in 1999 every Australian Parliamentarian and Senator swears and subscribes an oath to the Monarch in that same 70 year obsolete sovereignty!

If that were the limit of it then the situation might just be tolerable.

But it is not the limit. The situation is much more serious.

As established, sovereignty over the Commonwealth of Australia lies with the Australian people yet these same people remain subservient to a fundamental law, the Australian Constitution, which makes no reference to these same people. That fundamental law, the Constitution, exists in, and only recognises the sovereignty of the defunct nation, the United Kingdom of Great Britain and Ireland!

That this ludicrous scenario can have remained for so long is the result of a mass deception which must rank with the greatest of political manipulations of all time.

A manipulation which could only be perpetuated by concealing and misrepresenting the truth.

Such a distortion was evidenced when the High Court of Australia was recently confronted with a question involving this very matter.

The Full Bench of that court ruled in '*Sue v Hill*', at Paras. 53 to 59, that:

> "The result cannot be that, because the present sovereign has never been Queen of Great Britain and Ireland, the Australian Constitution miscarries for that reason . . ."

ANNEXURE 30

To arrive at this decision the High Court relied on an unrelated and unreliable pronouncement of one Lord Reid in the matter of the loss by Irish peers of their right to elect representatives because, "Ireland as a whole no longer existed politically."

The contorted and tortured logic (a process not infrequently entered into by the High Court of Australia) applied in the High Court's striving to uphold and maintain 'current practice' to protect the political process, and hence the Government, which appoints members to the Bench of that court, is nowhere more clearly illustrated than through the three judgements referred to in this submission.

ANNEXURES 28, 30 & 32

It is clear that the court's pronouncement in this matter is a nonsense. Lord Reid's opinion in the matter cited can not validate the Australian Constitution or any Government or other structure, including the High Court, created under it.

Whatever Lord Reid and the High Court might say, the Constitution still does not recognise the 'Queen of Australia', an Office which has no legal or executive power. Nor, in terms of 'black letter law', does it recognise the Queen of the United Kingdom of Great Britain and Northern Ireland! – even taking into account the UK Parliament 'Royal and Parliamentary Titles Act 1927' which was effected after Australia separated itself from the powers of that Parliament. Thus any outcome from this Act necessarily cannot validly carry over to Australia. If it could, then 'An Act to Constitute the Commonwealth' would have, at the time, been amended accordingly!

Whatever may be projected: the Australian Constitution remains part of a current Act of British law subject only to the defunct Monarchy of the United Kingdom of Great Britain and Ireland! And as such, under international law, has no legitimate application in the independent sovereign nation, the Commonwealth of Australia. Clearly, on the documented facts, the Australian Constitution does "miscarry"!

As an Act of colonial law the tenor of 'An Act to Constitute the Commonwealth of Australia' is one of subjugation. When the source of authority, the United Kingdom Government, abandoned the direct effecting of its legitimate power this role was assumed by the seven Australian governments. Each now maintain an executive head whose power is not derived from either the United Kingdom government or the Australian people.

THE FINAL SOLUTION!
THE AUSTRALIA ACTS OF 1986

That the 1984 Letters Patent rectified nothing was directly acknowledged when, in 1986, yet another attempt to disguise what, if not before, was by then, a hopeless legal conglomeration.

ANNEXURE 22

This attempt was made via what have become known as the 'Australia Acts 1986.'

These Acts, one enacted by the Parliament of the United Kingdom, and one enacted in substantially the same terms, by the Parliament of Australia, each infringe sovereignty. These Acts were not designated as Treaties and duly registered in accordance with the appropriate Article of the Charter of the United Nations. Consequently they may not be presented in any international forum.

The Act passed in Australia goes so far as to state that, contrary to the United Nations Charter Article 2 Paragraphs 1 and 4, (as well as a number of resolutions), it can amend or repeal Acts of the Parliament of the United Kingdom. A sovereignty foreign to Australia.

Apart from the fact that the Australia Act (Commonwealth) is offensive to international law it can have no standing, even if the Australian Constitution could be ruled valid, because it was passed by a Parliament and assented to by a Governor-General who was appointed by the Queen of Australia, an Office not recognised by the Australian Constitution under which the Act was created. That 'honorary' Governor-General, in turn, commissioned the Prime Minister and his cabinet and invested the members of that same Parliament that passed the 1986 Australia Act.

WORDING OF '1986 AUSTRALIA ACTS' CONSTITUTES AN ADMISSION AND CONTAINS A CONTRADICTION

The wording contained in the 'Australia Act' constitutes a clear admission that colonial law was, at least, up until 1986, being applied in Australia. At the same time that wording also clearly indicates Australia's sovereign, independent and federal nation status.

The following brief extract is offered as an example:

AUSTRALIA ACT 1986

> "An Act to bring Constitutional arrangements affecting the Commonwealth and the States into conformity with the Status of the Commonwealth of Australia as a sovereign, independent and federal nation . . . Termination of restrictions on legislative powers of Parliaments of States.
> 3. (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"

These Acts were clearly an attempt to further disguise the use of British law in Australia and effect the appearance of finally eliminating the influence of the United Kingdom Government and use of Imperial law in Australia. They have failed to do so on at least these counts:

1. They make no attempt to rescind the plethora of statute and unenacted British law that the courts of Australia have relied on, and continue to rely on, in their decision making in relation to the actions of ordinary Australian citizens as well as for the justification of actions (particularly in the area of external powers and treaty making) of the Federal Executive, the powers of which are not defined in the Australian Constitution.

2. As outlined, the very invalidity of processes used in the creation of these Acts renders them invalid and therefore when circumstances demand they may be ruled, in a court of law, to be so, with the result that Imperial law may be applied exactly as it was before their creation.

3. They do not repeal the Act of British law, 'An Act to Constitute the Commonwealth of Australia', the ninth clause of which remains the fundamental law of the Commonwealth of Australia while the eighth

clause of which continues to define Australia as a colony and the second clause defines the whole Act as functioning under the Monarchy of the United Kingdom of Great Britain and Ireland.

4. They fail to replace the Monarch of the United Kingdom of Great Britain and Northern Ireland as Executive Head of the Governments of the six Australian States, the peoples of which constitute the legal entity the Commonwealth of Australia.

5. They exist alongside the Letters Patent issued to constitute the Office of Governor of the separate Australian States, on February 14, 1986 under the title of Queen Elizabeth II of the United Kingdom of Great Britain and signed on behalf of the United Kingdom Government by 'Oulton' and designated to come into operation at the same time as the 'Australia Acts'. Thus the 'Australia Acts' did not inhibit the continuing interference in Australia's domestic affairs by the Monarch and the Government of the United Kingdom.

THE COLONIAL STATES OF AUSTRALIA

DESPITE the creation of a 'Queen of Australia' and the 'Australia Acts', the governing of the Australian States remains entirely colonial

A PURELY TITULAR QUEEN OF AUSTRALIA RULES OVER THE COMMONWEALTH WHILE THE QUEEN OF THE UNITED KINGDOM INVALIDLY RULES OVER THE AUSTRALIAN STATES!

Concerned and informed citizens are asking "is it possible?"

The Governors of the Australian States receive their instructions by way of Letters Patent from the Government of the United Kingdom under the name of the Queen of the United Kingdom of Great Britain and Northern Ireland. These Letters Patent were issued on, February 14, 1986, over the signature of Sir Anthony Derek Maxwell Oulton QC, Permanent Secretary in the Office of the Lord Chancellor, and significantly, they were designated to come into effect at the same time as the 'Australia Acts'.

ANNEXURE 23

NEW ROUND OF CHICANERY: BRITISH INFLUENCE CONTINUES

Thus, despite the Australia Acts, a new 'round' of direct interference in the internal affairs of Australia by the government of the United Kingdom commenced at exactly the same time as the charade of finalising the extraction of Australia's affairs from British influence became effective.

It is pertinent to introduce here, an area which will be dealt with in detail later. That is that the Australian Court system has become a protector of this invalid system of government and the actions of those individuals and agencies that also would have it maintained.

In a judgement, in Sue v Hill, handed down as late as June 23, 1999 the full bench of the High Court of Australia it was stated at Paragraph 96:

> "The point of immediate significance is that the circumstance that the same Monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of S44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and its exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome, themselves have no legal consequences for this country. Nor, as we have sought demonstrate in Section III, does the United Kingdom exercise any function with respect to the Governmental structures of the Commonwealth or States."

ANNEXURE 30

From the statements and illustrations already presented this is not an accurate description of the situation. Clearly the Constitutions of both the States and the Commonwealth operate in the Monarchy of the United Kingdom and the Offices of the separate State Governors are constituted directly by the British Government.

It is significant to report that as this submission was in preparation all six State Governors had persistently failed to provide details relating to the execution of their Office. As a last resort formal requests have had to be issued under the Freedom of Information Act 1982.

An answer to a question supplied by the Office of the Australian Attorney-General on October 21, 1997 contrasts markedly with the High Court judgement cited above: "The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of New Zealand). The Queen of Australia, acts on the advice of the Australian Government." And so, by simple deduction, the Queen of the United Kingdom acts on the advice of the Government of the United Kingdom!

ANNEXURE 10

> "The incongruous nature of a position in which the 'Colonial Laws Validity Act (UK) 1856' still applies to the States but not the Commonwealth was well summed up by Sir Owen Dixon in 1936. Speaking to the Australian Legal Convention in 1936 he referred to the 'Illogical course' which had been followed in the application of the statute" (Statute of Westminster 1931. This same illogicality exists in relation to the Australia Acts 1986) "to Australia. As he asserted, this course meant that the State and federal legislatures

Full text of speech contained in 'Jesting Pilate' (1965), p.82

> had been treated 'as if they operated in different countries'. More recently, Professor Geoffrey Sawer has described the position more vehemently as a 'grotesque constitutional situation'. As he went on, a situation was created in which 'the Australian Federal Government could enjoy the fullest degree of national autonomy, while the States of the federation remained in a legal status of dependent colonialism'.
>
> "The national government's links to Britain are now essentially in an independent relationship with the Sovereign. The Sovereign is the Queen of Australia, in a capacity separate from her relationship to the British polity. Side by side with this, however, the legal panoply of imperial dominion remains embedded in the constitutional workings of the Australian States."

G. Sawer, 'Australian Federal Politics and Law (Vol. 2) 1929-1949' 1963 , p.33

Alex Castles 'An Australian Legal History' 1992, p 418.

The Royal Styles and Titles Act 1973, was specifically designed to remove the 'Queen of the United Kingdom' in Australia law (a process which effectively obliterated the Australian Constitution, see pp. 32,33,34) while at the same time creating the 'Queen of Australia' to 'rule' over the Commonwealth. Despite this action the Monarchy of the United Kingdom, together with the influence of the United Kingdom Government, remains firmly entrenched in the governing of the States .

OFFICE OF STATE GOVERNORS CONSTITUTED BY UNITED KINGDOM GOVERNMENT

That this is manifestly so is illustrated through an examination of the current instruction by way of Letters Patent to State Governors which were issued in 1986 under: "Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith."

These instructions were issued:

> "In Witness whereof We have caused these Our Letters to be made Patent. Witness Ourself at Westminster the fourteenth day of February in the Thirty-Fifth year of Our Reign. By Warrant under The Queen's Sign Manual." – Oulton.

ANNEXURE 23

STATE GOVERNORS' LETTERS PATENT SIGNED BY BRITISH CITIZEN IN THE EMPLOY OF UNITED KINGDOM GOVERNMENT

'Oulton' is one Sir Anthony Derek Maxwell Oulton, GCB 1989 (KCB 1984; CB 1979); QC 1985 Ma PhD; Permanent Secretary, Lord Chancellor's Office, and Clerk of the Crown in Chancery, 1982-89; Barrister-at-law; Life Fellow, Magdalene College, Cambridge since 1995.

Thus on February 14, 1986, some two years after the Commonwealth Government attempted to remove reference to the UK Monarchy from the Commonwealth, the United Kingdom Government provided instructions, by way of Letters Patent, to Governors of Australian States (all non-British citizens) the federated peoples of which comprise the Commonwealth of Australia.

As far as can be ascertained no new Letters Patent have been issued.

These current instructions are being used by Australian citizens as their source of authority to commission the Premier and Cabinet Ministers and invest members (all Australian Citizens) in the Parliaments of the States. In addition the Governors use their British authority to commission magistrates, judges and police (also non British Citizens) with powers to impose what can properly be described as United Kingdom law on Australian Citizens within the sovereign territory of Australia.

But the situation possesses yet another dimension. 'The monarch in the United Kingdom is a constitutional monarch who occupies the throne by virtue of an Act of the Parliament and bears a title conferred by that Act."

Sir Kenneth M. McCaw QC and Attorney-General (1965) of New South Wales at page, 15, 'People Verses Power (ISBN 0 03 900161 X)

The United Kingdom Legislature consists of the trilogy, the 'House of Commons', the 'House of Lords' and the 'Queen in Parliament'. ". . . As Head of State, the Queen must remain politically neutral, since her Government will be formed from whichever party can command a majority in the House of Commons. The Queen Herself is part of the legislature (as The Queen in Parliament' she approves legislation), and technically she cannot vote" (Official Royal UK Govt. website).

ANNEXURE 23

The Queen is a composite part of the legislature and since the Act of Settlement 1701 has not enjoyed separate status as an independent legal entity. Therefore the issuing authority of these Letters Patent is clearly definable as the United Kingdom Parliament.

The Monarch and the Monarch's representatives (State Governors/Governors-General) are limited by

the current legislative power of the Parliament of the United Kingdom which, under domestic and international law, excludes the right to bestow the power of assent to bills within the sovereign territory of the Commonwealth of Australia, a Member State of the United Nations, nor can this power of assent be bestowed by a government which is itself subordinate to Clause 9 of the Constitution Act which is current domestic legislation of the Parliament of the United Kingdom.

Power of assent is a 'sovereign power' held by the Australian people alone. Even they cannot bestow this power upon a citizen who is subordinate to the British Parliament. A nation's sovereignty is not negotiable under domestic and international law!

So it is that these Letters Patent were signed in contravention of both United Kingdom and international law (UN Charter Article 2 Paragraphs 1 and 4 which were reinforced by Resolutions 2131 of 1966 and 2625 of 1970).

But there exists yet another anomaly. Even if their creation could be declared valid, under both British and international law, authority via such Letters Patent can only be issued to a British subject for application in relation to matters involving British Subjects and then only for application in the United Kingdom and/or her dependencies. Australia is not a dependency of the United Kingdom and Australian citizens are not British subjects. The Governor-General and the State Governors are also not British subjects.

The Letters Patent of February 14, 1986, issued from the United Kingdom, by the United Kingdom Government via the Queen of the United Kingdom are being used against both United Kingdom and International law, by non-British subjects to exert power over Australian citizens within the sovereign territory of the sovereign nation the Commonwealth of Australia, a Member State of the United Nations.

POLITICAL PROCESS CORRUPTED

THUS it must be concluded that: Because of the continuing involvement of the government of the United Kingdom in the affairs of Australia the Australian Political and Judicial system has been corrupted

Because the Australian Constitution is British law it follows that all laws deriving from it are properly British laws.

In addition, the United Kingdom Government also continues to permit other United Kingdom statute as well as British unenacted law (common law) to be applied to citizens residing in Australian territory.

A Governor-General appointed by the purely titular 'Queen of Australia' clearly has no executive power or legal position in relation to the fundamental law of Australia, the Commonwealth Constitution, which is, as confirmed, an Act of UK law that only recognises the Monarch in the sovereignty of the United Kingdom.

So, even if it is possible to establish that law created in Australia after the events of 1919-20 is valid, it will surely be more difficult to establish the validity of law created after Australia become a foundation Member State of the United Nations in 1945. But it is quite impossible to establish that law created in Australia after the 1973 creation of a 'Queen of Australia' has, under international law, any validity whatsoever.

It is evident that, at the federal level, concerted attempts have been made to create a facade to conceal the truth that Australia, since the events of 1919-20, has effectively been governed as a colony of the United Kingdom.

At the level of the States it is apparent that there exists an untidy state of confusion with differing approaches being made to camouflage that the State Governments quite clearly remain British colonial.

RECENT FAILURE BY STATE GOVERNORS TO PRESENT PUBLIC DOCUMENTS PERTAINING TO THE OFFICE THEY OCCUPY FLAGS THE DEVELOPMENT OF A POTENTIALLY DANGEROUS SITUATION

One State Governor has provided a copy of his letter of Commission and has been prepared to reveal that it is neither signed nor sealed. He also provided a certified copy of the United Kingdom Letters Patent Constituting his Office.

Another State Governor has revealed that his Letter of Commission was issued by the 'Queen of Australia' while at the same time providing Letters Patent issued by the United Kingdom Government with an added inscription attempting justification gained via the 1986 Australia Acts.

A third and fourth Governor have refused to supply any documentation claiming that the Office of Governor is beyond examination. Despite intense questioning no revelation has been forthcoming from the two remaining State Governors.

ANNEXURE 24

Since the people have not been consulted in relation to any change that may have been effected it is reasonable to assume that State Governors currently occupy Office demonstrably without authority. Should this prove to be so an extremely serious and potentially dangerous situation will have been permitted to develop.

SITUATION DOES NOT SERVE THE BEST INTERESTS OF THE AUSTRALIAN PEOPLE

Because the necessary measures to bridge the legal void, created when the Commonwealth of Australia achieved sovereign independent nation status, were not put in place the situation has remained such that powerful foreign political and commercial interests could continue to influence the State and Federal Governments of the Commonwealth of Australia in relation to all or selected affairs, both domestic and international. Clearly such a situation does not serve the best interests of the Commonwealth of Australia, that is, the sovereign Australian people.

Repeated and concerted efforts to conceal the fundamental invalidity of the politico/legal system functioning in Australia has manifestly prohibited the Australian people from exercising their right to self dertimination. There exists a perception that the situation has degenerated to a level which may precipitate civil unrest. Because of this, it is felt that urgent corrective measures are now obligatory.

BRITISH STATUTE AND UNENACTED LAW

THE present corrupt system of government in Australia has developed and evolved as a result of a failure to repeal colonial law and establish a citizen based foundation for the politico/judicial system operating in Australia.

UNITED KINGDOM GOVERNMENT OFFENDING INTERNATIONAL LAW

Australia continues, either 79 years after achieving and being guaranteed independent, sovereign nation status through becoming a Member Nation of the League of Nations, or at the very least some 54 years after being guaranteed sovereign independent nation status under the Charter of the United Nations, to be governed by a parliament and administered by a bureaucracy which is demonstrably the knowing servant of the Parliament of the United Kingdom of Great Britain and Northern Ireland. The Australian people continue to be governed under exactly the same law that was effected on them by the colonial power, the United Kingdom in 1900.

This being the case, it becomes quite arguable that Great Britain, by not divorcing itself from the affairs of Australia by repealing the Commonwealth of Australia Constitution Act (UK) 1900, is committing an act of political aggression and that those individual Australian citizens continuing to be involved in the creation and the administration of what are, in fact British laws, are committing acts of treason against the sovereign nation of the Commonwealth of Australia.

ANNEXURE 31

This is reinforced by the fact that all Senators and Federal Members of Parliament are required to swear and subscribe an oath of allegiance to the Monarch in the sovereignty of the United Kingdom.

United Kingdom law as it is currently being applied within the sovereign territory of the Commonwealth of Australia is largely devoid of civil rights. It is apparent that because of the actions within some areas of the Government tension within sections of the community have reached an intensity which needs to be seen as serious.

APPLICATION OF BRITISH STATUTE AND UNENACTED LAW IN AUSTRALIA

Because the Government of the Australian States remains entirely colonial with the Queen of the United Kingdom or her Instructed Governor acting as Executive Head of the respective Governments all aspects of British law may be effected in the States.

This results in Australian citizens being governed by, and subjected to, a judicial system which is not of their making.

BRITISH STATUTE LAW IN AUSTRALIA

Apart from the fact that the Commonwealth Constitution remains Statute law of the United Kingdom many other Acts of British law continue to have application in the States of the Federation of the Commonwealth of Australia. Attempts have been made in the States of Victoria and New South Wales to restrict and control the application of British Statute law within those two States.

Alex C. Castles, Professor of Law in the University of Adelaide succinctly describes the situation in his book, 'An Australian Legal History' (1982, edition 1992, ISBN 0 455 19609 5):

> "For more than 50 years the 1922 Act provided the basis for the operation of received British statutes in Victoria. Then in two Acts passed in 1980 the Victorian Parliament updated the earlier legislation and finally made local legislation the sole authority for the continuation of all received British statutory provisions in the State. The Imperial Acts Applications Act, 1980, partly repealed the 1922 legislation. Essentially, the 1980 Act repealed all received British statutes," (Which, no doubt, is an action that is offensive to both British and international law), "except where they were retained in force by this statute and the remaining provisions of the Act of 1922. In Part 2 of the 1980 Act, provisions from 13 British Acts, dating back to the thirteenth century were transcribed and made part of Victoria's own statute law. The British Acts from which these provisions are taken include a re-enacted clause from Magna Carta, the Bill of Rights, the Statute of Monopolies and the Royal Marriages Act. Just prior to the passing of this Act, the Imperial law and Re-enactment Act, 1980 provided for the inclusion of some other British statutory law into other State enactments such as the Crimes Act, and the Property Law Act."

STATE GOVERNMENTS CHOOSE, AT WILL, TO SELECTIVELY APPLY IMPERIAL LAW!

Alex C. Castles, 'An Australian Legal History'

"For the future, s.6 of the Imperial Acts Application Act, 1980, made it possible for the Governor-in-Council to reinstate British legislation if this might be deemed necessary." (Again such a provision would seem to be absurd. And the question must be asked: Under what provision of British and international law may a State of the federal sovereign and independent nation of Australia, selectively choose laws of another sovereign nation, the United Kingdom, to inflict on Australian citizens?).

"The passing of these two Victorian Acts has now brought the southern State more closely into accord with the provision made for the continuation of received British statutes in the New South Wales Imperial Acts Application Act, 1969. This Act went further than the Victorian legislation of 1922 in making no provision for the continued operation of the old principles to determine the application of some British statutes. For the future, as now in Victoria under the 1980 legislation, all British received statutes in New South Wales were henceforth to apply under the authority of the State legislature. Section 5 of the New South Wales Act repealed a number of British statutes which were presumed to be part of received law there. But in some instances substitute provisions in part III of the Act. At the same time, it was laid down that these re-enactment provisions were not to have primacy over other State statutes. In addition, s. 6 of the Act preserved a group of received British statutes where it was considered impractical to enact substitute provision. These include 'Constitutional Enactments', such as the Petition of Right and the Bill of Rights.

"As in Victoria, in the case of special contingencies such as the accidental omission of a British law from the terms of the 1969 Act, the operation of British statutory provisions may be revived. This, as the Act lays it down, can be done through proclamation made by the State Governor." (pp, 443 and 444).

(It appears the governments of the States of South Australia, Queensland, Western Australia and Tasmania have not enacted legislation to define how British Acts may be applied in those States).

When examined in conjunction with international law (e.g. UN Charter Article 2, Paragraphs 2 and 4 along with various resolutions) these happenings are extraordinary.

When considered in conjunction with the Immigration and Asylum Act 1971 (UK) which removed from Australian citizens all rights under United Kingdom law a situation has been created which has overtones of a form of 'legal slavery'.

British law can be applied at will, and is being so applied, to Australian citizens. But these same citizens, being denied British citizenship, in turn, have no general entitlements under it!

This is offered as an illustration that those assuming the power to make and inflict laws for application to Australian citizens do so in the full knowledge that Australia continues to be a concealed colony of the United Kingdom. These same people are, in fact, definable as agents serving, at least, in the legal sense, the interests of a foreign power. After all, State Governors' current Letters Patent were issued in 1986 under the Monarchy of the United Kingdom of Great Britain and Northern Ireland through the Office of the United Kingdom Government's Lord Chancellor.

With the authority of these instructions the Governors, in turn, commission individuals to form governments, invest those Governments' Ministers as well as commission senior bureaucrats, defence personnel, magistrates, judges and police.

THE SITUATION IN RELATION TO UNENACTED ENGLISH LAW IN AUSTRALIAN COURTS

The continued infliction of British law on Australian citizens is not restricted to the Commonwealth Constitution and other British Statute law. The complete transposition of the British system of the "law of Judges", the 'common law' or un-enacted law is operational in Australia. In many aspects this form of law is even more archaic than that presently applying in the United Kingdom.

Again the following quotes are taken from 'An Australian Legal History' (ISBN 0 455 19609 5, 1982, edition 1992) by Alex C. Castles, Professor of law University of Adelaide, who has, in this book, succinctly described the situation:

"No special provision was made in the Commonwealth Constitution for the operation of English unenacted law in relation to the national government established in 1901."

(After all Australia remained a colony and so there was no obvious need for this!) "Besides, many areas traditionally regulated by English unenacted law remained under the authority of the States." (As it does even today) "But the use of unenacted English law has nevertheless sometimes come to be regarded as a source of law which may help in some circumstances to explain and regulate the working of aspects of authority provided for under the Commonwealth Constitution. This has been notably so in relation to the powers exercised by the executive branch of government under the Constitution. But the use of unenacted law in relation to the powers and organs of the national government has not been limited to this. The most visible use of English unenacted law in Australia has been in the courts." (p493).

UNENACTED LAW CONSIDERED AS NO LONGER SUITABLE FOR APPLICATION IN BRITAIN CONTINUES TO BE APPLIED UNALTERED IN AUSTRALIA

"The received, unenacted law also shared another important characteristic with transplanted statutes. If it was receivable at the time designated for 'settlement' its continued operation as part of Australian law was unaffected by later British statutes unless these applied by paramount force. Thus, as principles of unenacted law were modified or excluded altogether in their operation in England by ordinary British statutes this had no legal effect in Australia. The received unenacted principles continued to operate in this country as before. An illustration of the application of this rule is to be seen in 1979 in State Government Insurance Commission (S.A.) v. Trigwell. The case involved the continued operation in South Australia of a common law rule which prevented the occupiers of land being made liable for damages inflicted when domestic animals strayed onto public highways.

"In England this common law principle has been abolished by statute. But the High Court (Australian) indicated the British enactment had no relevance to the continued operation of this common law rule in Australia.

"As a consequence of this, there are many principles of English unenacted law which are still applied in parts of Australia which are now unused in England. In those States which do not have Criminal Codes, for example, elements of the common law defining offences such as theft and homicide are still applied although they have been abolished in England by statute. Trigwell's case evidences how principles of the law of torts may still be based on unenacted law which has been found wanting in its operation in England and elsewhere. In the same context, parts of the law on defamation in Australia in some States are based on common law rules which have been modified by statute law in Britain. Sometimes principles of unenacted law which may seem quite out of place in the twentieth century may be found to be enforceable in Australia although they have been wholly or partly cast into oblivion in England for many years. This was shown in the decision of the High Court in Dugan v. Mirror Newspapers Ltd. in 1978. There a prisoner in a New South Wales gaol sought to bring an action in defamation against a Sydney newspaper.

"In 1950 he had been sentenced to death before the abolition of capital punishment in that State. The sentence had been commuted subsequently to one of life imprisonment. Nevertheless, because the ancient English common law principle on attainder was held to be still operative in the State, the prisoner was not permitted to seek redress for allegedly libellous material which had been published about him. Under this principle in its old form a person convicted of treason or felonies punishable by death lost his civil rights. The injustice of this rule applying in a blanket form was acknowledged in Britain as long ago as 1870. But as no effective steps had been taken to abolish this rule by statute in New South Wales only one of the seven justices of the High Court was prepared to declare that the common law principle should no longer be enforced.

"Despite the fact that there may be strong acknowledgment that principles like those upheld in Dugan may seem no longer to be fair or efficacious the decisions in this and other cases show that Australian Courts have a marked reluctance to alter received unenacted law by judicial action.

"Down to the present, the application of these principles in Australian courts have often maintained a firm and until recent times frequently a slavish adherence to the ways in which this law has continued to be applied by English judges. For many years Australian courts in fact adopted a deliberate policy of working to maintain uniformity between English and Australian judicial decisions in their dealings with unenacted law." (pp502 and 503).

When Australian courts are faced with a matrix of facts which do not align with a statute or codified law, be it a British or a nominally Australian statute, the judiciary will delve into the thousands of pages of references relating to British unenacted law, for a basis and a justification for a finding. "In practice Australian courts normally have shown little inclination to examine closely the suitability of unenacted law to Australian conditions." So it is that un-enacted British law may "be held to be lying dormant ready to be applied at some time in the future". (pp507 and 506).

> "As the Privy Council (of the Government of the United Kingdom) summed up its position, 'as the population and wealth of the colony increase, many rules and principles of English law, which were unsuitable to its infancy, will gradually be attracted to it'.
>
> "In Trigwell, for example, Chief Justice Barwick declared that the common law did not seem to be changeable by judicial action if the law had been declared by a court of high authority and its declaration of the law at the time was correct. As the Chief Justice went on to affirm, the unenacted law was not to be modified or displaced "because the court may think that changes in the society make or tend to make that declaration of the common law in appropriate to the times." (p503).
>
> "In Dugan, Gibbs J. followed an approach along basically the same lines. He claimed that it would be wrong for courts to reject the application of unenacted principles because they might seem to be 'out of harmony with modern notions'. To do otherwise, so he went on, could lead to 'a dangerous uncertainty as to matters of fundamental principle'." (p504).
>
> "While there has been no general acceptance that there is a common law of the Commonwealth there has, nevertheless, been clear acknowledgment that features of unenacted law can be used in determining the nature of some Commonwealth powers . . . The exercise of the executive powers of the Commonwealth under s. 61 of the Commonwealth Constitution has also been construed at times in the light of the legal position of the Crown at common law. Thus, for example, the legal status within Australia of relationships, including treaties, entered into between the executive arm of the Commonwealth and other countries has been regulated by common law principles." (p513).

Since the 'Executive Arm of the Commonwealth' is composed of individuals representing narrow party political and commercial and economic interests it may be assumed that those sharing power use whatever is conveniently available to permit them to continue to successfully exert that claimed power.

The Privy Council of the United Kingdom was, until 1986, Australia's final court of appeal (and arguably remains so in State matters) the High Court of Australia has increasingly been called on to adjudicate in matters deriving from un-enacted law.

> "With these developments the High Court has moved close to becoming the ultimate arbitrator of unenacted law in Australia. As such, in fulfilling its constitutionally-ordained role as the final court of appeal from the legal systems of the States and Territories," (This is a mis-statement for British law makers insisted in 1900 that it be the Privy Council of the United Kingdom that filled this role), "it is in a position to apply a uniform approach to the application of unenacted (British) law in Australia."

Thus is it illustrated that Australian politicians, justices and academics have failed to make what could be described as a meaningful attempt to provide a system of law which is suitable for application within an Australia which has achieved full international personality.

It is clear that despite the need to comply with the demands of international law those assuming positions of authority have chosen to ignore their obligation to act in the interests of the sovereign people of Australia choosing instead to continue to apply British colonial law to their fellow countrymen.

AUSTRALIANS VICTIMISED AND EXECUTED

AUSTRALIAN citizens victimised and executed through the application of British law within the sovereign territory of Australia.

The behaviour of every person residing in Australia is constantly dominated by rules, regulations and laws which are rightly definable as British colonial.

The system as it has evolved has become increasingly authoritarian. Individuals lacking access to any semblance of entrenched civil rights, find themselves being victimised and intimidated, not only by their Parliaments but by bureaucrats, 'inspectors', police, in fact any individual involved in administering regulations generated from within the various administrative departments of government.

The allegation of offences and the issuing of substantial 'on the spot fines' by the lowliest of government officials has become common place. While the victim usually has nominal access to contest such incidents through court processes the in-built difficulties render it unfeasible to pursue such a course. And in any event, a pragmatist will be aware that it has proven virtually impossible to achieve a result which favours an appellant.

The courts, at all levels, being the products of these parliaments, afford little solace for the individual since they have ruled on numerous occasions that it is not their role to act as legislative bodies but rather to interpret the laws that parliaments have made. And if laws defining human rights have not been made then those rights may be, and have been, denied by the courts even though they may be clearly set down in one or more international statutes. However in an ad hoc manner magistrates occasionally chose to examine British common law to resolve an issue.

Professor George Williams in the conclusion to his chapter on Human Rights in Australia in his book 'Human Rights Under the Australian Constitution' states:

> "In Australia, Human rights are protected at a number of different levels. This loose and sometimes overlapping web of protection offers significant support for civil liberties and may act as an important legal and political barrier to a government wishing to breach fundamental rights. However, the regime outlined above is inadequate. The protection offered is ad hoc and of limited scope. Brian Burdekin, a former Australian Human Rights Commissioner, commented in 1994 that: 'It is beyond question that our current legal system is seriously inadequate in protecting many of the rights of the most vulnerable and disadvantaged groups in our community'.
>
> "The scheme of protection is also unsatisfactory because it is largely unknown. There is little knowledge among Australians of their legal rights. Such rights are not readily accessible and thus fail to serve the important educative or symbolic function that should underline their operation. Ultimately, they do not effectively protect fundamental freedoms from being abrogated by Australian parliaments.
>
> "Although an approach based on liberalism might suggest that Australians have largely been free, republican theory suggests otherwise. Australians remain subject to the dominion of their parliaments because, at any time, their representatives could choose to arbitrarily interfere with individual liberty. The Australian people are subjugated by this potential. There is a need for greater protection entrenched in a statutory or constitutional Bill of Rights."

'Human Rights Under the Australian Constitution' George Williams, Oxford University Press, 1999 pp. 23 & 24

BILL OF RIGHTS DEFEATED

In 1973 an attempt to bring about a greater protection for fundamental rights in the form of a statutory Bill of Rights which sought to implement the International Covenant on Civil and Political Rights 1966 in Australia and would have protected a range of rights such as freedom of expression, freedom of movement, the right to marry and found a family and individual privacy. This Bill met with strong opposition and lapsed. Further attempts were made through 'watered down' Bills in 1983, 1985 and 1986 without success.

As a consequence courts continue to deny citizens access to basic human rights as set out in international Covenants, even ignoring the outcomes of the Namibia findings of the UN. And so it is for the greater part that the courts continue to look to the British system of common law in matters involving human rights. And of this Sir Anthony Mason, former Chief Justice of the High Court has remarked "... the common law system, supplemented as it presently is by statutes designed to protect particular rights, does not protect fundamental rights as comprehensively as do constitutional guarantees and conventions on human rights ... The common law is not as invincible a safeguard against violations of fundamental rights as it was once thought to be".

ibid. p 258

CITIZENS EXECUTED AS A RESULT OF BRITISH LAW BEING APPLIED IN SOVEREIGN AUSTRALIA

Historically it has been the courts which are the final arbitrators responsible for the application of the law. It is within those ultra-conservative places that British law has been applied even to the ultimate penalty of death by hanging. Of the many people who have paid this maximum penalty for offending British law in their own country, Australia, there is, perhaps, none so famous as Ronald Ryan.

> "Ronald Ryan had committed the ultimate crime in the course of his escape, he had killed a warder . . . or had he? The question arose at his trial and it cast a long shadow of doubt about the last man hanged in Australia."

'Crimes that shocked Australia' Alan Sharpe ISBN 1-863090-18-5, p 348

Ryan insisted that he had not fired the shot that killed the warder. It seemed likely that the warder had in fact died as a result of a shot fired by a second warder. While found guilty by jury trial, there remains grave doubt that no jurist could help but be influenced by the massive media coverage awarded to the circumstances of Ryan's escape. Nevertheless he was sentenced to death. Those of the public who were opposed to capital punishment worked tirelessly to save Ryan from the gallows. However, "While crowds gathered outside the gates of Pentridge on February 3, 1967, Ronald Ryan became the last man to be hanged in Australia . . . He was buried in an unmarked grave and, as is the custom (a British custom), his family were refused permission to attend the burial." So much has been written in condemnation of this incident in Australian history that it seems unlikely that another person will ever be executed under British law in Australia.

ibid p, 352

The case of the last woman to be hanged under British law in Australia was surrounded by equally controversial issues. She was:

> "Jean Lee, an attractive 31-year-old woman . . . who along with her lover, Robert Clayton and their friend Norman Andrews had been found guilty of the murder of a 73-year-old SP bookmaker . . . in 1949 . . . Subverting every code in the conservative post-war female identity, Jean Lee did not fit the mould. She was husbandless and supported herself and her child through work and lovers, eventually spiralling into prostitution and petty crime . . . She went to the gallows despite severe doubts about what part she played in the murder, the highly questionable police interrogation procedures of the time, and the controversial High Court and Privy Council decisions. Undoubtedly, however, she died as a warning to other women of the perilous consequences of deviating from the socially approved path of femininity. She had to be sedated and held upright on a chair before being plunged to her death on February 19, 1951."

'Last Woman Hanged In Australia', Random House 1997, ISBN 0091834422

While this extract is somewhat colourful in its language one should not be distracted from the fact that, in this case, British law right up to the Privy Council of the United Kingdom House of Lords was applied in the destruction of an Australian woman's life within the sovereign territory of Australia. And that this occurred 50 years after Australia ceased to be a colony of the United Kingdom and six years after both countries became members of the United Nations. Again the controversy surrounding this incident seems to have ensured that no other female will ever be executed in Australia.

However, others since this time have been subjected to the most severe of penalties often after conviction on purely circumstantial evidence and in the face of sensational media coverage. Most conspicuous amongst these is the case of Lindy Chamberlain who in 1983 was convicted of the murder of her infant child. She was duly sentenced to life imprisonment with hard labour. Despite massive public displays of dissatisfaction with the processes involved and the apparent misapplication of justice, the appeals for clemency and pleas for mercy the mother of three children remained incarcerated. In late 1985 an application for an inquiry into the Chamberlain case was rejected with a statement from the Northern Territory Solicitor-General, "the verdict against them can never be set aside". Three months later, on the production of a piece of the infant's clothing, Lindy Chamberlain was abruptly released from prison.

Such was the sustained public outcry in relation to the conduct of the Police and the Justice Department of the Northern Territory that in May of 1986 an inquiry opened. Ten months later the published report stated that "if all the evidence presented at the inquiry had been given at the trial then the judge would have been obliged to have acquitted the Chamberlains." Lindy Chamberlain, already freed, was found to be innocent and pardoned (for a crime she had never committed!) in 1987.

'Crimes That Shocked Australia' p,407

No system of law and order is fault free. However, the continued application of an outmoded colonial system which is devoid of civil rights and which is rightly the property of the foreign power, the United Kingdom of Great Britain and Northern Ireland, is totally and thoroughly offensive to the code of human rights, when applied to residents in an independent Australia. To be punished for offending the agreed laws of a country is one thing. To be punished in ones own country for offending the laws of foreign land is another. For an Australian citizen be punished in Australia after being falsely accused of offending British laws is grotesque in the extreme.

BRIDGING THE LEGAL VOID

AUSTRALIAN citizens argue that the political and legal system operating in Australia is offensive not only to international law but also to itself.

COMPLAINTS TO INDIVIDUALS CLAIMING TO HOLD POSITIONS OF POWER IGNORED

Over a protracted period, direct representation on the matters relating to the invalidity of the political and legal system operating in Australia has been made to Prime Ministers, Attorneys-General, Ministers, elected representatives, heads of departments and other senior bureaucrats, as well as Magistrates and Judges at a federal level over the life of two separate federal governments.

In addition, representation has been made to State (Provincial) Premiers, Ministers, Parliamentary members, Magistrates, Judges, Public Servants and Police.

Since no individual claiming the authority to occupy these positions of power has either acknowledged that a problem exists, or has overtly taken action to correct the situation, individual citizens have chosen to argue the matter through the court system as it exists.

JUDICIARY REQUIRED TO RULE THAT DUE TO CHANGE IN SOVEREIGNTY BRITISH COLONIAL LAW CAN NO LONGER BE INFLICTED ON AUSTRALIAN CITIZENS

Through the presentation of the facts of history, fully supported by documentation, courts at all levels have been asked to find that Australia is an independent sovereign nation being governed by laws that are rightly the property of the Parliament of the United Kingdom.

This has been done in the belief that the judiciary, being independent of the Federal and the six State governments were in a position which obliged them to find that the events of history support the simple scenario that the Commonwealth of Australia has undergone a change of sovereignty from the Monarchy of the United Kingdom to the sovereignty of the peoples of the Commonwealth of Australia and that this occurred not later than June 26, 1945 when Australia became a foundation Member State of the United Nations. And that paragraph 4 of Article 2 of the Charter guarantees the political independence of Australia, a Member State of the United Nations.

And that because a change in sovereignty is necessarily accompanied by an interruption in legal continuity the fundamental law of Australia, the Constitution, being the ninth clause of an Act of the Parliament of the United Kingdom passed in 1900, together with its eight antecedent clauses, no longer has application in the governing of the sovereign people of Australia.

And that, it then follows that since gaining independence, all laws reliant on and originating through the United Kingdom law, the Constitution, are definable as British law and as such may not be effected on Australian citizens resident in internationally recognised Australian territory.

ANNEXURE 26

'TESTING' OF THE VALIDITY OF THE SYSTEM HAS OCCURRED ACROSS THE NATION. APPEAL BEFORE THE MASTER OF THE SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

The Master of the Supreme Court of the Australia Capital Territory, after hearing argument to the contrary, ruled that British Colonial law can continue to be applied to Australian citizens in Australia and its territories. The content of his concluding statement reveals what seems to have become a colluded response to protect and thus perpetuate an invalid and increasingly corrupt legal system.

> "But there is a further, and perhaps more fundamental reason why I must strike out this appeal. Mr Skelton's argument is premised on the invalidity of the Constitution – it is a challenge to the very order under which this Court derives its authority (Spratt v Hermes [1965] 114 CRL 226). A similar fundamental challenge to the source of sovereign authority of this country was rejected by Mason CJ in Coe v Commonwealth (1993) 118 ALR 193 at 200 citing Jacobs J in an earlier challenge (Coe v Commonwealth [1979] 24 ALR 118) where His Honour said of paragraphs in a statement of claim challenging the sovereignty of Australia that they were ". . . not matters of municipal law but the law of nations and are not cognisable in a court exercising jurisdiction under that sovereignty which is sought to be challenged"

ARGUMENT PUT TO STATE MAGISTRATES COURT AND APPEALED TO STATE SUPREME COURT

The annexures presented in support of this section are offered as detailed illustrations of the refusal on the part of the Courts to even consider that a politico/legal defect exists. It will be observed that the judgements in no way reflect the evidence presented.

In the State of South Australia the police prosecutor and the Court were advised prior to a hearing that they would be asked to identify the source of the authority that they were using to require the defendant to present himself before the Court. They were also preliminarily presented with an outline of the Constitutional argument that was to be presented.

After refusing to state the source of his authority the presiding Magistrate further refused to hear the argument and so it was presented to the Court in a fully written and documented form.

ANNEXURE 27

Without considering that which was presented he proceeded to find, convict and penalise the defendant. It seems no record of proceedings was retained.

On appeal, the Supreme Court Judge also considered it unnecessary to identify the ultimate source of the authority he was claiming to exert. Citing instead Acts of the Parliament that he was aware the defence was to maintain existed without validity. The appeal to this court was presented by way of a fully documented affidavit. This included the written argument presented to the Magistrate.

The Judge prohibited the Crown Solicitor from addressing the Court thus protecting the 'Crown' from having to justify its operation in sovereign Australia by way of cross examination by the appellant.

The Judge proceeded to dismiss the appeal on the grounds that he simply did "not accede to any of the (Appellant's) arguments". The Judge failed to address any of those arguments or issues presented to him.

A slightly more refined presentation, by way of affidavit, was in a second instance, presented as a defence in another Magistrates Court in the same State. On this occasion the affidavit was served personally on the arresting policeman, Police Prosecutor and the Court Registrar. This was accompanied, in each instance, by a statement that as servants of a foreign power they were acting as individuals and that as such possessed no indemnity if their actions should be challenged at a later date.

The presiding Magistrate questioned the defendant at length and then ruled that nothing had occurred to prevent the application of "legislation and Letters Patent from the Parliament and Sovereign of the United Kingdom". The Magistrate then proceeded to hear the prosecutor, find, and penalise the defendant.

On appeal to the Supreme Court of South Australia the presiding judge failed to address the substance of the arguments presented. Instead he proceeded to denigrate the appellant.

In summation he stated: "In short, the arguments have all the hallmarks of a latter day Mr Justice Boothby. Since the enactment of the Colonial Laws Validity Act in 1865, nothing has occurred which adversely affects the constitutional or legislative competence of the Parliament of South Australia to make laws relating to road traffic and their enforcement in the courts of this State."

The appeal was dismissed.

Such decisions ignore the record of all of the historical events as they were presented to the respective courts and as they have been presented within the earlier part of this paper.

Virtually identical reactions have resulted when the Constitutional arguments have presented in the courts of the States of Western Australia, New South Wales, Victoria and Queensland.

It is of alarm that these 'non-judgements' have subsequently been quoted as precedents that have established that there is no substance to the Constitutional argument being advanced.

ARGUMENT PRESENTED TO AUSTRALIA'S HIGHEST COURT – THE HIGH COURT OF AUSTRALIA

As a result of an attempt by several individuals to have the issues brought before the Full Bench of the High Court of Australia, Justice Hayne elected to convert five individual cases into a class action. The only common class being that all five Applicants were citizens of Australia. Justice Hayne restricted each Applicant to 10 minutes, in turn, to present their case after which time he retired for some 25 minutes to consider and write his finding which, it was reported, took him approximately 55 minutes to read. He disposed of the five Applications in a common class judgement.

Students of, and researchers into, Australia's status within the international community of nations found the Judge's ruling to be quite amazing.

Apart from the fact that the Judge relied on the legal authority of the United Kingdom government for significant parts of his judgement he denied that Australia possessed domestic sovereignty while at the same time indicating that it has international sovereignty!

The Hayne ruling, that international law and treaties have no legal effect in Australia unless they were adopted into domestic law failed to take into account that the two treaties, the Treaty of Versailles, and the Charter of the United Nations, both central to the argument presented, had both been enacted into Australian law. (One via Treaty of Peace Act 1919-20, the other via the Charter of the United Nations Act (No 32 of 1945).

In his ruling he stated that

> "The immediate question is what law is to be applied in the courts of Australia. The former questions about the likelihood of Imperial legislation and international status can be seen as reflecting on whether Australia is an independent and sovereign nation. But they do so in two ways: Whether some polity can or would seek to legislate for this country and whether Australia is treated internationally as having the attributes of sovereignty. Those are not questions that intrude upon the immediate issue of the administration of justice according to law in the courts of Australia. In particular, they do not intrude upon the question of what law is to be applied by the courts. That question is resolved by covering cl 5 of the Constitution. It provides:
>
> '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'.
>
> "It is, then to the Constitution and to laws made by the Parliament of the Commonwealth under the Constitution that the courts must look . . ."

ANNEXURE 28

By ruling thus Justice Hayne effectively locked Australia into being a colony. However, even within the Judge's amazing ruling and his assertions in relation to the continued use of the British law, the Constitution Act, these two Treaties are applicable as both domestic and international law. Their content of international law is in fact Australian law – by whatever premise anyone might wish to adopt. Thus because of the content of these laws, namely, The Treaty of Peace Act and The Charter of the United Nations Act, both made under the Constitution, the Hayne ruling is interpretable as inhibiting, under clause 5 of the Act, the application of the very same British law which contains at clause 9, that same Constitution!

An even more astounding facet of this Judge's ruling is that in his process of reasoning he overruled the Full Bench (including himself) of the High Court of Australia in a judgement handed down just eight months earlier. By way of this ruling the Court found that Treaty law did, in fact, override domestic law.

On two separate occasions attempts were made to serve writs of certiorari on this Judge. In each instance High Court Registries refused to accept them stating, verbally, that decisions of the High Court may not be challenged!

ANNEXURE 29

It is of great concern that this wholly unreliable judgement is repeatedly quoted and used by lower courts to summarily dismiss defence where constitutional issues are presented. This occurs even despite a later judgement which ruled differently.

RULING OF FULL BENCH OF HIGH COURT EFFECTIVELY OVERTURNS 'HAYNE' RULING

In finding, on June 23, that the United Kingdom is a power which is foreign to Australia, the Full Bench of seven judges effectively negated the Hayne Judgement.

To arrive at this decision the Court, by necessity, needed to approach all aspects of the United Kingdom's relationship and influence in and on Australia's affairs. Students of the issues concerned recognise that like other courts this court went to great lengths to protect 'current practice' by recording their decision in language that is so tortured and contorted that its content is largely meaningless. The full 100 pages may be examined on website http://www.austlii.edu.au/au/cases/cth/high_ct/1999/30.html

ANNEXURE 29

Despite the fact that the Constitution Act and the Constitution itself can only recognise and function in the Monarchy of the United Kingdom, the Court chose to rule that the United Kingdom is a foreign power for purposes of interpreting Section 44(i) of the constitution.

ANNEXURE 1

This decision has, under the same Section 44(i) as well as S44(ii) effectively disqualified all sitting Members in both the Senate and the House of Representatives because every member, under S42 of the Constitution has sworn an oath of allegiance to the Queen in the Monarchy of the United Kingdom of Great Britain and Northern Ireland. This oath is contained in the Schedule to the Constitution and is beyond amendment by the Australian Parliament or by the Australian people. It may only be altered by the Parliament of the United Kingdom.

ANNEXURE 31

Paragraph 96 of this 298 paragraph judgement is sufficient to illustrate the alarming inconsistency in interpretation for which the High Court is noted.

> "The point of immediate significance is that the circumstance that the same monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of s44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and it exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome, themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in Section III, does the United Kingdom exercise any function with respect to the Governmental structures of the Commonwealth or States."

The Court ruled that Australia, like the United Kingdom, enjoys full sovereign status, but both sovereignties exist in the same monarchy! While citizens of each nation have different allegiances! There is little doubt that the High Court, like State courts, has become an extension of the political system. This Full Bench decision had the result of preventing a successful candidate in a Senate election from taking a seat in the Senate of the Australian Parliament on the grounds that when she had taken out Australian citizenship she had not renounced her United Kingdom citizenship. She was a member of a newly established political party whose *modus operandi* has been to attack and expose the corruption and malpractice which has developed within the long established political parties.

HIGH COURT OF AUSTRALIA CONTRADICTS ITSELF IN CONSECUTIVE JUDGEMENTS

In the very next High Court Judgement, Justice Hayne, a member of the Full Bench which handed down the judgement mentioned above, yet again contradicted himself and his fellows by ruling that laws applied in Australia must satisfy the conditions set down by the parliament of the United Kingdom. That is, he again ruled that Australia does not enjoy domestic sovereignty! These examples effectively illustrate that, no matter what the cost to truth, justice, and logic, courts at all levels deliver findings that ensure that the established system is maintained irrespective of any and all international illegalities involved.

ANNEXURE 32

To protect the political system that directly appointed them, judges sitting in Australia's highest court, the High Court of Australia, have debased that court by selective evaluation of evidence presented thus resulting in illogical and even irrational decisions. The only conclusion that can be drawn is that it is considered more important to protect the existing political system through maintaining 'current practice' than to dispense truth and justice.

ATTORNEY-GENERAL CONDONES BREACH OF INTERNATIONAL LAW

Annexure 33 contains an exchange of correspondence involving the Federal Attorney-General, who is the ultimate protector of law in the Commonwealth of Australia. Through this exchange it is possible to interpret that the Federal Government is prepared to condone the committing of offences, against both domestic and international law, by the nation's courts, rather than face the invalidity of 'current practice' and make the necessary adjustments to validate its authority.

ANNEXURE 33

HIGH COURT ASKED TO RULE ON DISQUALIFICATION OF ALL SITTING MEMBERS OF PARLIAMENT

As a result of this Full Bench ruling, a Notice of Motion has been lodged with the High Court of Australia requiring that it rule that their Judgement that the United Kingdom is a foreign power, has effectively disqualified all sitting members in the Australian Parliament in that they have sworn and subscribed an oath of allegiance to the Monarch of that same foreign power.

ANNEXURE 34

The people have approached and made demands of individuals assuming positions of power on both sides of the political spectrum. They have taken the argument to lower courts, they have called on the pro-

tector of Australian law, the Attorney-General, to see that those charged with administering the law obey that same law. They have presented the facts of the invalidity of the political system in use in Australia to the highest court in the land. All to no avail. The people have enjoyed no success. They have not wrested control over their affairs from the existing invalid system. However . . .

CHARADE OF CALLING A REFERENDUM FOR THE PEOPLE TO DECIDE: MONARCHY OR A REPUBLIC?

Perhaps the much publicised referendum to decide whether Australia will be a 'Republic' or a 'Monarchy' into the next millennium could be attributed to persistent agitation by informed and concerned citizens.

The referendum was dated for November 6. As this submission went to press, on August 5, the process of drafting the legislation pertaining to 'The Republic' and the wording of the questions to be put to the people had not been finalised. In fact, Parliamentary committees were still meeting in an attempt to resolve matters of principle.

Despite this, it is clear that the legislation being created to permit and conduct this referendum will inevitably result in the fundamental principle for each of the options advanced relying on the retention of the United Kingdom Parliament's domestic law, 'An Act to Constitute the Commonwealth of Australia'! Any approach other than this would necessitate an admission that power has been maintained without the necessary authority. It is clear this does not present as an option to politicians, the judiciary or senior bureaucrats.

Thus this 'offering' to the people to choose between a 'monarchy' or a 'republic' results, either way, in a perpetuation of the present fundamentally flawed and thus invalid situation.

The current proposition to 'bridge the legal void' represents just another in an 80 year procession of charades.

Each time the legal void in which Australia finds itself suspended is seriously exposed the Australian Parliament colludes with United Kingdom Parliament to produce some 'creative legislation'. While in between such times the Australian courts regularly indulge in producing 'creative judgements' which ignore, not only the legal void but also the existence of civil rights implicit in international treaties to which Australia is a signatory. When pertinent questions are asked of the Australian Attorney-General he persistently evades responsibility by requiring an 'Adviser' to provide the signed response.

There exists clear signs of an imminent collapse of political and judicial structures curently in use in Australia.

THE INTERNATIONAL ARENA

SOME projected effects of the prolongation in office of an invalid Australian Government

This report has thus far been concerned with the effects of the continued application of United Kingdom Law on Australia's internal affairs and the consequent effects on the citizenry of Australia.

However, this does not represent the limit of the concerns that are held for it is clear that the existing situation, as it becomes more widely understood, has the potential to profoundly affect Australia's standing in relation to international affairs. This in turn may bring an entirely new set of problems for the people of Australia.

AUSTRALIAN CITIZENSHIP LAWS INVALID

Within Australia there are a large number of residents who have emigrated from their place of birth. Many of these people have chosen, in accordance with the National Citizenship Act 1948, to become 'naturalised' Australian citizens choosing, in the process, to renounce the citizenship which they brought with them.

Apart from the established argument relating to the invalidity of the Australian Constitution which in turn renders the National Citizenship Act 1948 invalid, there exists no power within the Constitution to create other than British citizens. In other words the Constitution makes no provision for the creation of Australian citizens.

It is of grave concern that should the situation be challenged in the international arena it will be found that a very significant proportion of Australian residents will be found, in the legal sense, to be stateless. Perhaps a more serious scenario may occur thus; on the establishment that the asylum believed to be afforded by 'Australian citizenship' and residency is invalid, individuals will have lost all protection and may find themselves victimised through being again subjected to the laws of a State that it was believed had, for whatever reason, been renounced.

On the Australian domestic scene an interesting aside to this scenario arises thus: People naturalised under the National Citizenship Act 1948 cannot validly occupy a seat in an Australian parliament. But more significantly, since Australian electoral roles contain the names of citizens created by way of the National Citizenship Act 1948, it follows that parliaments have been elected by unqualified voters and therefore those parliaments have no status as representatives of the Australian people.

INTERNATIONAL TREATIES

Validity of International Treaties to which the Australian Government is a signatory . . .

Authorities canvassed have been unable to indicate precisely how many treaties to which Australia is a signatory. Different definitions produce answers ranging from 940 to upwards of 3000.

As already established in the body of this paper, and compounded by the simple scenario outlined immediately above, the 'Government' responsible for signing these treaties could not, at any time, under international law, have validly represented the sovereign peoples of Australia, that is, by definition, the legal entity, the Commonwealth of Australia. Thus it would seem that it may well be argued that any, each, and every one of these treaties may, at any time, be declared invalid and therefore not binding on signatory States.

This in turn represents a threat to the protection of, amongst other things, commercial and intellectual property, patents, contracts, extradition orders and even peace treaties and defence alliances.

It is demonstrably clear that, by continuing to permit the application of United Kingdom law in Australia, both signatory Member States, Australia and the United Kingdom, have contravened both the Covenant of the League of Nations and the Charter of the United Nations.

In the first instance:"In case any Member of the League shall, before becoming a Member of the League have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations".

Article 20 of the Covenant of the League of Nations

And in the second instance: "In the event of a conflict between the obligations of a Member of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail".

Article 103 of the Charter of the United Nations

It is projected that if the unrepresentative and invalid governmental structure of the Commonwealth of Australia is permitted to continue serious repercussions within the international arena are inevitable.

RIGHT TO SOVEREIGNTY DENIED

THE PRESENT corrupted system of government in Australia has developed and evolved as a result of a failure to establish a citizen-based foundation for the politico/legal system operating in Australia.

PEOPLE ASSUMING POWER ARE RELUCTANT TO RELINQUISH THE CONTROL THAT THEY ENJOY

The authors and submitters of this report, being informed and concerned Australians, believed it reasonable to expect that politicians and members of the Judiciary, after having on many occasions, been confronted with the facts of history and the demands of international law, would have declared it both necessary and urgent, to create and install a valid instrument to bridge the 79 year legal void resulting from the 1919-20 change in sovereignty of Australia.

However, because of the outcomes of direct approaches to all high offices, including the entire court system, within Australia, it has become abundantly clear that that which would cause the Australian Government to become a legitimate member of the World Community of Governments is unattainable through civil action within Australia.

It is now clear that the adjustments necessary to give a valid status to the government of the Commonwealth of Australia, are "not matters of municipal law but the law of nations and are not cognisable in a court exercising jurisdiction under that sovereignty which is sought to be challenged".

THE PEOPLE APPROACH THE INTERNATIONAL ARENA

In desperation, an application was made to the International Court of Justice. As reported above, despite the convincing argument presented, the sovereign Australian people submitting the application were not granted standing by that court.

Thus, now, this approach to the individual Member States of the General Assembly, the Security Council, the Human Rights Commission and the International Criminal Commission, all of the United Nations.

Under the Charter of the United Nations all Member States have an obligation through, a mutual guarantee, to ensure that each Member State shall enjoy political freedom, political sovereignty.

THE EXPRESSION OF THE AFFAIRS OF STATE REST DIRECTLY WITH THE SOVEREIGN PEOPLE

The content of this report clearly establishes that those claiming the power to govern over the Sovereign People of Australia do so, not only, without the necessary authority of those same people but, as demonstrated, have also sworn and signed an oath of allegiance to the Monarch in the sovereignty of the United Kingdom, a power foreign to Australia.

Accordingly the 'Australian government' does not, and can not, validly represent the federated sovereign peoples of Australia, that is, the Commonwealth of Australia.

As a result, affairs of State and the representation in matters of State can only be expressed through the direct actions of the sovereign people.

NOTICE OF INTENTION TO APPLY FOR AN INTERNATIONAL CRIMINAL TRIBUNAL ISSUED

On June 8, 1999 notice of intention to apply for the establishment of an International Criminal Tribunal was served on:

1. The individual assuming the role of Prime Minister and leader of the Government of Australia, Mr John Howard;

2. The individual assuming role of Federal Attorney-General, Mr Darryl Williams;

ANNEXURE 35

3. The individual assuming the role of Leader of the Opposition to the Government of Australia, Mr Kim Beasley.

A response, dated July 27, 1999 has been received from the Office of the Attorney-General over the

signature of an 'Adviser'. This response restates the politically convenient 'theory of sovereignty through evolution' while confirming that 'Australia is a fully independent nation' in which 'Imperial law' may still be applied!

The response also states that, in general, international law including the Charter of the United Nations, is not binding on Australian courts in relation to the individual rights of Australian citizens and does not impose any obligation on the actions of either an individual or the executive.

ANNEXURE 35

(It is pertinent to mention that the 'Hayne J' in Joosse and Anor v Australian Securities and Investment Commission [ASIC] judgement relied on [see ANNEXURE 28] resulted in the ASIC pursuing the matter but then in the light of a High Court Full Bench decision in Sue v Hill [see extracts, ANNEXURE 3] which effectively overruled Hayne J, seeking an adjournment *sine die* rather than face a full Constitutional argument. Yet the Attorney-General, no doubt finding the arguments presented unanswerable, continues to rely on this 'unsafe' judgement).

Concerned and informed Australian citizens have taken exhaustive measures to extract their sovereign nation from the influence of foreign powers. They continue to be totally denied their inalienable right to self determination.

REQUEST IN CONCLUSION

This submission has demonstrated that the federated peoples of Australia, which constitute the legal entity, the Commonwealth of Australia, are of an independent sovereign nation.

This submission has demonstrated that the six Australian State Governments as well as the Federal Government of Australia remain extensions of the United Kingdom Government.

This submission has also demonstrated that those exerting power through these governmental structures, as well as those individuals nominated to act on their behalf, are clearly definable as agents of a power foreign to the Commonwealth of Australia.

This submission has demonstrated that individuals within Australia, in concert with the Government of the United Kingdom, have repeatedly acted to conceal the political and legal truth that the sovereign people constituting the Commonwealth of Australia have for almost 80 years been denied the right to self determination.

ANNEXURE 35

And, finally, the content of the correspondence presented in the final annexure to this submission clearly and decisively demonstrates that those assuming the role of the Australian Government, even in the face of the most extreme action which the sovereign people may take, persist with what is seen as a hopeless charade and in the process tenuously rely on a single, extremely questionable, High Court Judgement.

Aware and informed citizens recognise that the long standing situation has now degenerated to a stage where a breakdown in law and order, with associated violence, is entirely predictable and that urgent corrective action is called for.

Having absolutely exhausted all possible domestic avenues of rectification it is now apparent that the only non violent action remaining open to the citizenry of Australia lies with this appeal to individual members of the international community who, being co-signatories to the Charter of the United Nations, guarantee the Commonwealth of Australia, under Articles 2, 4, 6, 102 and 103, as well as various resolutions, the right to self determination.

Therefore, a request is made, to all Member States to individually and collectively present and plead our cause before the General Assembly of the United Nations. We ask, through those same Member States, for the General Assembly:

1. To establish, within the territory of Australia, an International Tribunal to investigate, with the view to the confirmation of, the allegations contained in this submission and as a result have all Australian governments at all levels declared, under international law, invalid;

2. To establish within the territory of Australia an International Criminal Tribunal, to prosecute individuals named in the annexures of this report and any other individuals who have been seen to be aiding and abetting the continuing breach of international law through the application of United Kingdom law within the territory of the sovereign nation State, the Commonwealth of Australia;

3. To implement such other procedures as are seen as necessary to uphold the Charter of the United Nations;

4. To initiate and maintain procedures necessary to ensure the security of people residing, both individually and collectively, in the territory of the Commonwealth of Australia up to and until the successful implementation of a Constitution agreed to by way of a plebiscite conducted amongst all mature Australian citizens;

5. To declare Australia's seat at the United Nations to be *persona non grata* until such time as a representative is nominated by a Government which validly represents the sovereign and federated people of Australia, that is, the Commonwealth of Australia.

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ANNEXURE 1

THE AUSTRALIAN CONSTITUTION ACT

THE CONSTITUTION

As altered to 31 October 1993

(See Note 1 on Page 37)

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THE CONSTITUTION

(63 & 64 VICTORIA, CHAPTER 12)

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:—

Short title.

1. This Act may be cited as the Commonwealth of Australia Constitution Act.[1]

Act to extend to the Queen's successors.

2. 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.

Proclamation of Commonwealth.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation[2] 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.

Commencement of Act.

4. 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.

Operation of the Constitution and laws.

5. 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.[3]

Definitions.

6. "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.

Repeal of Federal Council Act. 48 & 49 Vict. c. 60.

7. 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[4] as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application of Colonial Boundaries Act. 58 & 59 Vict. c. 34.

8. 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.

Constitution.

9. The Constitution of the Commonwealth shall be as follows:—

THE CONSTITUTION.[1]

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:
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CHAPTER I.

THE PARLIAMENT.

Chap. I.
The Parliament.

PART I.—GENERAL.

Part I.
General.

1. 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 herein-after called "The Parliament," or "The Parliament of the Commonwealth."

Legislative power.

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

Governor-General.

3. 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.

Salary of Governor-General.

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

4. 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.

Provisions relating to Governor-General.

5. 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.

Sessions of Parliament.
Prorogation and dissolution.

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.

Yearly session of Parliament.

6. 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.

PART II.—THE SENATE.

The Senate.

7. 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,[5] 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.

Qualification of electors.

8. 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.

Method of election of senators.

9. 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[6] prescribing the method of choosing the senators for that State.

Times and places.

The Parliament of a State may make laws[6] for determining the times and places of elections of senators for the State.

Application of State laws.

10. 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.

Failure to choose senators.

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

Issue of writs.

12. 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.

Rotation of senators. Altered by No. 1, 1907, s. 2.

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 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 ~~January~~ **July** preceding the day of his election.

Further provision for rotation.

14. 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.[7]

Casual vacancies. Substituted by No. 82, 1977, s. 2.

15.[8] 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,[9] 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. The qualifications of a senator shall be the same as those of a member of the House of Representatives. *Qualifications of senator.*

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

19. 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. *Resignation of senator.*

20. 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. *Vacancy by absence.*

Vacancy to be notified.

21. 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.

Quorum.

22. 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.

Voting in the Senate.

23. 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. House of Representatives.

PART III.—THE HOUSE OF REPRESENTATIVES.

Constitution of House of Representatives.

24. 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.

Provision as to races disqualified from voting.

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

Representatives in first Parliament.

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

Alteration of number of members.

28. 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.

Duration of House of Representatives.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws[10] 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.

Electoral divisions.

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

30. 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.

Qualification of electors.

31. 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.

Application of State laws.

Writs for general election.

32. 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.

Writs for vacancies.

33. 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.

Qualifications of members.

34. 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.

Election of Speaker.

35. 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.

Absence of Speaker.

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

Resignation of member.

37. 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.

Vacancy by absence.

38. 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. 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.

Quorum.

40. 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.

Voting in House of Representatives.

PART IV.—BOTH HOUSES OF THE PARLIAMENT.

Part IV. Both Houses of the Parliament.

41. 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.

Right of electors of States.

42. 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.

Oath or affirmation of allegiance.

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

Member of one House ineligible for other.

44. Any person who—

Disqualification.

(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 sub-section 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.

Vacancy on happening of disqualification.

45. 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.

Penalty for sitting when disqualified.

46. 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.

Disputed elections.

47. 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.

Allowance to members.

48. 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.

Privileges, &c. of Houses.

49. 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.

Rules and orders.

50. 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.

Part V. Powers of the Parliament.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power[11] 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:

Inserted by No. 81, 1946, s. 2.

(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:

(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:

Altered by No. 55, 1967, s. 2.

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

(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,[12] 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.

Exclusive powers of the Parliament.

52. 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.

Powers of the Houses in respect of legislation.

53. 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.

Appropriation Bills.

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

Tax Bill.

55. 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.

Recommendation of money votes.

56. 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.

Disagreement between the Houses.

57. 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. 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.

Royal assent to Bills.

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.

Recommendations by Governor-General.

59. 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.

Disallowance by the Queen.

60. 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.

Signification of Queen's pleasure on Bills reserved.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Chap. II. The Government.

61. 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.

Executive power.

62. 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.

Federal Executive Council.

63. 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.

Provisions referring to Governor-General.

Ministers of State.

64. 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.

Number of Ministers.

65. 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.

Salaries of Ministers.

66. 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.

Appointment of civil servant.

67. 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.

Command of naval and military forces.

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

Transfer of certain departments.

69. 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.

Certain powers of Governors to vest in Governor-General.

70. 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.

Chap. III. The Judicature.

Judicial power and Courts.

71. 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.

Judges' appointment, tenure and remuneration.

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.

Paragraph added by No. 83, 1977, s. 2.

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.

Paragraph added by No. 83, 1977, s. 2.

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.

Paragraph added by No. 83, 1977, s. 2.

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

Paragraph added by No. 83, 1977, s. 2.

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.

Paragraph added by No. 83, 1977, s. 2.

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.

Paragraph added by No. 83, 1977, s. 2.

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.

Paragraph added by No. 83, 1977, s. 2.

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.

Appellate jurisdiction of High Court.

73. 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.

Appeal to Queen in Council.

74. 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,[13] but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original jurisdiction of High Court.

75. 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.

Additional original jurisdiction.

76. 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.

Power to define jurisdiction.

77. 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.

Proceedings against Commonwealth or State.

78. 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.

Number of judges.

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

Trial by jury.

80. 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.

Chap. IV. Finance and Trade.

CHAPTER IV.

FINANCE AND TRADE.

Consolidated Revenue Fund.

81. 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.

Expenditure charged thereon.

82. 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.

Money to be appropriated by law.

83. 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.

Transfer of officers.

84. 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.

Transfer of property of State.

85. 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. 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. 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.

Uniform duties of customs.

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

Payment to States before uniform duties.

89. 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.

Exclusive power over customs, excise, and bounties.

90. 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.

Exceptions as to bounties.

91. 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.

Trade within the Commonwealth to be free.

92. 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.

Payment to States for five years after uniform tariffs.

93. 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.

Distribution of surplus.

94. 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.

Customs duties of Western Australia.

95. 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.

Financial assistance to States.

96. 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.

Audit.

97. 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.

Trade and commerce includes navigation and State railways.

98. 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.

Commonwealth not to give preference.

99. 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.

Nor abridge right to use water.

100. 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.

Inter-State Commission.

101. 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.

Parliament may forbid preferences by State.

102. 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. The members of the Inter-State Commission—

Commissioners' appointment, tenure, and remuneration.

(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. 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.

Saving of certain rates.

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.

Taking over public debts of States.

Altered by No. 3, 1910, s. 2.

105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

Agreements with respect to State debts.

Inserted by No. 1, 1929, s. 2.

(*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.

Chap. V. The States.

CHAPTER V.

THE STATES.

Saving of Constitutions.

106. 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.

Saving of Power of State Parliaments.

107. 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.

Saving of State laws.

108. 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. 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.

Inconsistency of laws.

110. 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.

Provisions referring to Governor.

111. 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.

States may surrender territory.

112. 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.

States may levy charges for inspection laws.

113. 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.

Intoxicating liquids.

114. 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.

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

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

States not to coin money.

116. 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.

Commonwealth not to legislate in respect of religion.

117. 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.

Rights of residents in States.

Recognition of laws, &c. of States.

118. 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.

Protection of States from invasion and violence.

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

Custody of offenders against laws of the Commonwealth.

120. 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.

Chap. VI. New States.

CHAPTER VI.

NEW STATES.

New States may be admitted or established.

121. 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.

Government of territories.

122. 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.

Alteration of limits of States.

123. 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.

Formation of new States.

124. 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.

Chap. VII. Miscellaneous.

Seat of Government.

125. 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.

Power to Her Majesty to authorise Governor-General to appoint deputies.

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies[14] 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.

[15] * * * * * * * *

Section 127 repealed by No. 55, 1967, s. 3.

CHAPTER VIII.

ALTERATION OF THE CONSTITUTION.

Chap. VIII. Alteration of Constitution.

Mode of altering the Constitution.

128.[1] This Constitution shall not be altered except in the following manner:—

Paragraph altered by No. 84, 1977, s. 2.

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.

Paragraph altered by No. 84, 1977, s. 2.

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.

Paragraph added by No. 84, 1977, s. 2.

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.

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.*)

NOTES

1. The Constitution as printed above contains all the alterations of the Constitution made up to 31 October 1993. Particulars of the Acts by which the Constitution was altered are as follows:

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

2. Covering Clause 3—The Proclamation under covering clause 3 was made on 17 September 1900 and is published in *Gazette* 1901, p. 1 and *infra* p. 41.

3. Covering Clause 5—*Cf.* the *Statute of Westminster Adoption Act 1942, infra* p. 47.

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. S. 7—The number of senators for each State was increased to 12 by the *Representation Act 1983*, s. 3.

6. S. 9—The following State Acts have been passed in pursuance of the powers conferred by s. 9:

NOTES—*continued*

State	Number	Short title	How affected
New South Wales	No. 73, 1900	Federal Elections Act, 1900	Ss. 2, 3, 4, 5 and 6 and the Schedule repealed by No. 9, 1903; wholly repealed by No. 41, 1912
	No. 9, 1903	Senators' Elections Act, 1903	Amended by No. 75, 1912 and No. 112, 1984
	No. 75, 1912	Senators' Elections (Amendment) Act, 1912	*(Still in force)*
	No. 112, 1984	Senators' Elections (Amendment) Act, 1984	*(Still in force)*
Victoria	No. 1715	*Federal Elections Act* 1900	Repealed by No. 1860
	No. 1860	*Senate Elections (Times and Places) Act* 1903	Repealed by No. 2723
	No. 2399	*Senate Elections (Times and Places) Act* 1912	Repealed by No. 2723
	No. 2723	*Senate Elections (Times and Places) Act* 1915	Repealed by No. 3769
	No. 3769	*Senate Elections (Times and Places) Act* 1928	Repealed by No. 6365
	No. 6365	*Senate Elections Act* 1958	Amended by No. 10108
	No. 10108	*Senate Elections (Amendment) Act,* 1984	*(Still in force)*
Queensland . . .	64 Vic. No. 25	*The Parliament of the Commonwealth Elections Act and The Elections Acts* 1885 *to* 1898 *Amendment Act of* 1900	Operation exhausted
	3 Edw. VII. No. 6	*The Election of Senators Act of* 1903	Repealed by 9 Eliz. II. No. 20
	9 Eliz. II. No. 20	*The Senate Elections Act of* 1960	Amended by No. 79, 1984
	No. 79, 1984	*Senate Elections Act Amendment Act 1984*	*(Still in force)*
South Australia . .	No. 834	The Election of Senators Act, 1903	Amended by No. 4, 1978, No. 37, 1981 and No. 80, 1984
	No. 4, 1978	The Election of Senators Act Amendment Act, 1978	*(Still in force)*
	No. 37, 1981	Election of Senators Act Amendment Act, 1981	*(Still in force)*
	No. 80, 1984	Election of Senators Act Amendment Act, 1984	*(Still in force)*
Western Australia	No. 11, 1903	*Election of Senators Act,* 1903	Amended by No. 27, 1912 and No. 86, 1984
	No. 27, 1912	*Election of Senators Amendment Act,* 1912	*(Still in force)*
	No. 86, 1984	*Election of Senators Amendment Act 1984*	*(Still in force)*

NOTES—*continued*

State	Number	Short title	How affected
Tasmania	64 Vic. No. 59	The Federal Elections Act, 1900	Repealed by 26 Geo. V. No. 3
	3 Edw. VII. No. 5	The Election of Senators Act, 1903	Repealed by 26 Geo. V. No. 3
	26 Geo. V. No. 3	*Senate Elections Act* 1935	Amended by No. 63, 1984
	No. 63, 1984	*Senate Elections Amendment Act* 1984	*(Still in force)*

7. S. 14— For the provisions applicable upon the increase in the number of senators to 12 made by the *Representation Act 1983, see* s. 3 of that Act.

8. Section 15, before its substitution by the *Constitution Alteration (Senate Casual Vacancies) 1977*, provided 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."

9. S. 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.

10. S. 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	Federal Elections Act, 1900
Victoria	No. 1667	*Federal House of Representatives Victorian Electorates Act* 1900
Queensland	64 Vic. No. 25	*The Parliament of the Commonwealth Elections Act and The Elections Acts* 1885 *to* 1898 *Amendment Act of* 1900
Western Australia	64 Vic. No. 6	Federal House of Representatives Western Australian Electorates Act, 1900

NOTES—*continued*

11. S. 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.

12. S. 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	Commonwealth Powers (War) Act, 1915	Expired 9 Jan 1921; *see* s. 5
	No. 33, 1942	Commonwealth Powers Act, 1942	Expired; *see* s. 4
	No. 18, 1943	Commonwealth Powers Act, 1943	Expired; *see* s. 4
	No. 48, 1983	Commonwealth Powers (Meat Inspection) Act, 1983	*(Still in force)*
Victoria	No. 3108	*Commonwealth Powers (Air Navigation) Act* 1920	Repealed by No. 4502
	No. 3658	*Commonwealth Arrangements Act* 1928 (Part III)	Repealed by No. 4502
	No. 4009	*Debt Conversion Agreement Act* 1931 (No. 2)	*(Still in force)*
	No. 4950	*Commonwealth Powers Act* 1943	Not proclaimed to come into operation and cannot now be so proclaimed
Queensland	12 Geo. V. No. 30	*The Commonwealth Powers (Air Navigation) Act* of 1921	Repealed by 1 Geo. VI. No. 8
	22 Geo. V. No. 30	*The Commonwealth Legislative Power Act,* 1931	Repealed by No. 46, 1983
	7 Geo. VI. No. 19	*Commonwealth Powers Act* 1943	Expired; *see* s. 4
	14 Geo. VI. No. 2	*The Commonwealth Powers (Air Transport) Act of* 1950	*(Still in force)*
South Australia	No. 1469, 1921	Commonwealth Powers (Air Navigation) Act, 1921	Repealed by No. 2352, 1937
	No. 2061, 1931	Commonwealth Legislative Power Act, 1931	*(Still in force)*
	No. 3, 1943	Commonwealth Powers Act 1943	Expired; *see* s. 5
Western Australia	No. 4, 1943	*Commonwealth Powers Act,* 1943	Repealed by No. 58, 1965
	No. 57, 1945	*Commonwealth Powers Act,* 1945	Repealed by No. 58, 1965
	No. 30, 1947	*Commonwealth Powers Act,* 1943, *Amendment Act,* 1947	Repealed by No. 58, 1965
	No. 31, 1947	*Commonwealth Powers Act,* 1945, *Amendment Act,* 1947	Repealed by No. 58, 1965

NOTES—*continued*

State	Number	Short title	How affected
	No. 73, 1947	*Commonwealth Powers Act,* 1945, *Amendment Act, (No.* 2), 1947	Repealed by No. 58, 1965
	No. 81, 1947	*Commonwealth Powers Act,* 1945-1947, *Amendment (Continuance) Act,* 1947	Repealed by No. 58, 1965
Tasmania	11 Geo. V. No. 42	*Commonwealth Powers (Air Navigation) Act,* 1920	Repealed by 1 Geo. VI. No. 14
	No. 46, 1952	*Commonwealth Powers (Air Transport) Act* 1952	*(Still in force)*
	No. 62, 1966	*Commonwealth Powers (Trade Practices) Act* 1966	Expired; *see* s. 2

13. S. 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) 58 ALR 108.

14. S. 126—*See* clause IV of the Letters Patent relating to the Office of Governor-General, published in *Gazette* 1984, S334, pp. 3 and 4 and *infra* p. 44.

15. Section 127, before its repeal by the *Constitution Alteration (Aboriginals) 1967*, provided as follows:

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

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!

ANNEXURE 2

THE ACT OF SETTLEMENT, 1701

The Jacobite Heritage

Act of Settlement, 1701

Whereas in the first year of the reign of Your Majesty, and of our late most gracious sovereign lady Queen Mary (of blessed memory), an Act of Parliament was made, entitled, "An Act for declaring the rights and liberties of the subject, and for settling the succession of the crown," wherein it was (amongst other things) enacted, established, and declared that the crown and regal government of the Kingdoms of England, France, and Ireland, and the dominions thereunto belonging, should be and continue to Your Majesty and the said late Queen, during the joint lives of Your Majesty and the said Queen, and to the survivor: and that after the decease of Your Majesty and of the said Queen, the said Crown and regal government should be and remain to the heirs of the body of the said late Queen; and for default of such issue, to Her Royal Highness the Princess Anne of Denmark, and the heirs of her body; and for default of such issue to the heirs of the body of Your Majesty. And it was thereby further enacted, that all and every person and persons that then were, or afterwards should be reconciled to, or shall hold communion with the see or Church of Rome, or should profess the popish religion, or marry a papist, should be excluded, and are by that Act made for ever incapable to inherit, possess, or enjoy the Crown and government of this realm, and Ireland, and the dominions thereunto belonging, or any part of the same, or to have, use, or exercise any regal power, authority, or jurisdiction within the same: and in all and every such case and cases the people of these realms shall be and are thereby absolved of their allegiance: and that the said Crown and government shall from time to time descend to and be enjoyed by such person or persons, being Protestants, as should have inherited and enjoyed the same, in case the said person or persons, so reconciled, holding communion, professing or marrying, as aforesaid, were naturally dead:

After the making of which statute, and the settlement therein contained, your majesty's good subjects, who were restored to the full and free possession and enjoyment of their religion, rights, and liberties, by the providence of God giving success to your majesty's just undertakings and unwearied endeavours for that purpose, had no greater temporal felicity to hope or wish for, that to see a royal progeny descending from Your Majesty, to whom (under God) they owe their tranquillity, and whose ancestors have for many years been principal assertors of the reformed religion and the liberties of Europe, and from our said most gracious sovereign lady, whose memory will always be precious to the subjects of these realms: and it having since pleased Almighty God to take away our said sovereign Lady, and also the most hopeful Prince William, Duke of Gloucester (the only surviving issue of Her Royal Highness the Princess Anne of Denmark) to the unspeakable grief and sorrow of Your Majesty and your said good subjects, who under such losses being sensibly put in mind, that it standeth wholly in the pleasure of Almighty God to prolong the lives of Your Majesty and of Her Royal Highness, and to grant to Your Majesty, or to Her Royal Highness, such issue as may be inheritable to the Crown and regal government aforesaid, by the respective limitations in the said recited act contained, do constantly implore the divine mercy for those blessings: and Your Majesty's said subjects having daily experience of your royal care and concern for the present and future welfare of these Kingdoms, and particularly recommending from your throne a further provision to be made for the succession of the Crown in the Protestant line, for the happiness of the nation, and the security of our religion; and it being absolutely necessary for the safety, peace, and quiet of this

realm, to obviate all doubts and contentions in the same, by reason of any pretended title to the Crown, and to maintain a certainty in the succession thereof, to which your subjects may safely have recourse for their protection, in case the limitations in the said recited act should determine: therefore for a further provision of the succession of the Crown in the Protestant line, we Your Majesty's most dutiful and loyal subjects, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, do beseech Your Majesty that it may be enacted and declared, and be it enacted and declared 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, That the most excellent Princess Sophia, Electress and Duchess Dowager of Hanover, daughter of the most excellent Princess Elizabeth, late Queen of Bohemia, daughter of our late sovereign lord King James the First, of happy memory, be and is hereby declared to be the next in succession, in the Protestant line, to the imperial Crown and dignity of the said Realms of England, France, and Ireland, with the dominions and territories thereunto belonging, after His Majesty, and the Princess Anne of Denmark, and in default of issue of the said Princess Anne, and of His Majesty respectively: and that from and after the deceases of His said Majesty, our now sovereign lord, and of Her Royal Highness the Princess Anne of Denmark, and for default of issue of the said Princess Anne, and of His Majesty respectively, the Crown and regal government of the said Kingdoms of England, France, and Ireland, and of the dominions thereunto belonging, with the royal state and dignity of the said Realms, and all honours, styles, titles, regalities, prerogatives, powers, jurisdictions and authorities, to the same belonging and appertaining, shall be, remain, and continue to the said most excellent Princess Sophia, and the heirs of her body, being Protestants: and thereunto the said Lords Spiritual and Temporal, and Commons, shall and will in the name of all the people of this Realm, most humbly and faithfully submit themselves, their heirs and posterities: and do faithfully promise, that after the deceases of His Majesty, and Her Royal Highness, and the failure of the heirs of their respective bodies, to stand to, maintain, and defend the said Princess Sophia, and the heirs of her body, being Protestants, according to the limitation and succession of the Crown in this act specified and contained, to the utmost of their powers, with their lives and estates, against all persons whatsoever that shall attempt anything to the contrary.

II. Provided always, and be it hereby enacted, That all and every person and persons, who shall or may take or inherit the said Crown, by virtue of the limitation of this present act, and is, are or shall be reconciled to, or shall hold communion with, the See or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be subject to such incapacities, as in such case or cases are by the said recited act provided, enacted, and established; and that every King and Queen of this Realm, who shall come to and succeed in the imperial Crown of this Kingdom, by virtue of this act, shall have the coronation oath administered to him, her or them, at their respective coronations, according to the act of Parliament made in the first year of the reign of His Majesty, and the said late Queen Mary, intituled, *An act for establishing the coronation oath*, and shall make, subscribe, and repeat the declaration in the act first above recited mentioned or referred to, in the manner and form thereby prescribed.

III. And whereas it is requisite and necessary that some further provision be made for securing our religion, laws and liberties, from and after the death of His Majesty and the Princess Anne of Denmark, and in default of issue of the body of the said Princess, and of His Majesty respectively; 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 Parliament assembled, and by the authority of the same,

That whosoever shall hereafter come to the possession of this Crown, shall join in communion with the Church of England, as by law established;

That in case the Crown and imperial dignity of this Realm shall hereafter come to any person, not being a native of this Kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England, without the consent of Parliament;

That no person who shall hereafter come to the possession of this Crown, shall go out of the dominions of England, Scotland, or Ireland, without the consent of Parliament;

That from and after the time that the further limitation by this act shall take effect, all matters and things relating to the well governing of this Kingdom, which are properly cognizable in the Privy Council by the laws and customs of this Realm, shall be translated there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same;

That after the said limitation shall take effect as aforesaid, no person born out of the Kingdoms of England, Scotland, or Ireland, or the dominions thereunto belonging (although he be naturalized or made a denizen, except such as are born of English parents) shall be capable to be of the Privy Council, or a member of either House of Parliament, or to enjoy any office or place of trust, either civil or military, or to have any grant of lands, tenements or hereditaments from the Crown, to himself or to any other or others in trust for him;

That no person who has an office or place of profit under the King, or receives a pension from the Crown, shall be capable of serving as a member of the House of Commons;

That after the said limitation shall take effect as aforesaid, judges commissions be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both Houses of Parliament it may be lawful to remove them;

That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.

IV. And whereas the laws of England are the birth-right of the people thereof, and all the Kings and Queens, who shall ascend the throne of this Realm, ought to administer the government of the same according to the said laws, and all their officers and ministers ought to serve them respectively according to the same: the said Lords Spiritual and Temporal, and Commons, do therefore further humbly pray, That all the laws and statutes of this Realm for securing the established religion, and the rights and liberties of the people thereof, and all other laws and statutes of the same now in force, may be ratified and confirmed, and the same are by His Majesty, by and with the advice of the said Lords Spiritual and Temporal, and Commons, and by authority of the same, ratified and confirmed accordingly.

ANNEXURE 3

LETTER FROM AUSTRALIAN PARLIAMENTARY HOUSE CONFIRMING OBLIGATORY NATURE OF THE OATH AND AFFIRMATION TO BE SWORN AND SIGNED BY ALL PARLIAMENTARY MEMBERS

PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 7111

10 JUN

Mr Peter Batten
PO Box 23A
SOMERS
Vic 3927

Dear Mr Batten

Your letter dated 31 May 1999 to the Australian Electoral Commission on the subject of Members' oaths or affirmations of allegiance was referred to the Department of the House of Representatives for answer in respect of Members of the House.

An oath or affirmation of allegiance by Members and Senators is a requirement of the Australian Constitution. No provisions of the *Commonwealth Electoral Act 1918* are involved. Section 42 of the Constitution states:

> **42.** 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.

The wording of the oath or affirmation is set out in the schedule to the Constitution, as follows:

> 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.*)

There is no provision for any deviation from this constitutional requirement. No Member may take part in proceedings of the House until sworn in.

The standing orders of the House state in relation to a new Parliament that Members shall 'be sworn, or make affirmation, as prescribed by the Constitution'. Although no more detailed procedures are specified, either in the standing orders or elsewhere, the traditional practice is as follows.

The oath or affirmation of allegiance taken by newly elected Members at the beginning of a Parliament is administered by a person authorised to do so by the Governor-General. This is traditionally a Justice of the High Court. The judge is escorted into the Chamber and to the Speaker's Chair by the Serjeant-at-Arms. The Clerk reads to the House the commission from the Governor-General authorising the judge to administer the oath or affirmation and then tables the returns to the writs for the general election, showing the Member elected for each electoral Division. Members are called by the Clerk in turn and approach the Table in groups of approximately ten to twelve, make their oath or affirmation, sign (subscribe) the oath or affirmation form and then return to their seats. The Ministry is usually sworn in first, followed by the opposition executive and then other Members.

Members not sworn in initially may be sworn in later in the day's proceedings or on a subsequent sitting day by the Speaker. The Speaker receives, after his or her appointment, a commission from the Governor-General to administer the oath or affirmation. Those Members elected at by-elections during the course of a Parliament are also sworn in by the Speaker.

Yours sincerely

Robyn Webber
Director
Chamber Research Office

ANNEXURE 4

EXTRACT FROM HIGH COURT OF AUSTRALIA JUDGEMENT IN SUE V HILL HCA 30 OF JUNE 23, 1999

AustLII High Court of Australia

Sue v Hill [1999] HCA 30 (23 June 1999)

Last Updated: 23 June 1999

HIGH COURT OF AUSTRALIA

GLEESON CJ,

GAUDRON, McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ

Matter No S179/1998

HENRY (NAI LEUNG) SUE PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Matter No B49/1998

TERRY PATRICK SHARPLES PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Sue v Hill [1999] HCA 30

23 June 1999

S179/1998 and B49/1998

ORDER

1. Answer the questions reserved in each stated case as follows:

(a) Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?

Answer: Yes

citizen or entitled to the rights and privileges of a subject or citizen. That is, the inquiry is not about whether Australia's relationships with that power are friendly or not, close or distant, or meet any other qualitative description. Rather, the words invite attention to questions of international and domestic sovereignty[50].

49. Further, because the question is whether, at the material time, the United Kingdom answered the description of "a foreign power" in s 44(i), it is not useful to ask whether that question could have been easily answered at some earlier time, any more than it is useful to ask whether it is easily answered now. No doubt individuals will be directly affected by the answer that is given and, to that extent, their rights, duties and privileges may be affected. But any difficulty in deciding whether the United Kingdom did answer the description at the material time, or in deciding when it first answered that description, does not relieve this Court of the task of answering the question that now is presented.

Constitutional interpretation

50. In *Bonser v La Macchia*, Windeyer J referred to Australia having become "by international recognition ... competent to exercise rights that by the law of nations are appurtenant to, or attributes of, sovereignty"[51]. His Honour regarded this state of affairs as an instance where "[t]he law has followed the facts"[52]. It will be apparent that these facts, forming part of the "march of history"[53], received judicial notice[54]. They include matters and circumstances external to Australia but in the light of which the Constitution continues to have its effect and, to repeat Windeyer J's words[55], "[t]he words of the Constitution must be read with that in mind".

51. There is nothing radical in doing as Windeyer J said; it is intrinsic to the Constitution. What has come about is an example of what Story J foresaw (and Griffith CJ repeated[56]) with respect to the United States Constitution[57]:

> "The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."

52. The changes to which Windeyer J referred did not require amendment to the text of the Constitution. Rather, they involved[58]:

> "in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the *Colonial Laws Validity Act 1865* (Imp) and restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope."

Changes in the United Kingdom

53. So also with respect to changes in the constitutional arrangements in the United Kingdom itself. The condition of those arrangements at any one time may be difficult to perceive by reason of the lack of any single instrument answering the description of a written constitution. Nevertheless, it is readily apparent from judicial decisions in the United Kingdom that the

96. The point of immediate significance is that the circumstance that the same monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of s 44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality[132] so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and its exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome [133], themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in Section III, does the United Kingdom exercise any function with respect to the governmental structures of the Commonwealth or the States.

97. As indicated earlier in these reasons, we would give an affirmative answer to the question in each stated case which asks whether Mrs Hill, at the date of her nomination, was a subject or citizen of a foreign power within the meaning of s 44(i) of the Constitution.

98. GAUDRON J. In each of these matters a case has been stated for the consideration of the Full Court pursuant to s 18 of the *Judiciary Act 1903* (Cth)[134]. Each matter arises out of the 1998 election for the return of six Senators for the State of Queensland to serve in the Parliament of the Commonwealth. The writ for the election was issued on 31 August 1998. Pursuant to the writ, nominations were made on or before 10 September and the election was held on 3 October 1998. Following the counting of votes, the Governor of Queensland certified, on 26 October 1998, that Mrs Heather Hill, the first respondent in each matter, was duly elected as the third Senator. Messrs Ludwig, Mason and Woodley were certified as duly elected as the fourth, fifth and sixth Senators respectively.

99. The cases have been stated in separate proceedings commenced by the petitioners, Mr Sue and Mr Sharples. They invoke the jurisdiction purportedly conferred on this Court by s 354 of the *Commonwealth Electoral Act 1918* (Cth) ("the Act"). I say "purportedly conferred" because question (a) in each of the cases stated asks:

> "Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?"

Necessarily, that question must be answered first. Before turning to that question, however, it is convenient to refer to the nature of the challenge made by the petitioners and the facts by reference to which each challenge is made.

Nature of the challenge

100. Each petitioner challenges Mrs Hill's election on the basis that, at the time of her nomination, she did not satisfy the requirements of s 44(i) of the Constitution. Section 44 relevantly provides:

> " 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; ...

ANNEXURE 5

DOCUMENTS RE:
INTERNATIONAL COURT OF JUSTICE

1. Letter of Introduction
2. Application and Petition
3. Orders sought
4. Affidavit

Institute of Taxation Research

8th. June 1999

The President,
The International Court of Justice
The Hague,
Netherlands.

Dear Sir,

We hereby place in your hands an unusual but highly important application based on the provisions of two major treaties and the basic principles of national sovereignty, which underlie international law.

The application is not made in the name of a government of the Nation State of Australia, since we are convinced that any governmental power of this nation state remains dormant and unexercisable in the absence of a plebiscite of the Australian people under which we could authorise a national government to be formed.

We have been informed by the United Nations that the Australian people, rather than the government, are the state. The Application is therefore made on their behalf. It is not made in the interests of any one section and our desire is the establishment of a legal political and judicial system in Australia to provide peace, order, and good government. In particular we desire a judicial system in which truth and justice are the most important elements rather than those dominating the existing illegal system run for the benefit of those who preside over it and those who work within it.

To assist the court we have also requested the assistance of a number of other powers in bringing this matter to a hearing. All of the powers approached are signatories to either or both of the principal treaties cited and therefore are bound to see the treaty provisions upheld.

Those of us who are desirous of a peaceful outcome believe that the issues of international law involved are so fundamental that an early decision by the Honourable Court would be relatively straightforward. Armed with such a decision we know the Australian people could then rectify the situation with minimal levels of disturbance.

We therefore place the matter in your hands in the knowledge that all the domestic remedies in Australia have been exhausted and that the Australian courts are sworn to uphold the domination of a foreign government and system.

Brisbane
Tel (07) 3257 1920
Fax (07) 3852 2486
Unit 117, MacTaggarts Place
53 Vernon Terrace
Teneriffe Wharves QLD 4005
Email itr@hypermax.net.au

Melbourne
Tel (03) 8796 3311
Fax (03) 8796 3322
7 Apsley Place PO Box 9112
Seaford Mail Centre
Seaford VIC 3198
Email taxres@hotmail.com

A number of senior members of the legal profession have volunteered to present the case to the Honourable Court on behalf of the Australian people and in addition there have been sufficient contributions to ensure the full carriage of the matters.

The people of Australia place their trust in the deliberations of the Court in the belief that the International Court of Justice alone can provide the justice they seek.

Signed on behalf of the citizens of Australia

....

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE HAGUE **No. of 1999**

In the matter of an Application under Article 36 of the Statute

Between

THE SOVEREIGN PEOPLE OF AUSTRALIA
Applicant

And

THE PARLIAMENT AND GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
Respondent

APPLICATION AND PETITION

We, the Sovereign People of Australia humbly petition the Honourable Court to cause to appear before it representatives of the Parliament and Government of the United Kingdom of Great Britain and Northern Ireland in a matter involving the sustained and deliberate breaches of Articles X, XVIII, and XX of the Covenant of the League of Nations and Articles 2, 4, 6, 102 and 103 of the Charter of the United Nations in that they have promoted maintained and succoured an illegal colonial regime within the sovereign territory of Australia, and that they have deliberately and sustainedly created and maintained laws of the Imperial Parliament of the United Kingdom of Great Britain and Northern Ireland whose sole purpose was the continued subjugation of peoples not lawfully under the sovereign authority of the said parliament.

Further that they, and their de facto colonial government of the Commonwealth of Australia, and their colonial governments of the component states therein, acting without ever having acquired the permission of the Australian people to exercise their sovereign power, have oppressed the sovereign people of Australia in divers ways as shown in the particulars hereunder.

Under the powers conferred on this Honourable Court under Article 36 of its Statute relating to its sole and compulsory jurisdiction over matters involving treaties and breaches thereof we request that the court hear our petition, brought forward with the assistance of the governments of other nation signatories to the above treaties under whose terms they are duty bound to defend the political independence of the nation of Australia.

PARTICULARS

1. The Commonwealth of Australia was formed as a colonial federation of six British Colonies under the Act to Constitute the Commonwealth of Australia 1900 (UK), an Act under domestic British law passed by the Imperial Parliament of the United Kingdom in July 1900 coming into effect on 1 January, 1901.

2. Despite recognition by the other nations of the world as an independent nation Australia is still governed today under this Act of British domestic law in contravention of international law and practice. The power of repeal and therefore of sovereignty over the Act remains solely with the Government and Parliament of the United Kingdom.

3. By the preamble to this Act the Commonwealth was established under the sovereignty of the United Kingdom of Great Britain and Ireland, a legal entity which ceased to exist upon attainment of independence by the Irish Free State on 15th. January 1922 when "Ireland" ceased to exist.

4. The aforesaid Act is determined in such ways as to ensure the permanent retention of executive power by the United Kingdom by establishing eight (8) preliminary sections which the colonial government had no rights to adjust or alter and a ninth section being the Constitution under which the Commonwealth would be administered.

5. The eight preliminary sections, known in Australian law as the Covering Clauses, ensure that the "Commonwealth" as an entity established under Section 6 must be as defined in the Act and Constitution. In Section 8 the Commonwealth is defined as a "self governing colony", which is a true and fair description of the Commonwealth as established.

6. Under the provisions of Section 2 permanently establishing the Crown of the United Kingdom as the sovereign authority, which is described in Section 61 of the included Constitution as holding all executive power, the Commonwealth is defined in such a way that sovereign authority cannot pass to the people of Australia in any manner consistent with the document which remains current British domestic law.

7. However at the Imperial War Conference of 1917 the Imperial Government and the assembled representatives of the Dominions of Canada, Australia, South Africa, New Zealand and Newfoundland decided that the constitutional arrangements of the British Empire would have to be altered on the basis of full national equality for the five principal Dominions. (Resolution IX of the Conference)

8. At the Paris Peace Conference of 1919 the Dominions, including Australia, were accorded full national recognition and on presentation of full powers documents in the "Head of State" form became signatories to the Treaty of Peace signed at Versailles on 28th. June, 1919

9. Recognised by the other powers present as a legitimate sovereign nation Australia was granted a C class mandate over former German territories in the Pacific Ocean adjacent to Australia.

10. Acting within the new nation status now recognised by the other participant nations Australia then signed further Peace Treaties with the former belligerents, Hungary, Austria, Bulgaria, and Poland.

11. In its new national capacity Australia became one of the founding members of the International Labour organisation.

12. Upon the commencement of the operations of the League of Nations on 10th. January 1920 Australia became a member of the Assembly of the League, took part in its deliberations and voted upon issues, at times taking the opposite side from its former colonial power.

13. At the Imperial Conference of 1921 the Prime Minister of the United Kingdom, Mr. Lloyd George, opened the conference with a speech in which he specifically drew attention to the new status of the dominions as having equal national status with the United Kingdom. The Imperial Conference then formally sealed this decision. These events were formally reported to the Australian Parliament on 30th. September 1921 (see attachment from the official record.)

14. Thus the United Kingdom in document and deed officially relinquished sovereign authority in and over Australia.

15. The then Prime Minister of Australia, Mr. William Morris Hughes, reported the events of the Paris Peace conference to the Parliament of the Commonwealth on 10th. September 1919 (see attachment from the official record) and following protracted debate both Houses of the Commonwealth Parliament unanimously ratified the Treaty of Peace on the 19th. September and 1st October 1919 respectively thereby accepting the new nation status for Australia.

16. In December 1921 the Prime Minister Mr. Hughes introduced a bill into the Commonwealth Parliament to commence the rearrangement of the constitutional basis as required under Resolution IX of the Imperial War Conference 1917. However political pressure from British commercial interests on members of Parliament saw the unanimous vote of 1919 disappear and the bill was withdrawn due to lack of support. As a result the required constitutional alterations to recognise Australia's change of status have never been carried out.

17. Further all the Courts of the Commonwealth have refused to recognise the historical events of 1917, 1919 and 1921 and maintain the fiction that Australia "gradually became independent somewhere between World War One and World War Two." By this fiction the courts and judges are able to avoid the necessary break in legal continuity arising from the change in

sovereignty and have continued to enforce colonial laws at all levels and have resisted all attempts to have them fully consider the historical facts.

18. Further the courts of Australia effectively operate as courts administering United Kingdom law although current domestic law of the United Kingdom requires that such courts can only operate within sovereign territory of the United Kingdom and can only be presided over by persons qualified under current United Kingdom law. The persons presiding over such courts in Australia are not qualified under United Kingdom law.

19. The law schools of the various Australian universities do not teach or even reveal the above facts to their students. All Australian lawyers are taught to look to the United Kingdom for their authority as well as common law and certain statute law.

20. They are aided and abetted in this by the chief legal officers of the Commonwealth and the States who also refuse to recognise the aforesaid facts and knowingly disseminate false information to the public and the courts. As a result the people of Australia are denied redress of their complaint5s under properly constituted courts of law as prescribed in international law.

21. Although the record of the parliament includes its acceptance of the historical changes, in practise the executive government co-operates with the courts to conceal the facts and their import from all Australian citizens.

22. In 1931 the Imperial Parliament passed the Statute of Westminster designed to aid and abet the Government of the Commonwealth of Australia and the governments of other former Dominions in the denial of their peoples sovereignty and to ensure the continued imposition of United Kingdom domestic law upon the peoples of the former Dominions. Although required by Article XVIII of the Covenant of the League of Nations to register this international arrangement with the secretariat of the League this was not done, thereby showing that the United Kingdom in practise continued to treat Australia and the other former Dominions as de facto colonies in contravention of international law.

23. Under the Act of Settlement of 1701, being an Act of the English Parliament adopted into United Kingdom law by the Act of Union of 1706, the sovereign of England and thus of the United Kingdom is required to obey this law in order to hold the throne. Because of the operation of this law the current Sovereign of the United Kingdom remains a British subject and subject to the authority of the United Kingdom Parliament. Any Royal Assent to bills passed by the Parliament of the Commonwealth of Australia is thus de facto the assent of the sovereign authority of the Imperial Parliament of the United Kingdom and unlawful in international law unless the Commonwealth remains a colony.

24. If Australia remains a self-governing colony of the United Kingdom the exclusion of Australian citizens and products from the benefits of the Treaty or

Rome and subsequent pan European agreements and treaties entered into by the United Kingdom is unlawful.

25. By these means the Australian people are denied their sovereign rights, their freedoms, the capacity to conduct their own lawful affairs, are differentially taxed in such a manner to place a burden upon ordinary citizens whilst special laws allow major foreign companies, including those of the former colonial power, to operate with minimal taxation. The taxation applied to the ordinary citizens operates under arbitrary rules and with draconian powers which breach both the Universal Declaration of Human Rights and the 1966 Convention on Civil and Political Rights by frequently arbitrarily seizing their property and depriving some citizens of their right to subsistence conferred under Article 1.2 of the Convention.

26. In 1945, when presenting its credentials for the San Francisco Conference which established the United Nations the Commonwealth Government deliberately falsely informed the Conference that the Constitution was Australian law under which the Government was established and under which the Full Powers documents were issued, whereas the Constitution remains current domestic legislation of the United Kingdom Parliament.

In the alternative, if the acceptance of the sovereign nation of Australia as a member state of the United Nations was valid, then the continued application of United Kingdom colonial law within Australia is a breach of Sections 4 and 6 of the Charter as well as various Resolutions of the General Assembly of the United Nations. The so-called Australia Acts 1986 of the Commonwealth and the United Kingdom parliaments are in fact international treaties or arrangements and are required to be registered in accordance with Sections 102 and 103 of the said Charter but have not been so registered.

27. The sovereign authority of the Australian people remains unchallenged, but it is clear that the Government in all its aspects, judicial, executive and parliamentary remains a de facto colonial government of the United Kingdom and as such possesses no sovereign or legal authority in and over the independent nation of Australia.

28. Various Australian citizens have attempted to seek judicial review of the situation but have been denied by the Supreme Courts of the states and the High Court of Australia (see attached judgements).

29. Redress has been sought within the High Court, being the official highest court in the nation but this has been denied by both the justices and officials of the courts. Having thus exhausted all domestic remedies we therefore seek to place the matters before this Honourable Court as a Court of last resort.

30. Mindful of the question of *locus standii,* but in full belief that the Sovereign People of Australia have a right to be heard, we have therefore sought assistance from several governments of nation signatories to the aforementioned treaties, to bring these issues under the treaties before the Court if standing is denied to the People of Australia.

ORDERS SOUGHT

We, the people of Australia, therefore seek the following orders from this Honourable Court.

A. That the Government and Parliament of the United Kingdom be ordered to cease all acts and destroy all documents and authorities which purport in any way to exercise sovereign authority over Australia.

B. That the Parliament of the United Kingdom be required to repeal forthwith all laws supporting or succouring or seeking to be used by colonial governments in Australia.

C. That the Government of the United Kingdom be ordered to withdraw and destroy all Letters Patent issued by the Queen of the United Kingdom, either by and with the assistance of the Government or without such assistance, and to advise all parties in Australia publicly that any subsidiary Letters Patent or Commissions appointing judges or other public officials possess no legal authority and status

D. That Australia's seat at the United Nations be declared vacant and that the government of the Commonwealth be declared to have no legal standing.

E. That until a plebiscite is conducted of the Australian people to establish a new legal government that the only law in effect in Australia is international law until the people of Australia specifically allow parts of the law in prior usage to continue for a limited time in the interests of peace and good order.

F. To declare that the Queen of the United Kingdom, under the terms of the Act of Settlement of 1701 being a British subject and thereby subject to the sovereign authority of the British people as expressed through their Parliament has no continuing authority in and over Australia unless and until the Australian people exercising their free informed choice determine otherwise.

G. That at its discretion this Honourable Court place for investigation before the International War Crimes Commission, or when its Statute may be approved before the International Criminal Court, the names and activities of any person who is held to be with full knowledge of the legal circumstances seen to be continuing to act contrary to international law and binding Conventions.

H. Any such other order as the Honourable Court may determine.

6. That although the events of 1919 to 1921 are publicly acknowledged history in the rest of the world the facts are omitted from every major history textbook published in Australia, they are not taught in history courses in Australian schools or universities.

7. That the date of Australia's independence has been knowingly concealed by the Executive Governments of the Commonwealth and the States and by the United Kingdom Government during recent times as shown by the attached letters.

8.. That the legal profession in Australia have willingly and knowingly acted to prevent the Australian people from attaining and exercising their civil and political rights as acknowledged under instruments of international law.

9. That if this application and petition are not heard before this Honourable Court then, because some 2 million Australians are now aware of the facts and have expressed great anger at public meetings, the strong likelihood exists that armed conflict will break out in Australia between the current illegal regime and the people of Australia. Further that such a conflict could have major international repercussions given that the same historical facts and situations apply to the people of Canada, and the people of New Zealand.

Sworn at Melbourne)
By the said Ian Sidney)
Henke)

This 9th day of June 1999

....
Witness.

IN THE INTERNATIONAL COURT OF JUSTICE
AT THE HAGUE **No. of 1999**

In the matter of an Application under Article 36 of the Statute

Between

THE SOVEREIGN PEOPLE OF AUSTRALIA
Applicant

And

THE PARLIAMENT AND GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
Respondent

AFFIDAVIT

I, Ian Sidney Henke, of 7 Apsley Place Seaford in the State of Victoria make oath and say as follows:

1. That I have supervised the preparation of the Application and Petition to the International Court of Justice in the above matter.

2. That the Application is made on behalf of numerous Australian citizens, who having vainly sought redress and justice from the Australian courts now seek redress before this Honourable Court.

3. That in the attempt to have the issues brought before the High Couirt of Australia Justice Hayne elected to convert five individual cases into a class action the only common class being that all five Applicants were citizens of Australia and that Hayne J. did dispose of their Applications in a common, class, judgement as attached..

4. That to the best of my knowledge and belief the documents attached hereto are true and correct copies of the official records, publications and court transcripts obtained by us during the preparation of this petition and application.

5. That a deliberate program of misinformation is being conducted by the Government of the Commonwealth of Australia and its agencies, in evidence of which we include public statements by the Commissioner of Taxation and the Assistant Commissioner of Taxation, newspaper articles, and an internal instruction to lower ranked staff.

Prepared by: The Institute of Taxation Research
Of: 7 Apsley Place
Seaford, Victoria
Phone 64.3.8796 3311
Fax: 64.3.8796 3322

On behalf of: The Sovereign People of Australia.

Signed by on Behalf of the Sovereign People of Australia

This 9th day of June 1999

....

ANNEXURE 5

Foreign &
Commonwealth
Office

North East Asia and Pacific Department
London SW1A 2AP

Telephone: 0171-270

22 July 1999

I Henke
Institute of Taxation Research
Unit 117
MacTaggarts Place
53 Vernon Terrace
Teneriffe Wharves
Brisbane
Queensland 4005
AUSTRALIA

Dear I Henke,

APPLICATION TO THE INTERNATIONAL COURT OF JUSTICE

Please refer to your letter to the Prime Minister dated 14 June with which you enclosed copies of the above application and petition in two volumes. I have been asked to acknowledge receipt.

Since under Article 34(1) of the Statute of the International Court of Justice "only states may be parties in cases before the Court", and the Institute of Taxation Research is clearly not a state, the British Government does not intend to respond to this application.

Yours sincerely,

Jonathan Drew

Jonathan Drew
North East Asia and Pacific Department

ANNEXURE 6

LETTER FROM UNITED NATIONS RE: AUSTRALIA'S STATUS AS A SOVEREIGN STATE

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE· UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE· UNATIONS NEWYORK

REFERENCE:

19 December 1997

Dear Mr. Joosse,

This is in response to your memorandum of 5 December 1997 which asks us the date that the Untied Nations recognizes as "the legal date on which Australia ceased to be a colony of the United Kingdom and assumed sovereign nation status." You also allude to recent enquiries conducted by the Secretary-General and my office on this issue.

We are unaware of any enquiries being made on this issue in this Office.

In relation to your question we note that the Charter of the United Nations entered into force on 24 October 1945 and that Australia was an original Member of the United Nations, having signed the Charter on 26 June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce.

Yours sincerely,

Paul C. Szasz
Acting Director and Deputy to the
Under-Secretary-General
Office of the Legal Counsel

ANNEXURE 7

1. Extract from the Charter of the United Nations
2. Copy of UN Resolution 2131 of 1965
3. Copy of UN Resolution 2625 of 1970

I, BRIAN ALEXANDER SLEE, Executive Officer, Department of Foreign Affairs and Trade, Canberra, hereby certify that the attached text is a true copy of the Charter of the United Nations, with the Statute of the International Court of Justice annexed thereto, done at San Francisco on the twenty-sixth day of June, one thousand nine hundred and forty-five, the original of which is deposited in the archives of the Government of the United States of America.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Department of Foreign Affairs and Trade of Australia.

SIGNED at Canberra on this sixteenth day of October, one thousand nine hundred and ninety-seven.

Brian Slee

Executive Officer
Treaties Secretariat

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS
DETERMINED

to save succeeding generations from the scourge of war, which twice in our life-time has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS
TO ACCOMPLISH THESE AIMS.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III

PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1. In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of

this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

YEARBOOK OF THE UNITED NATIONS

1965

OFFICE OF PUBLIC INFORMATION
UNITED NATIONS, NEW YORK

A/6220. Report of First Committee.
RESOLUTION 2131(XX), as proposed by First Committee, A/6220, adopted by Assembly on 21 December 1965, meeting 1408, by roll-call vote of 109 to 0, with 1 abstention, as follows:
In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville) Democratic Republic of the Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Maldive Islands, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, USSR, United Arab Republic, United Republic of Tanzania, United States, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.
Against: None.
Abstaining: United Kingdom.

"*The General Assembly,*

"*Deeply concerned* at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

"*Considering* that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State,

"*Recognizing* that, in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political

status and freely pursue their economic, social and cultural development,

"Recalling that in the Universal Declaration of Human Rights the General Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,

"Reaffirming the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and the Organization of African Unity and affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Co-operation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion adopted at Accra by the Heads of State and Government of the African States,

"Recognizing that full observance of the principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

"Considering that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

"Considering further that direct intervention, subversion and all forms of indirect intervention are contrary to these principles and, consequently, constitute a violation of the Charter of the United Nations,

"Mindful that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

"Fully aware of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

"In the light of the foregoing considerations, solemnly declares:

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

"2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

"3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

"4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

"5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

"6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

"7. For the purpose of the present Declaration, the term 'State' covers both individual States and groups of States.

"8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII."

CHAPTER VII

REGIONAL ACTION TO IMPROVE RELATIONS BETWEEN EUROPEAN STATES WITH DIFFERENT SOCIAL AND POLITICAL SYSTEMS

The question of "Actions on the regional level with a view to improving good neighbourly relations among European States having different social and political systems" was first placed on the agenda of the General Assembly in 1963 at its eighteenth session. This was done at the request of Romania.

On that occasion, the Assembly decided, in

YEARBOOK OF THE UNITED NATIONS

Volume 24

1970

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UNITED NATIONS, NEW YORK

ANNEX

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

PREAMBLE

The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(*d*) The duty of States to co-operate with one another in accordance with the Charter,

(*e*) The principle of equal rights and self-determination of peoples,

(*f*) The principle of sovereign equality of States,

(*g*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.

Nothing in the foregoing shall be construed as affecting:

(*a*) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(*b*) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(*a*) To promote friendly relations and co-operation among States; and

(*b*) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compli-

ance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(*a*) States are juridically equal;

(*b*) Each State enjoys the rights inherent in full sovereignty;

(*c*) Each State has the duty to respect the personality of other States;

(*d*) The territorial integrity and political independence of the State are inviolable;

(*e*) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(*f*) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

GENERAL PART

2. *Declares* that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. *Declares further* that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

CHAPTER III

THE QUESTION OF DEFINING AGGRESSION

CONSIDERATION BY SPECIAL COMMITTEE

In accordance with a General Assembly decision of 12 December 1969,[1] the Special Committee on the Question of Defining Aggression continued its work in 1970.

Meeting at Geneva, Switzerland, from 13 July to 14 August 1970, the Special Committee discussed the three draft proposals which had been submitted to it at its 1969 session, namely: (1) a USSR proposal; (2) a 13-power proposal (Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia); and (3) a six-power proposal (Australia, Canada, Italy, Japan, the United Kingdom and the United States).[2]

After a general discussion of the three proposals, the Special Committee decided to consider them paragraph by paragraph according to the concepts on which they were based.

The main points considered by the Special Committee were the following:

(1) Application of the definition of aggression: (*a*) the definition and the power of the Security Council; (*b*) political entities to which the definition should apply.

(2) Acts proposed for inclusion in the definition: (*a*) the question of "direct or indirect" aggression;

[1] See Y.U.N., 1969, p. 774, text of resolution 2549(XXIV).

[2] *Ibid.*, pp. 768-71, for information on the draft proposals.

ANNEXURE 8

EXTRACT OF AUSTRALIAN PARLIAMENTARY DEBATES, HOUSE OF REPRESENTATIVES SEPTEMBER 30, 1921

pp11630-11631

lodge an appeal against his assessment, and all appeals are most carefully and exhaustively investigated. If then dissatisfied with the decision given, he can further appeal. The medical examinations are made by the departmental medical officers, and the staffs of assistant departmental medical officers, and wherever the Commission considers the circumstances warrant it the case is referred to a specialist for advice.

PAPERS.

The following papers were presented:—

Norfolk Island—Report for the year ended 30th June, 1921.

Papua—Oilfields in—Reports on operations of the Anglo-Persian Oil Company during March to July, 1921.

Ordered to be printed.

IMPERIAL CONFERENCE.

STATUS OF DOMINIONS — EMPIRE'S FOREIGN POLICY — ANGLO-JAPANESE TREATY—THE PACIFIC PROBLEM—DISARMAMENT CONFERENCE — CONSTITUTIONAL CONFERENCE.

Mr. HUGHES (Bendigo—Prime Minister and Attorney-General) [11.30].—(*By leave.*)—On the 7th April, 1921, I made a statement to this House setting out the principal questions to be considered at the Conference, and giving reasons why Australia should be represented. Let me remind you of what I then said—.

> The Conference has been summoned to deal with questions of foreign policy, naval defence, and the renewal of the Anglo-Japanese Treaty. Certain other subsidiary matters are also set out on the agenda-paper. One relates to communications (including wireless) between various parts of the Empire; but I shall direct my remarks mainly to those matters which are of fundamental importance.

I emphasized the importance of foreign policy to Australia in general and the Anglo-Japanese Treaty in particular, the dependence of the Empire on sea power, and expressed my opinion that the Treaty ought to be renewed, and in such form, if that should prove by any means possible, as would be satisfactory to America. I concluded by saying—

> If I am asked if the Commonwealth is to be committed to anything done at the Conference, I say, quite frankly, that this Parliament will have the amplest opportunity of expressing its opinion on any scheme of naval defence that is decided upon before the scheme is ratified.
>
> As to the renewal of the Treaty with Japan, this is my attitude, and I submit it to the consideration of honorable members: I am in favour of renewing the Treaty in any form that is satisfactory to Britain, America, and ourselves. I am prepared to renew it in these circumstances. If it is suggested that the renewal should take the form which would involve the sacrifice of those principles which we ourselves regard as sacred, I am not prepared to accept it. In such circumstances, I shall bring back the Treaty to this Parliament. I think I have put the situation clearly; and since these matters have sometimes to be settled quickly, I want honorable members to say whether they will give me the authority I ask for.
>
> With regard to the expenditure involved in any naval scheme, the House will not be committed to the extent of one penny. The scheme will be brought before Parliament, and honorable members will be able to discuss, and accept or reject it.

Honorable members, therefore, were fully aware of the main objects of my mission and of my attitude towards them. I undertook not to commit Australia to any expenditure unless approved by Parliament. The Parliament gave me the authority I asked for, and on the 28th April I left for London. I have been absent just five months, and now, at the earliest possible moment after my return, I propose to inform the Parliament and the country of what the Conference did.

I need hardly say that the pledges given by me have been carried out, not only to the letter, but in the spirit. The Commonwealth is not committed to any expenditure. Everything done is subject to parliamentary approval, and Parliament will have the fullest opportunity of expressing its opinions.

Before plunging into the details of the subjects dealt with in London, a few prefatory words about the Conference itself seem called for.

The recent meeting of the Prime Ministers of Great Britain and the overseas Dominions differed in many respects from those which preceded it. Prior to the war, Imperial Conferences were ceremonious and social functions rather than serious attempts to co-ordinate the activities of a far-flung Empire. The experiences of war showed clearly that as the safety of every part of the Empire depended upon united action, means for insuring to each member an effective share in guiding its course must be devised. Matters over which we had no control, in shaping which we had no voice, about which we were indeed quite ignorant, had led to a declaration of war by Great Britain in 1914. A bolt had fallen from the blue; Britain was at war; as part of the Empire we were involved. Britain had done much for us, under her sheltering wing we had rested for over a century

in perfect peace and security. Our hour of great trial had come; we had to prove ourselves worthy of the traditions of our race and our liberties, or perish.

The war has changed many things. It has destroyed dynasties, uprooted ancient institutions, readjusted the boundaries of the nations, and created many difficult problems; but it has also given us a wider and more splendid concept of Empire. We have realized that the British Empire is a partnership of free nations, every one being free to act as it pleases, yet all united in council and in action. Our isolation did not insure our safety. Before the war, we had stood aloof from world politics, yet the maelstrom of war engulfed us, and this young Democracy has proved itself worthy of its breeding and of its liberties. The legions of Australia fought alongside those of Britain and the other Dominions. Our ships were on every sea; our armies in the forefront of the far-flung battle line in Europe and Asia. We had been a Dominion; the war made us a nation within the Commonwealth of Nations. The admission of the representatives of the Dominions into the Imperial War Cabinet marked the first great step in the new era. Then came the Peace Conference on which the Dominions were granted separate representation, and sat on a footing of equality with the great nations of the earth. But not only was our status as nations thus conceded, but by virtue of our membership of the British Empire we exercised an influence and wielded an authority far greater than that of the majority of the nations gathered round the Peace Table, for as members of the British Empire Delegation—the name by which the Imperial Cabinet was known during the Peace Conference—we enjoyed privileges denied to all save the great Powers; we were consulted on the vital matters which came before the Council of the Four, and our voices and votes shaped the policy which the British representatives urged in that Council. We affixed our signatures to the Versailles Treaty.

The status granted in War has been confirmed in times of Peace. Mr. Lloyd George in his opening Speech to the Conference said:—

> In recognition of their services and achievements in the war the British Dominions have now been accepted fully into the comity of the nations of the whole world. They are signatories to the Treaty of Versailles and of all other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League; in other words, they have achieved full national status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even more clear to their own communities and to the world at large, we shall be glad to have them put forward at this Conference.

In these words, the Prime Minister of Britain, the President of the Conference, set out in clear unambiguous language the concept of a partnership of free nations, all equal in dignity and responsibility, to which the Conference subsequently formally and officially set its seal.

I ask this House and this country to note all that is involved in these words of the Prime Minister of Britain, accepted by his colleagues and indorsed by the Conference, I ask them to contrast this concept of a British Commonwealth comprised of free nations, each enjoying the status of nationhood, each claiming and being accorded an equal voice in shaping Empire policy, with that other concept, which, not many years ago, stood unchallenged—of Britain supreme in power and authority, deciding without question the destiny of all. In those days when one spoke of Empire the British communities oversea seemed only the appanages of Britain's glory; Britain loomed so large as to dwarf all others. In the minds of men Britain was the Empire.

But the years have passed; much water has run under the bridges, much blood has been shed; the Dominions have established their right to be treated as equals, and Britain, not waiting for formal demand, has been the first to acclaim and gladly welcome us as her equal, and bid us sit with her at the Council table of Empire.

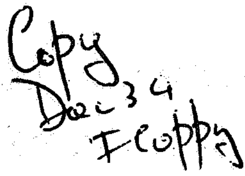
The Imperial Conference of 1921 was one in which all members met as equals to discuss not the prosecution of a war, on which common agreement was easily attainable, but the intricacies of foreign policy in many countries and the measures necessary for the safety and prosperity of the whole Empire.

For the first time, then, in the history of this great Empire the representatives

ANNEXURE 9

1. Letter to Lord Chancellor
2. Reply on behalf of Lord Chancellor

The Office of the Lord Chancellor
Houses of Parliament
Westminster Palace
LONDON
UNITED KINGDOM
July 13 1997
(actually 23 July)



Dear Sir,

My continuing research into the relationship between the United Kingdom and Australia has turned up a document which contains the following statement:-

> " The chief law officer of the United Kingdom, the Lord Chancellor, states:
> ' "The Commonwealth of Australia Constitution Act (UK) 1900 is an Act of the United Kingdom Parliament. The right to repeal this act remains the sole prerogative of the Parliament of the United Kingdom . There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations. Indeed, the United Nations Charter itself precludes any such action. The government of the United Kingdom presented the original document of the Commonwealth of Australia Constitution Act (UK) 1900 to Australia in 1988 as a gesture of goodwill on its 200th anniversary."'

Since this statement is not accompanied by a reference will you please verify its accuracy and, if it is found so, if it can actually be attributed to the Lord Chancellor?

Since it seems clear that the two counties are now quite independent, has the government of the United Kingdom given consideration to the repealing of the Commonwealth of Australia Constitution Act (UK) 1900?

It would be appreciated if you would give a priority to this communication that will result in an undelayed response.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia
AUSTRALIA 5341

Foreign &
Commonwealth
Office

Far Eastern and Pacific Department
London SW1A 2AP

Telephone: 0171-270 3266

11 December 1997

P Batten Esq
P.O. Box 1333
RENMARK
S.A. 5341
Australia

Dear Mr Batten

AUSTRALIAN CONSTITUTION

Thank you for your letter to the Lord Chancellor of 13 July. I have been asked to reply. I apologise for the delay in replying.

We have been unable to locate the source of the quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1990 not in 1988, although the 1900 Act was on loan to Australia at this latter date.

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation. The statement does not, however, address the special status of the Constitution of the Commonwealth of Australia. Nor does it refer to the Australia Acts, which declared that no future Act of the British Parliament would extend to Australia.

The Commonwealth of Australia Constitution Act was enacted in the United Kingdom at a time when Westminster was required to legislate on Australian issues; the measure was based on Australian drafts and was endorsed at the time by a majority of Australians. The continuing role of the Australia Constitution Acts as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made.

I hope this information is of help to you.

Yours sincerely

Mark Armstrong

Mark Armstrong
Far Eastern and Pacific Department

ANNEXURE 10

Letter from Office of Australian Attorney General

20/97071622

Mr Peter Batten
PO Box 1333
Renmark
South Australia 5341

Dear Mr Batten

I refer to your letter dated 17 July 1997 to Sir Robert Fellowes and to your letter to the British High Commission in which you requested information about the status of certain constitutional instruments and the Queen's role as Queen of Australia. Your letter have been forwarded to the office of the Attorney-General. I have been asked to reply on behalf of the Attorney-General.

The status of the Commonwealth Constitution

You would be aware that the Commonwealth Constitution was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.

However, 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 deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed.

Letters Patent

I am advised that Letters Patent constituting the office of Governor General of Australia were issued on 29 October 1900 under the Great Seal of the United Kingdom by Queen Victoria as Queen of the United Kingdom. Amendments to the Letters Patent issued in 1900, made on 4 December 1958, were approved by Queen Elizabeth II on the advice of the Australian Government. On 24 August 1984 the Letters Patent issued in 1900 were revoked and new Letters Patent were issued by Queen Elizabeth II as Queen of Australia under the Great Seal of Australia. The Letters Patent issued in 1984 have not been superseded.

The Queen's Role

The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of

Parliament House, Canberra ACT 2600 • Telephone (02) 6277 7300 • Fax (02) 6273 4[illegible]2

New Zealand). The Queen of Australia, when acting in relation to Australia, acts on the advice of the Australian Government. I have not seen and therefore cannot comment on any advice from the 'Keeper of the Royal Seals' to the effect that the Queen of Australia cannot issue Letters Patent in relation to the office of the Governor-General on the advice of the Australian Government.

I am afraid I cannot say whether the Queen, when acting in her capacity as Queen of the United Kingdom under the laws of the United Kingdom, can issue Letters Patent to non-British subjects.

I hope you find these comments helpful.

Yours sincerely

Adele Byrne
Adviser

ANNEXURE 11

1. Extract from Australian Parliamentary Debates The Senate October 1, 1919

2. Copy of a set of documents relating to Peace Treaties of 1919, as published in Australian Parliamentary Papers 1920-21

2. No.
3. The next census will be taken in April, 1921, when the question of representation, as well as redistribution, will need to be considered.

WHEAT POOL.

1918-19 CROP.

Senator PRATTEN asked the Minister in charge of the Wheat Pool, *upon notice*—

What is the total number of bushels of wheat represented by the uncashed certificates still remaining in the 1918-19 Wheat Pool?

Senator RUSSELL.—Inquiries are being made, and a reply will be furnished in due course.

NAVY MECHANICS.

BRITISH EXPERIENCE.

Senator McDOUGALL asked the Minister representing the Minister for the Navy, *upon notice*—

1. How many mechanics were sent to Great Britain at the country's expense to study submarine building and other naval work?
2. Have any of these men been asked for a report on their experiences in Great Britain?
3. If so, has that report been submitted to the Department?
4. Is said report available to senators?
5. How many of these men are still in the employment of the Department?
6. How many have taken positions with other firms?
7. Is it not the policy of the Department to avail itself of the experience gained by these men?

Senator RUSSELL.—The answers are—

1. Ten.
2 and 3. They were required to keep notes of their work, and these notes were collected prior to their departure from Great Britain, and sent to the general manager, Cockatoo Island, Sydney.
4. No formal reports have been received.
5. Six.
6. No information is available.
7. The experience gained is being availed of as far as possible, though no submarines are being built in view of existing circumstances.

PACIFIC ISLANDS.

Senator FERRICKS asked the Leader of the Government in the Senate, *upon notice*—

Will he lay on the table of the Senate the recommendations of the late General Pethebridge regarding the control and development of the Pacific Islands?

Senator RUSSELL.—No report of the nature indicated can be traced as having been received by the Minister of Defence although it is understood that the late administrator had in preparation such a report. Further inquiry will, however, be made.

TREATY OF PEACE.

Senator MILLEN (New South Wales—Minister for Repatriation) [3.12].—I move—

That this Senate approves of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles, on the 28th June, 1919.

In moving the motion it is not my intention, even if I were competent to do so, to refer to the great and stirring events which led up to the shaping of this agreement, or to those scarcely less dramatic happenings which accompanied the completion of that document. Honorable senators have recently had the opportunity of hearing from the lips of the man most competent to tell the story of that side of this important event. I shall confine myself to dealing with the Treaty—what it is, and what it does—and in doing that I shall endeavour to be as brief as the magnitude of the subject will permit. Yet I feel that it impossible, when we recognise what the presentation of this Treaty, and our acceptance of it, really means to ignore the thoughts and emotions which will spring up in the minds of most of us. For over five years Australia, in conjunction with the allied and associated Powers, was engaged in the most titanic struggle known in the history of the world. During that period the people whose representatives we are were engaged in a tremendous effort, making great sacrifices, faced always with the menace of great danger, and not infrequently confronted or overshadowed by great fears. Now that we are passing from the turmoil of war and are approaching the goal of peace—that goal towards which our eyes have been so steadfastly directed and our hearts have been bent—we should be other than the men we are if we were not conscious of the feelings of profound relief, of devout thankfulness, and of justifiable pride. If we would correctly assess the value of this Treaty to ourselves, let us for a moment consider what the position would have been had the situation been reversed, and, instead of being asked to ratify a treaty imposed on a beaten

some time. There have been one or two side issues introduced, and a little side-stepping. We are taking a practical step in the direction of securing Peace, and I think that we can congratulate ourselves and the whole world on the fact that the terrible holocaust has ceased. Whatever one's views may be, we cannot look back upon the horrible scenes of war without regretting that the world had not reached a more civilized stage. We had hoped that such a war was impossible, but we were apparently labouring under a delusion. I trust that the world after the late great conflict has learned that wars are of no benefit to the common people. I do not wish to deal with the Treaty in detail, because my geographical knowledge of Europe would not enable me to do so, even were I so disposed. The Treaty does not embody all I expected, but I believe that there has been an honest attempt on the part of all nations to abolish war. I am disappointed with the results of the Conference; but in so far as the nations of the world have made a genuine effort to prevent further wars, I believe the foundations have been laid for making the world a better place in which to live.

Speaking of the Labour Conference, and as an Australian who claims to have more interest in Labour than ever before, I believe the Treaty does not hold out much for us when I consider the questions set down for discussion. We have reached the standard laid down in the Treaty, and hope to improve in the future. Industrially, we have been experimenting in many directions, but I do not think we have been altogether successful up to date. Judging by experience, there seems a reasonable hope of solving many of the difficulties with which we are faced to-day. I believe it would be advantageous if we could help by our experience in improving the labour conditions in other countries of the world. By levelling up the conditions in other countries, we would be providing a great national asset for Australia. I sincerely regret that Labour is not to be represented, and I still hope that some arrangement may be made to overcome that difficulty. It was not the desire of the Government to say how many representatives of Labour there should be—that was determined at the Peace Conference. There was no desire on the part of the Government to interfere with the nominations of the Labour party, and it was in a position to nominate whatever delegate it desired. The date fixed for the Conference was soon after the return of our representatives from the Peace Conference; and that made it rather difficult for a Labour representative to be elected in Australia. However, the Conference will meet from time to time, and Labour organizations will have the opportunity of sending their representatives. I could draw attention to a good deal that has been accomplished by the Treaty. I believe it gives to the world a great hope, and the document proves that all the belligerent nations have come together in a spirit of confidence, in the interests of the general welfare of the people of the world.

Question resolved in the affirmative.

FRANCE: ANGLO-AMERICAN TREATY.

Debate resumed from 17th September (*vide* page 12341), on motion by Senator Millen—

> That this Senate approves the Treaty made at Versailles on the 28th June, 1919, between His Majesty the King and the President of the French Republic, whereby, in case the stipulations relating to the left bank of the Rhine, contained in the Treaty of Peace with Germany signed at Versailles the 28th day of June, 1919, by the British Empire, the French Republic and the United States of America, among other Powers, may not at first provide adequate security and protection to France, Great Britain agrees to come immediately to her assistance in the event of any unprovoked movement of aggression against her being made by Germany.

Senator GARDINER (New South Wales [8.55].—In speaking to this motion, I hope I will not have to ask the Senate for an extension of time. It appears to me that there is no occasion for such a motion to be submitted to the Commonwealth Parliament. I direct attention to the fact that in the earlier portion of the motion "British Empire" is used; but when it comes to the question of an agreement as to who is to resent interference by Germany, the words "Great Britain" are used. I think that is wise. We are passing a motion that does not bind Australia to interfere in any unprovoked assault made by Germany against France. Any one who is acquainted with the circumstances surrounding the breaking of treaties, or how wars have been caused, can easily

[482]—2

1920-21.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

PEACE TREATIES.

PAPERS RELATING TO SIGNING AND RATIFICATION OF THE PEACE TREATIES—

(*a*) MEMORANDUM DATED 12TH MARCH, 1919, CIRCULATED BY SIR ROBERT BORDEN, ON BEHALF OF THE DOMINION PRIME MINISTERS.

(*b*) RULES OF THE PEACE CONFERENCE CONTAINED IN ANNEX II. TO PROTOCOL I. OF THE CONFERENCE, DEFINING THE POSITION AND REPRESENTATION OF THE SEVERAL POWERS, INCLUDING THE DOMINIONS (DATED 18TH JANUARY, 1919).

(*c*) CORRESPONDENCE BETWEEN THE COMMONWEALTH GOVERNMENT AND THE SECRETARY OF STATE FOR THE COLONIES CONCERNING THE SIGNING AND RATIFICATION OF THE PEACE TREATIES.

(*d*) ORDER IN COUNCIL PASSED IN AUSTRALIA, MOVING HIS MAJESTY THE KING TO ISSUE LETTERS PATENT APPOINTING PLENIPOTENTIARIES IN RESPECT OF THE COMMONWEALTH OF AUSTRALIA.

Presented by Command; ordered to be printed, 29th April, 1921.

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(This Document is the Property of His Britannic Majesty's Government.)

Secret.
W.C.P. 242.

(a)

MEMORANDUM, DATED 12TH MARCH, 1919, CIRCULATED BY SIR ROBERT BORDEN ON BEHALF OF THE DOMINION PRIME MINISTERS.

BRITISH EMPIRE DELEGATION.

THE DOMINIONS AS PARTIES AND SIGNATORIES TO THE VARIOUS PEACE TREATIES.

Memorandum circulated by Sir Robert Borden on behalf of the Dominion Prime Ministers.

(1) The Dominion Prime Ministers, after careful consideration, have reached the conclusion that all the treaties and conventions resulting from the Peace Conference should be so drafted as to enable the Dominions to become Parties and Signatories thereto. This procedure will give suitable recognition to the part played at the Peace Table by the British Commonwealth as a whole, and will at the same time record the status attained there by the Dominions.

(2) The procedure is in consonance with the principles of constitutional government that obtain throughout the Empire. The Crown is the Supreme Executive in the United Kingdom and in all the Dominions, but it acts on the advice of different Ministries within different constitutional units; and under Resolution IX. of the Imperial War Conference, 1917, the organization of the Empire is to be based upon equality of nationhood.

(3) Having regard to the high objects of the Peace Conference, it is also desirable that the settlements reached should be presented at once to the world in the character of universally accepted agreements, so far as this is consistent with the constitution of each State represented. This object would not be achieved if the practice heretofore followed of merely inserting in the body of the convention an express reservation providing for the adhesion of the Dominions were adopted in these treaties; and the Dominions would not wish to give even the appearance of weakening this character of the peace.

(4) On the constitutional point, it is assumed that each treaty or convention will include clauses providing for ratification similar to those in the Hague Convention of 1907. Such clauses will, under the procedure proposed, have the effect of reserving to the Dominion Governments and Legislatures the same power of review as is provided in the case of other contracting parties.

(5) It is conceived that this proposal can be carried out with but slight alterations of previous treaty forms. Thus :—

(*a*) The usual recital of Heads of State in the Preamble needs no alteration whatever, since the Dominions are adequately included in the present formal description of the King, namely, "His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India".

(*b*) The recital in the Preamble of the names of the Plenipotentiaries appointed by the High Contracting Parties for the purpose of concluding the treaty would include the names of the Dominion Plenipotentiaries immediately after the names of the Plenipotentiaries appointed by the United Kingdom. Under the general heading "The British Empire" the sub-headings "The United Kingdom," "The Dominion of Canada," "The Commonwealth of Australia," "The Union of South Africa," &c., would be used as headings to distinguish the various Plenipotentiaries.

(*c*) It would then follow that the Dominion Plenipotentiaries would sign according to the same scheme.

(6) The Dominion Prime Ministers consider, therefore, that it should be made an instruction to the British member of the drafting Commission of the Peace Conference that all treaties should be drawn according to the above proposal.

Hotel la Perouse,
Paris, 12th March, 1919.

(b)

RULES OF THE PEACE CONFERENCE CONTAINED IN ANNEX II. TO PROTOCOL I. OF THE CONFERENCE, DEFINING THE POSITION AND REPRESENTATION OF THE SEVERAL POWERS, INCLUDING THE DOMINIONS (DATED 18TH JANUARY, 1919).

ANNEX No. II. TO PROTOCOL No. I. OF PRELIMINARY PEACE CONFERENCE, PARIS, 18TH JANUARY, 1919.

RULES OF THE CONFERENCE.

I.

The Conference summoned with a view to lay down the conditions of peace, in the first place by peace preliminaries and later by a definite Treaty of Peace, shall include the representatives of the allied or associated belligerent Powers.

The belligerent Powers with general interests (the United States of America, the British Empire, France, Italy, Japan) shall attend all sessions and commissions.

The belligerent Powers with special interests (Belgium, Brazil, the British Dominions and India, China, Cuba, Greece, Guatemala, Hayti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Poland, Portugal, Roumania, Serbia, Siam, the Czecho-Slovak Republic) shall attend the sessions at which questions concerning them are discussed.

Powers having broken off diplomatic relations with the enemy Powers (Bolivia, Ecuador, Peru, Uruguay) shall attend sessions at which questions interesting them will be discussed.

Neutral Powers and States in process of formation shall, on being summoned by the Powers with general interests, be heard, either orally or in writing, at sessions devoted especially to the examination of questions in which they are directly concerned, and only in so far as those questions are concerned.

II.

The Powers shall be represented by Plenipotentiary Delegates to the number of—

- Five for the United States of America, the British Empire, France, Italy, Japan;
- Three for Belgium, Brazil, Serbia;
- Two for China, Greece, the Hedjaz, Poland, Portugal, Roumania, Siam, the Czecho-Slovak Republic;
- One for Cuba, Guatemala, Hayti, Honduras, Liberia, Nicaragua, Panama;
- One for Bolivia, Ecuador, Peru, Uruguay.

The British Dominions and India shall be represented as follows:—

- Two delegates each for Canada, Australia, South Africa, India (including the native States);
- One delegate for New Zealand.

Each delegation shall be entitled to set up a panel, but the number of plenipotentiaries shall not exceed the figures given above.

The representatives of the Dominions (including Newfoundland) and of India can, moreover, be included in the representation of the British Empire by means of the panel system.

Montenegro shall be represented by one delegate, but the manner of his appointment shall not be decided until the present political situation of that country becomes clear.

The conditions governing the representation of Russia shall be settled by the Conference when Russian affairs come up for discussion.

III.

Each delegation of plenipotentiaries may be accompanied by duly accredited technical delegates and by two shorthand writers.

The technical delegates may attend sessions in order to supply information when called upon. They may be asked to speak in order to give necessary explanations.

IV.

The order of precedence shall follow the alphabetical order of the Powers in French.

V.

The Conference shall be opened by the President of the French Republic. The President of the French Council of Ministers shall thereupon provisionally take the chair.

The credentials of members present shall at once be examined by a committee composed of one plenipotentiary for each of the allied or associated Powers.

VI.

At the first meeting the permanent president and four vice-presidents shall be elected from among the Plenipotentiaries of the Great Powers in alphabetical order.

VII.

A secretariat chosen outside the ranks of the plenipotentiaries, consisting of one representative each of the United States of America, the British Empire, France, Italy, and Japan shall be submitted for the approval of the Conference by the president, who shall be in control of and responsible for it.

The secretariat shall draw up the protocols of the sessions, classify the archives, provide for the administrative organization of the Conference, and, generally, insure the regular and punctual working of the services intrusted to it.

The head of the secretariat shall be responsible for the safe custody of the protocols and archives.

The archives shall be accessible at all times to members of the Conference.

VIII.

Publicity shall be given to the proceedings by means of official communiques prepared by the secretariat and made public. In case of disagreement as to the wording of such communiques, the matter shall be referred to the chief plenipotentiaries or their representatives.

IX.

All documents to be incorporated in the protocols must be supplied in writing by the plenipotentiaries originally responsible for them.

No document or proposal may be so supplied except by a plenipotentiary or in his name.

X.

With a view to facilitate discussion, any plenipotentiary wishing to propose a resolution must give the president twenty-four hours' notice thereof, except in the case of proposals connected with the order of the day and arising from the actual discussion.

Exceptions may, however, be made to this rule in the case of amendments or secondary questions which do not constitute actual proposals.

XI.

All petitions, memoranda, observations, and documents addressed to the Conference by any persons other than the plenipotentiaries must be received and classified by the secretariat.

Such of these communications as are of any political interest shall be briefly summarized in a list circulated to all the plenipotentiaries. Supplementary editions of this list shall be issued as such communications are received.

All these documents shall be deposited in the archives.

XII.

All questions to be decided shall be discussed at a first and second reading; the former shall afford occasion for a general discussion for the purpose of arriving at an agreement on points of principle; the second reading shall provide an opportunity of discussing details.

XIII.

The plenipotentiaries shall be entitled, subject to the approval of the Conference, to authorize their technical delegates to submit direct any technical explanations considered desirable regarding any particular question.

If the Conference shall think fit, the study of any particular question from the technical point of view may be intrusted to a Committee composed of technical delegates, who shall be instructed to present a report and suggest solutions.

XIV.

The protocols drawn up by the secretariat shall be printed and circulated in proof to the delegates with the least possible delay.

To save time, this circulation of the protocols in advance shall take the place of reading them at the beginning of the sessions. Should no alterations be demanded by the plenipotentiaries, the text shall be considered as approved and deposited in the archives.

Should any alteration be called for, it shall be read aloud by the president at the beginning of the following session.

The whole of the protocol shall, however, be read if one of the plenipotentiary members shall so request.

XV.

A committee shall be formed to draft the motions adopted.

This committee shall deal only with questions which have been decided; its sole task shall be to draw up the text of the decisions adopted and to present them to the Conference for approval.

It shall consist of five members who shall not be plenipotentiary delegates, and shall comprise one representative each of the United States of America, the British Empire, France, Italy, and Japan.

(c)

CORRESPONDENCE BETWEEN THE COMMONWEALTH GOVERNMENT AND THE SECRETARY OF STATE FOR THE COLONIES CONCERNING THE SIGNING AND RATIFICATION OF THE PEACE TREATIES.

S.C. 101/113.

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 20TH JANUARY, 1919, 7.10 p.m.

Following is purport of regulations for dealing with representation of British Empire at Peace Conference. Belligerent Powers with general interest shall take part in all sittings and commissions. These comprise besides British Empire United States of America France Italy and Japan. Belligerent Powers with particular interests shall take part in sittings at which questions concerning them discussed. This group includes besides Belgium Brazil and other foreign States British Dominions and India. Five Powers named above shall each be represented by five plenipotentiary delegates Belgium Brazil and Serbia by three each Greece, Roumania and certain other States two each and one each for Cuba and certain other States. Article proceeds "the British Dominions and India shall be represented as follows two delegates each for Australia Canada South Africa and India (including the Native States) one delegate for New Zealand. Although the number of delegates may not exceed figures above mentioned each delegation has the right to avail itself of the panel system. Representation of the Dominions (including Newfoundland) and India may besides be included in the representation of the British Empire by the panel system" delegates take precedence according to alphabetical order in French of the Powers.

Prime Minister,

Melbourne, 23rd April, 1919.

Memorandum for:

The Acting Official Secretary to the Governor-General.

I am directed to request you to invite His Excellency the Governor-General to be so good as to sign the attached Order (the issue of which was approved at the meeting of the Executive Council held to-day), and when the seal has been fixed, to despatch the document to the Secretary of State for the Colonies. It is desired also that the terms of the Order be communicated to the Secretary of State for the Colonies by cablegram.

M. L. SHEPHERD,
Secretary.

ORDER

Commonwealth of Australia to wit. (L.S.) R. M. FERGUSON, Governor-General.	By His Excellency the Governor-General of the Commonwealth of Australia.

Whereas in connexion with the Peace Congress it is expedient to invest fit persons with full powers to treat on the part of His Majesty the King in respect of the Commonwealth of Australia with persons similarly empowered on the part of other States:

Now therefore I, Sir Ronald Craufurd Munro Ferguson, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby order that His Majesty the King be humbly moved to issue letters patent to each of the following persons, namely, the Right Honorable William Morris Hughes, P.C., M.P., Prime Minister of the Commonwealth of Australia, and the Right Honorable Sir Joseph Cook, P.C., G.C.M.G., M.P., Minister of State for the Navy of the Commonwealth of Australia, naming and appointing him as Commissioner and Plenipotentiary in respect of the Commonwealth of Australia with full power and authority as from the first day of January, 1919, to conclude with such plenipotentiaries as may be vested with similar power and authority on the part of any Powers or States, any treaties, conventions, or agreements in connexion with the said Peace Congress, and to do for and in the name of His Majesty the King in respect of the Commonwealth of Australia everything so agreed upon and concluded and transact all such other matters as may appertain thereto.

Given under my Hand and the Seal of the Commonwealth, at Melbourne, this 23rd day of April, in the year of our Lord One thousand nine hundred and nineteen, and in the ninth year of His Majesty's reign. (L.S.)

By His Excellency's Command,

W. A. WATT,
Acting Prime Minister.

S.C. 101/45.

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 28TH JUNE, 1919, 6.50 p.m.

E. 15.

June 28th. Peacy Treaty with Germany signed by representatives of Allied and Associated Powers and by representatives of Germany to-day at 4 o'clock. Concluding article of Treaty provides that first proces verbal of deposit of ratification will be drawn up as soon as Treaty has been ratified by Germany on one hand and by three of principal Allied and Associated Powers on the other hand that from date of this first proces verbal Treaty will come into force between high contracting parties who have ratified it that for determination of all periods of time as provided for in Treaty this date will be date of coming into force of Treaty and that in all other respects Treaty will enter into force for each Power at date of deposit of its ratification.

Date of ratification *i.e.* of coming into force of Peace Treaty cannot be stated yet.

S.C. 101/61.

[Secret.]

DECIPHER OF CABLEGRAM FROM THE GOVERNOR-GENERAL, SOUTH AFRICA, DATED PRETORIA, 29TH JULY, 1919, 6 P.M.

E. Ord. 144.

29th July. Have been requested by Secretary of State for the Colonies to deliver following message to Mr. Hughes and to repeat it to you. Am arranging communicate to Mr. Hughes. Message begins—

Now that Germany has ratified Treaty of Peace it is of the greatest importance that it should be ratified by us with the least possible delay as till this is done there can be no definite peace. As you are aware His Majesty can constitutionally ratify any treaty without consent of Parliament. British Government has, however, thought it desirable submit treaty to Parliament where it will be without doubt approved in the course of this week.

It is of course for you to decide whether you wish to submit treaty to the Parliament of Australia before its ratification by His Majesty. If so it would be necessary for you to do so immediately on your return. Ends.

S.C. 101/65A.

[Secret.]

DECIPHER OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 7TH AUGUST, 1919, 5.55 P.M.

MN83.

7th August. Urgent. My telegram 23rd July Peace Treaty sent to Hughes through Governor-General Union of South Africa and repeated to you. Following reply has been received begins.

Your telegram 23rd July. Propose lay Treaty of Peace before Parliament for ratification. Hughes. Ends.

Please telegraph earliest date on which formal assent of Commonwealth Parliament to ratification may be expected. Matter is urgent in view of severe pressure being put on us from Paris to ratify at earliest possible date. Canada holding special session to consider treaty 1st September and French ratification expected 2nd September or 3rd September.

S.C. 101/66.

[Secret.]

DECIPHER OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 12TH AUGUST, 1919, 8.25 P.M.

MN4.

12th August. Urgent. In continuation of my telegram of 7th August.

Government of Union of South Africa which has convened special session of Parliament to consider Peace Treaty with Germany being of opinion that it will be very desirable to secure uniformity in dealing with this question have asked me to submit suggestions as to form in which the Peace Treaty should receive Parliamentary approval in Dominions, that is whether approval should take form of Bill on lines of that submitted to Parliament here or of motion submitted to Parliament for that purpose. I have replied to effect that matter is of course one for decision of local Government but that in my opinion best course would be to obtain approval of Treaty by resolution of both Houses and that if as is probable legislation on lines of British Bill is required in order to give effect to Treaty this could follow later.

It is important to bear in mind that the British Bill is not a Bill to ratify Peace Treaty but to empower the Government to take the necessary steps to carry out those provisions of the Treaty which require legislative authority.

My reason for suggesting resolution of both Houses is that this procedure might enable ratification to take place without the delay that might be involved in obtaining Parliamentary powers for carrying out Treaty.

I should be grateful if you will inform me what procedure will be adopted by your Government. If as I hope procedure by resolution is adopted, I assume that there will be no objection His Majesty's ratifying immediately we receive cable to effect that such resolution has been passed and I have telegraphed in same sense to other Dominions.

COPY OF CABLEGRAM SENT BY THE ACTING PRIME MINISTER TO THE SECRETARY OF STATE FOR THE COLONIES ON 15TH AUGUST, 1919.

Your telegram 7th August: Am summoning Parliament for special consideration of Peace Treaty on Wednesday, 10th September. Impossible to arrange meeting before. Difficult to predict at this stage time required for its passage through both Houses but may be able to give you indication a little later on. You may rely upon utmost despatch by Commonwealth Government.

COPY OF CABLEGRAM SENT BY THE ACTING PRIME MINISTER TO THE SECRETARY OF STATE FOR THE COLONIES, 15TH AUGUST, 1919.

In reply to your telegram 12th August: View Commonwealth Government is that resolution is preferable course, but have had no opportunity of consulting Prime Minister. He arrives Western Australia next week and I will take earliest opportunity of conferring with him and communicate final decision.

S.C. 101/73.

[Secret.]

DECIPHER OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 26TH AUGUST, 1919, 12.45 P.M.

MN3.

26th August. Your telegram 18th August Peace Treaty with Germany.

Canada will proceed by way of resolution of both Houses in order that matter may be expedited legislation giving effect to treaty being introduced later.

Procedure by way of resolution will also be adopted by New Zealand.

S.C. 101/76.

[Secret.]

MN30.

DECIPHER OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 1ST SEPTEMBER, 1919, 6.45 P.M.

1st September. My telegram of 26th August Peace Treaty with Germany. Union of South Africa also will proceed by way of joint resolution.

S.C. 101/77.

[Urgent.]

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 6TH SEPTEMBER, 1919, 11.55 P.M.

MN8.

6th September. Urgent. Confidential. Parliamentary approval of Treaty of Peace with Germany. Have heard nothing from you since your two telegrams 18th August. New Zealand resolution already passed and Canadian and South African resolutions expected by Thursday next.

Please telegraph as soon as possible when Australian approval may be expected.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 8TH SEPTEMBER, 1919.

Your telegram 6th September: Parliamentary approval of Peace Treaty with Germany. Proceding by resolution to be moved next Wednesday. Ratification probably within fortnight.

COPY OF CABLEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, 27TH SEPTEMBER, 1919.

September 27th. According to present arrangements date for signature of Treaty with Bulgaria October 25th. Whom would your Ministers wish to appoint to sign on behalf of Australia?

S.C. 101/93.

DECODE OF TELEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 30TH SEPTEMBER, 1919, 12.25 P.M.

MN4.

With reference to your telegram 9th September Peace Treaty when may approval of Commonwealth Parliament be expected.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 3RD OCTOBER, 1919.

Your telegram 27th September. High Commissioner for Australia is authorized to sign Treaty with Bulgaria on behalf of Australia.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

Extract from the Votes and Proceedings, No. 156, dated 19th September, 1919.

3. Peace Treaty between Allies and Germany. The Order of the Day having been read for the resumption of the debate on the following motion of Mr. Hughes—"That this House approves of the Treaty of Peace between the Allied and Associated Powers and Germany signed at Versailles on the 28th June, 1919"—and on the Amendment moved thereto by Mr. J. H. Catts, viz.:—"That the following words be added to the motion, 'That owing to the limited amount of information placed before Parliament in relation to the Peace Treaty, its commitments and responsibilities, the whole matter be referred to a Committee of both Houses of the Parliament for inquiry and report'"—

Debate resumed.

Question—That the words proposed to be added be so added—put and negatived.

Debate on original motion continued.

Question—That the motion be agreed to—put and passed.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 2ND OCTOBER, 1919.

Your telegram 30th September. Peace Treaty and Anglo-French Treaty approved by both Houses of Commonwealth Parliament.

S.C. 101/96.

DECODE OF TELEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 4TH OCTOBER, 1919, 7.45 P.M.

MN. 70.

With reference to your telegram October 3rd, most satisfactory to know that Treaty of Peace with Germany approved by Commonwealth Parliament. Parliaments of Canada, New Zealand, and Union of South Africa have approved also.

S.C. 101/98.

E.29.

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, OCTOBER 11TH, 1919, 2.30 P.M.

October 11th. With reference to my telegram 4th October General Instrument for ratification of Treaty of Peace with Germany and its protocol, Rhine Territory Agreement, and Treaty concerning Poland signed by the King October 8th.

S.C. 101/115.

DECODE OF CABLEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 27TH NOVEMBER, 1919, 10.55 A.M.

73.

November 27th. In view of present precarious situation in Central and South-eastern Europe His Majesty's Government are anxious that Treaty with Austria and other connected Treaties should be ratified as soon as possible and as soon as legislation with regard to Austrian Treaty on lines of that with regard to German Treaty has been passed by Parliament here they would be glad to be in position to advise His Majesty the King to ratify Austrian-Czecho-Slovac and Serb-Croat-Slovene Treaties contained in my despatches of October 17th Dominions 786, 783, 785. His Majesty's Government would be glad to know as soon as possible whether your Ministers concur in proposed ratification. Please telegraph reply.

S.C. 101/124.

[Urgent.]

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 9TH DECEMBER, 1919, 5.50 P.M.

Ord. 33.

Matter most urgent. December 9th. Certain modifications have been made in agreement signed St. Germain, September 10th, regarding contributions to cost of liberation of territory of former Austro-Hungarian Monarchy see paragraph 1 (5) of my despatch October 17th Dominions 786. Declaration accepting this modification now ready for signature of representatives of Allied and Associated Powers and will remain open until December 22nd. As original agreement signed by representatives of Dominions necessary that modifications should be also signed on their behalf. Whom would your Ministers wish to appoint as their representative? Sir Eyre Crowe present head of British Peace Delegation, Paris, has already authority to sign on behalf of India and if your Ministers see no objection it might be convenient for him to sign above declaration on behalf of Dominions also. If your Ministers agree same arrangement might be made in respect of Roumanian Minorities Treaty now ready for signature and any other documents of similar minor character requiring signature on behalf of Dominions which might arise out of Peace settlement. *Telegraph reply with least possible delay.*

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 12TH DECEMBER, 1919.

Your telegram 9th December. High Commissioner for Australia is authorized to sign modification of Austrian Peace Treaty on behalf of Australia, or failing his ability to do so, Sir Eyre Crowe is authorized to sign.

S.C. 101/126.

[Urgent.]

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, DECEMBER 13TH, 1919, 2.15 P.M.

MN. 16.

Matter most urgent. With reference to your telegram December 12th, Signature of modification of Austrian Treaty of Peace: Presume that your reply applies also to other documents mentioned in my telegram of December 9th.

Telegraph reply with least possible delay.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 15TH DECEMBER, 1919.

Your telegram 13th December. Signature of modification of Austrian Treaty of Peace. You are correct in assuming my reply applies also to other documents mentioned your telegram December 9th.

S.C. 101/130.

DECODE OF TELEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, THE 23RD DECEMBER, 1919, 2.25 P.M.

MN95.

With reference to my telegram November 27th ratification of Treaty Austria and other connected Treaties; please reply with least possible delay.

COPY OF TELEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 6TH JANUARY, 1920.

"Your telegram 28th November: Commonwealth Ministers concur in proposed ratification of Austrian, Czecho Slovac, and Serb Croat Slovene Treaties."

DECODE OF TELEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 14TH FEBRUARY, 1920, 11.10 A.M.

February 14th. With reference to my despatch October 20th Dominions 788 notification received from Bulgarian Government that they are ready to ratify Treaty of Peace. Would be glad to learn as early as possible whether your Ministers agree that His Majesty the King should ratify. Treaty with protocol annexed signed November 27th enclosed my despatch January 28th, Dominions 42.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 25TH FEBRUARY, 1920.

"Your telegram 14th February. Commonwealth Government agrees that His Majesty should ratify Treaty of Peace with Bulgaria."

S.C. 101/186.

[Urgent.]

DECODE OF TELEGRAM RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, THE 5TH MAY, 1920, 7.5 P.M.

May 5th. Text of Turkish Treaty expected to be ready for presentation to Turkish Delegates at Paris May 11th. Desired to inform them on this occasion who will eventually sign for Dominions. Please telegraph at once whether High Commissioner will be authorized to sign.

COPY OF CABLEGRAM RECEIVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 7TH MAY, 1920.

May 7th. If Hungarian Delegation agrees to sign Peace Treaty May 16th signature may take place about 20th May. Please telegraph whether High Commissioner authorized to sign.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 11TH MAY, 1920.

"Your telegram 5th May. High Commissioner for Australia is authorized to sign Turkish Treaty on behalf of Commonwealth."

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 13TH MAY, 1920.

"Your telegram 7th May. High Commissioner authorized to sign Hungarian Treaty."

S.C. 22/2.

DECODE OF CABLEGRAM FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, JUNE 8TH, 1920, 5.50 P.M.

MN133.

June 8th. Hungarian Treaty of Peace signed Grand Trianon Palace June 4th. Foreign countries signing were United States of America France Italy Japan Belgium Cuba China Greece Nicaragua Panama Poland Portugal Roumania Serb Croat Slovene State Siam Czecho Slovakia. High Commissioner signed on behalf of Commonwealth of Australia.

F.6597.—2

S.C. 20/10.

[Secret.]

DECIPHER OF TELEGRAM RECEIVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 6TH JULY, 1920, 1.55 P.M.

July 6th. On various occasions recently minor treaties conventions etcetera arising out of peace settlement have been drawn up at Paris which require signature on behalf of Dominions and several others are pending *e.g.*, one as to Bessarabia. It is difficult to forecast exactly when such treaties etcetera will be ready for signature but strong pressure is often exercised to bring about signature at short notice on account of political considerations involved, see for example my telegram of June 29th Schleswig. It has been suggested that it would be of convenience and also save time if Dominion Governments were willing to give a general authorization to His Majesty's Ambassador at Paris to sign on their behalf any minor treaties conventions etcetera. Lord Derby has already full power to sign on behalf of India all treaties etcetera arising out of Peace Conference. Please telegraph view of your Ministers. It would be of course understood that if suggestion acceptable Dominion Governments would continue to be informed in advance of nature of documents to be signed so that they would have opportunity of arranging for special signature on their behalf in any case where they desired such signature. Similar telegram sent to other Dominions.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 19TH JULY, 1920.

"Your telegram 6th July. Signing of minor treaties. Commonwealth Government is desirous that these treaties, conventions, &c., be signed by High Commissioner on behalf of Australia, and that in all matters of importance Commonwealth Government be afforded opportunity of expressing opinion before treaties submitted to High Commissioner for signature."

S.C. 20/40.

[Urgent.]

DECODE OF TELEGRAM RECEIVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, THE 9TH OCTOBER, 1920, 5.40 P.M.

October 9th. Urgent. Bessarabian Treaty referred to in my telegram July 6th now nearly ready for signature. Final text not received yet from Paris but according to first draft which alone available London sovereignty of Roumania recognised over Bessarabia and guarantee of liberty and justice insured by Roumania to inhabitants. Remaining articles concerned mainly with questions relating to future nationality of nationals of former Russian Empire habitually resident in Bessarabia and with assumption by Roumania of proportional part affecting Bessarabia of Russian public debt and other Russian public liabilities. Please telegraph whether Ministers agree to signature on their behalf.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 13TH OCTOBER, 1920.

"Your telegram October 9th. Commonwealth Government agrees signature Bessarabian Treaty."

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S.C. 22/6.

DECODE OF CABLEGRAM RECEIVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 18TH NOVEMBER, 1920, 2.10 P.M.

ORD. 56/18.

November 18th. My despatch July 29th Treaty 24. Hungarian Treaty ratified by Hungarian National Assembly November 13th. Should be glad to know as soon as possible by telegraph whether your Ministers agree to ratification by His Majesty the King.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 20TH NOVEMBER, 1920.

"Your telegram 18th November Commonwealth Government agrees to ratification of Hungarian Treaty by His Majesty the King."

S.C. 20/65.

DECODE OF CABLEGRAM RECEIVED BY HIS EXCELLENCY THE GOVERNOR-GENERAL FROM THE SECRETARY OF STATE FOR THE COLONIES, DATED LONDON, 1ST DECEMBER, 1920, 5.30 P.M.

ORD. 52/1.

December 1st. With reference to my despatch September 15th Dominions Treaty 37, proposed that ratification of Central European Frontiers Treaty by His Majesty the King should take place simultaneously with ratification of Hungarian and Bessarabian Treaties; see my telegram December 1st. Should be glad to know as early as possible by telegraph whether your Ministers agree to ratification.

COPY OF CABLEGRAM SENT TO THE SECRETARY OF STATE FOR THE COLONIES, 6TH DECEMBER, 1920.

"Your telegrams 1st December: Commonwealth Government agrees to ratification of Bessarabian Treaty and Central European Frontiers Treaty by His Majesty the King."

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(*d*)

ORDER IN COUNCIL PASSED IN AUSTRALIA, MOVING HIS MAJESTY THE KING TO ISSUE LETTERS PATENT APPOINTING PLENIPOTENTIARIES IN RESPECT OF THE COMMONWEALTH OF AUSTRALIA.

ORDER

Commonwealth of Australia to wit.
R. M. FERGUSON,
Governor-General.

By His Excellency the Governor-General of the Commonwealth of Australia.

Whereas in connexion with the Peace Congress it is expedient to invest fit persons with full powers to treat on the part of His Majesty the King in respect of the Commonwealth of Australia with persons similarly empowered on the part of other States:

Now therefore I, Sir Ronald Craufurd Munro Ferguson, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, do hereby order that His Majesty the King be humbly moved to issue letters patent to each of the following persons, namely, the Right Honorable William Morris Hughes, P.C., M.P., Prime Minister of the Commonwealth of Australia, and the Right Honorable Sir Joseph Cook, P.C., G.C.M.G., M.P., Minister of State for the Navy of the Commonwealth of Australia, naming and appointing him as Commissioner and Plenipotentiary in respect of the Commonwealth of Australia, with full power and authority as from the first day of January, 1919, to conclude with such plenipotentiaries as may be vested with similar power and authority on the part of any powers or States, any treaties, conventions or agreements in connexion with the said Peace Congress and to do for and in the name of His Majesty the King in respect of the Commonwealth of Australia everything so agreed upon and concluded and transact all such other matters as may appertain thereto.

Given under my Hand and the Seal of the Commonwealth, at Melbourne, this 23rd day of April, in the year of our Lord One thousand nine hundred and nineteen, and in the ninth year of His Majesty's reign.
(L.S.)

By His Excellency's Command,

W. A. WATT,
Acting Prime Minister.

ANNEXURE 12

EXTRACT FROM AUSTRALIAN PARLIAMENTARY DEBATES THE HOUSE OF REPRESENTATIVES SEPTEMBER 30, 1921

pp 11630-11631

lodge an appeal against his assessment, and all appeals are most carefully and exhaustively investigated. If then dissatisfied with the decision given, he can further appeal. The medical examinations are made by the departmental medical officers, and the staffs of assistant departmental medical officers, and wherever the Commission considers the circumstances warrant it the case is referred to a specialist for advice.

PAPERS.

The following papers were presented:—

Norfolk Island—Report for the year ended 30th June, 1921.

Papua—Oilfields in—Reports on operations of the Anglo-Persian Oil Company during March to July, 1921.

Ordered to be printed.

IMPERIAL CONFERENCE.

STATUS OF DOMINIONS — EMPIRE'S FOREIGN POLICY — ANGLO-JAPANESE TREATY—THE PACIFIC PROBLEM—DISARMAMENT CONFERENCE — CONSTITUTIONAL CONFERENCE.

Mr. HUGHES (Bendigo—Prime Minister and Attorney-General) [11.30].—(*By leave.*)—On the 7th April, 1921, I made a statement to this House setting out the principal questions to be considered at the Conference, and giving reasons why Australia should be represented. Let me remind you of what I then said—.

The Conference has been summoned to deal with questions of foreign policy, naval defence, and the renewal of the Anglo-Japanese Treaty. Certain other subsidiary matters are also set out on the agenda-paper. One relates to communications (including wireless) between various parts of the Empire; but I shall direct my remarks mainly to those matters which are of fundamental importance.

I emphasized the importance of foreign policy to Australia in general and the Anglo-Japanese Treaty in particular, the dependence of the Empire on sea power, and expressed my opinion that the Treaty ought to be renewed, and in such form, if that should prove by any means possible, as would be satisfactory to America. I concluded by saying—

If I am asked if the Commonwealth is to be committed to anything done at the Conference, I say, quite frankly, that this Parliament will have the amplest opportunity of expressing its opinion on any scheme of naval defence that is decided upon before the scheme is ratified.

As to the renewal of the Treaty with Japan, this is my attitude, and I submit it to the consideration of honorable members: I am in favour of renewing the Treaty in any form that is satisfactory to Britain, America, and ourselves. I am prepared to renew it in these circumstances. If it is suggested that the renewal should take the form which would involve the sacrifice of those principles which we ourselves regard as sacred, I am not prepared to accept it. In such circumstances, I shall bring back the Treaty to this Parliament. I think I have put the situation clearly; and since these matters have sometimes to be settled quickly, I want honorable members to say whether they will give me the authority I ask for.

With regard to the expenditure involved in any naval scheme, the House will not be committed to the extent of one penny. The scheme will be brought before Parliament, and honorable members will be able to discuss, and accept or reject it.

Honorable members, therefore, were fully aware of the main objects of my mission and of my attitude towards them. I undertook not to commit Australia to any expenditure unless approved by Parliament. The Parliament gave me the authority I asked for, and on the 28th April I left for London. I have been absent just five months, and now, at the earliest possible moment after my return, I propose to inform the Parliament and the country of what the Conference did.

I need hardly say that the pledges given by me have been carried out, not only to the letter, but in the spirit. The Commonwealth is not committed to any expenditure. Everything done is subject to parliamentary approval, and Parliament will have the fullest opportunity of expressing its opinions.

Before plunging into the details of the subjects dealt with in London, a few prefatory words about the Conference itself seem called for.

The recent meeting of the Prime Ministers of Great Britain and the overseas Dominions differed in many respects from those which preceded it. Prior to the war, Imperial Conferences were ceremonious and social functions rather than serious attempts to co-ordinate the activities of a far-flung Empire. The experiences of war showed clearly that as the safety of every part of the Empire depended upon united action, means for insuring to each member an effective share in guiding its course must be devised. Matters over which we had no control, in shaping which we had no voice, about which we were indeed quite ignorant, had led to a declaration of war by Great Britain in 1914. A bolt had fallen from the blue; Britain was at war; as part of the Empire we were involved. Britain had done much for us, under her sheltering wing we had rested for over a century

in perfect peace and security. Our hour of great trial had come; we had to prove ourselves worthy of the traditions of our race and our liberties, or perish.

The war has changed many things. It has destroyed dynasties, uprooted ancient institutions, readjusted the boundaries of the nations, and created many difficult problems; but it has also given us a wider and more splendid concept of Empire. We have realized that the British Empire is a partnership of free nations, every one being free to act as it pleases, yet all united in council and in action. Our isolation did not insure our safety. Before the war, we had stood aloof from world politics, yet the maelstrom of war engulfed us, and this young Democracy has proved itself worthy of its breeding and of its liberties. The legions of Australia fought alongside those of Britain and the other Dominions. Our ships were on every sea; our armies in the forefront of the far-flung battle line in Europe and Asia. We had been a Dominion; the war made us a nation within the Commonwealth of Nations. The admission of the representatives of the Dominions into the Imperial War Cabinet marked the first great step in the new era. Then came the Peace Conference on which the Dominions were granted separate representation, and sat on a footing of equality with the great nations of the earth. But not only was our status as nations thus conceded, but by virtue of our membership of the British Empire we exercised an influence and wielded an authority far greater than that of the majority of the nations gathered round the Peace Table, for as members of the British Empire Delegation—the name by which the Imperial Cabinet was known during the Peace Conference—we enjoyed privileges denied to all save the great Powers; we were consulted on the vital matters which came before the Council of the Four, and our voices and votes shaped the policy which the British representatives urged in that Council. We affixed our signatures to the Versailles Treaty.

The status granted in War has been confirmed in times of Peace. Mr. Lloyd George in his opening Speech to the Conference said:—

> In recognition of their services and achievements in the war the British Dominions have now been accepted fully into the comity of the nations of the whole world. They are signatories to the Treaty of Versailles and of all other Treaties of Peace; they are members of the Assembly of the League of Nations, and their representatives have already attended meetings of the League; in other words, they have achieved full national status, and they now stand beside the United Kingdom as equal partners in the dignities and responsibilities of the British Commonwealth. If there are any means by which that status can be rendered even more clear to their own communities and to the world at large, we shall be glad to have them put forward at this Conference.

In these words, the Prime Minister of Britain, the President of the Conference, set out in clear unambiguous language the concept of a partnership of free nations, all equal in dignity and responsibility, to which the Conference subsequently formally and officially set its seal.

I ask this House and this country to note all that is involved in these words of the Prime Minister of Britain, accepted by his colleagues and indorsed by the Conference, I ask them to contrast this concept of a British Commonwealth comprised of free nations, each enjoying the status of nationhood, each claiming and being accorded an equal voice in shaping Empire policy, with that other concept, which, not many years ago, stood unchallenged—of Britain supreme in power and authority, deciding without question the destiny of all. In those days when one spoke of Empire the British communities oversea seemed only the appanages of Britain's glory; Britain loomed so large as to dwarf all others. In the minds of men Britain was the Empire.

But the years have passed; much water has run under the bridges, much blood has been shed; the Dominions have established their right to be treated as equals, and Britain, not waiting for formal demand, has been the first to acclaim and gladly welcome us as her equal, and bid us sit with her at the Council table of Empire.

The Imperial Conference of 1921 was one in which all members met as equals to discuss not the prosecution of a war, on which common agreement was easily attainable, but the intricacies of foreign policy in many countries and the measures necessary for the safety and prosperity of the whole Empire.

For the first time, then, in the history of this great Empire the representatives

ANNEXURE 13

1. **Copy of extracts Parliamentary Debates House of Representatives September 10, 1919 Specific reference: p1219**

2. **Copy of Treaty of Peace Act No. 20 of 1919**

3. **Copy of Treaty of Peace Act No. 39 of 1920**

4. **Extract from Commonwealth Parliamentary paper *'Trick or Treaty – Commonwealth Power to Make and Implement Treaties'***

is immaterial to the Government whether any of these individuals is a member of an association or not. A pledge was given to men who did certain things at a certain time. That pledge will be honoured.

Senator BAKHAP.—Hear, hear! I hope so!

Senator MILLEN.—But the Government does not intend that other persons who came in afterwards, and enrolled in an association which had been formed by the men to whom the Government had given that pledge, shall reap where they have not sown.

Senator BAKHAP.—But, surely, investigation will prove the merits of the matter!

Senator MILLEN.—That is just what I was about to say. We cannot accept the statements of the men who claim the benefits of our pledge as sufficient in themselves. Senator Bakhap would not suggest that. Every man will be given opportunity to prove his claim—to show whether or not he did come to the rescue of the Government at the time when it asked him to do so. I am desirous that the pledge of the Government shall be carried out, both in the letter and in the spirit. We do not propose, however, to permit those who in no sense came to the country's help at first, but came afterwards—those who are hangers-on to the others—to secure the benefit of the pledge given to other men.

Question resolved in the affirmative.

Senate adjourned at 3.14 p.m.

House of Representatives.

Wednesday, 10 September, 1919.

Mr. SPEAKER (Hon. W. Elliot Johnson) took the chair at 3 p.m., and read prayers.

ASSENT TO BILLS.

Assent to the following Bills reported:—

Moratorium Bill.
Commercial Activities Bill.
Wireless Telegraphy Bill.

[459]—2

PAPERS.

The following papers were presented:—

Peace Treaty.—Between the Allied and Associated Powers and Germany, signed at Versailles, 28th June, 1919.

Ordered to be printed.

Customs Act—Regulations Amended—Statutory Rules 1919, No. 205.
Defence Act—Regulations Amended—Statutory Rules 1919, Nos. 204, 206, 207, 208.
Entertainments Tax Assessment Act—Regulations Amended—Statutory Rules 1919, No. 211.
Lands Acquisition Act—Land acquired under, at—
- Adelaide, South Australia—for Repatriation purposes.
- Brisbane, Queensland—for Repatriation purposes.
- Port Adelaide, South Australia—For Customs purposes.

Northern Territory—Ordinance of 1919—No. 10—Deputy Administrator.
Public Service Act—Promotions—Department of the Treasury—
- G. C. Allen, M. D. Briggs, E. O. Walters.
- W. Hayes, J. A. W. Stevenson.
- H. Kinnish, H. C. Higgins, C. T. C. Hills, F. G. H. Garrett.

War Precautions Act—Regulations amended—Statutory Rules 1919, No. 203.

TREATY OF PEACE.

Mr. HUGHES (Bendigo—Prime Minister and Attorney-General) [3.4].—I desire, by leave, to move—

That this House approves of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles on the 28th June, 1919.

I wish also to move—

That this House approves the Treaty made at Versailles on the 28th June, 1919, between His Majesty the King and the President of the French Republic, whereby, in case the stipulations relating to the left bank of the Rhine, contained in the Treaty of Peace with Germany, signed at Versailles on the 28th day of June, 1919, by the British Empire, the French Republic, and the United States of America, among other Powers, may not at first provide adequate security and protection to France, Great Britain agrees to come immediately to her assistance in the event of any unprovoked movement of aggression against her being made by Germany.

I think it would be better for the House to deal with the two motions in the one debate. They can be put separately.

Mr. TUDOR.—Can we do that, Mr. Speaker?

Mr. SPEAKER (Hon. W. Elliot Johnson).—It would be a rather novel and inconvenient procedure to have two

motions before the House at the one time, although, if the two relate practically to the same matter, their separate discussion might lead to overlapping and repetition of the same matter. Perhaps the two could be incorporated in one motion divided into two parts.

Mr. HUGHES.—Very well, sir. My purpose will be served if I move the first motion, and merely give notice of the second.

Mr. SPEAKER.—Is it the pleasure of the House that the Prime Minister have leave to move his motion without notice?

HONORABLE MEMBERS.—Hear, hear!

Mr. SPEAKER.—Leave is granted.

Mr. HUGHES.—I move —

> That this House approves of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles on the 28th June, 1919.

Plunged as I am into an atmosphere with which I am very familiar, yet from which I have been absent for many months, I feel that I must preface what I have to say in regard to the motion by expressing my satisfaction at being once more among those with whom I have been associated so long.

Since I left for England no less than four men who have been members of this House during the period in which most of us have had the honour of representing the people here have died. I refer to Lord Forrest, Sir George Reid, Mr. Manifold, and Mr. Palmer. Their deaths have come in at least two cases without warning. All were men who did their work manfully, and endeavoured to serve their country to the very best of their ability. I wish to express my deep regret at their death, and to say how much I sympathize with those whom they have left behind.

I find myself to-day confronted with a task which, for many reasons, presents a thousand difficulties. I have laid on the table of the House a copy of the Treaty of Versailles, which is not as other Treaties that have marked the cessation of war and the making of peace between contesting nations in the days that have gone. It is a document of monumental importance, the like of which the world has never before seen. It not only makes peace between Germany and the Allied and Associated Powers, but it also reapportions great areas of territory in Europe, Asia, the Pacific, and Africa. It is the charter of a new world. We must examine it in that light, if we wish to ascertain whether it is worthy of the ideals for which the Allies fought and the sacrifices which they made to realize them.

It would be quite impossible to present to this House the reasons for the acceptance of this Treaty without a glance at the circumstances which existed at and before our departure from Australia, and also of those which immediately preceded the negotiations, long drawn out, of which this Treaty is the result. Before my right honorable colleague (Sir Joseph Cook) and myself left Australia, the fortunes of the Allies had reached their nadir. It is no abuse of words to say that their position was almost desperate. How desperate it was, can hardly be realized by those who have lived these five years in a land remote from the faintest echoes of this world-wide strife, and who, sheltered behind the barrier of the valour and heroism of the millions who fought so gloriously for freedom and for those other great ideals upon which civilization rests, pursued the even tenor of their way, basking in sunshine, and enjoying indeed a prosperity which was unhappily not shared by the great majority of the peoples of the world.

A month or so before we left Australia, and at the very time when a Recruiting Conference, called by His Excellency the Governor-General, was being held at Government House, in this city, the great German offensive was launched against the sorely-tried British front. On the 21st March, 1918, the legions of the enemy, inspired by the hope of speedy victory, and having at their disposal an overwhelming superiority of numbers at that point, hurled themselves against the Fifth Army, which, resisting valiantly, was, after some days, bruised and beaten, and driven back in headlong retreat. It is well-nigh impossible for honorable members to realize to the full all that the piercing of the Allied line meant, not merely to Europe and to the capital of France, which it directly threatened, but to all the world. Let me try to set out, as well as I can in the poor words that I can summon at this moment, the position as it then was. There is no need for the language of exaggeration. It was a posi-

which Australia had fought was guaranteed; and, as is well known to the people of Australia, I took the earliest possible opportunity of making a strong and emphatic protest against what had been done.

I wish to make clear to the House what I did, for my attitude, as well as my utterances, have been much misrepresented in Australia. I did not claim that the representatives of the Dominions should have been summoned to Versailles. Nothing was further from our thoughts. The settlement of the terms of the Armistice was a military matter, with which I was totally unfitted to deal, as, indeed, were all the representatives of the Dominions. But in regard to the terms of Peace, the Dominions had been assured—nay, every one of them had a right to expect, apart from any assurance—that they would be consulted before those terms were settled. We were not consulted, and, speaking in London on, I think, the day following the issue of the Allied Note, I said—

> We went into this war to fight for liberty and the rights of small nations. We are a small nation, conscious of our national spirit, and jealous of our rights and liberties. Germany threatened our territorial integrity and our political liberty. We, along with the Allies, have won, after four years of fearful sacrifice, a decisive victory. We have a right to demand a victorious peace. We have a right to demand that in the terms of Peace our territorial integrity shall be guaranteed, that those islands, which are the gateways to our citadel, shall be vested in us, not because we want territory, but because we desire safety. The terms of Peace do not guarantee that this shall be done.
>
> Before the war we had the right to make what laws we pleased. These Peace terms seem to imperil, or, at best, impair, that right. We claim the right, and shall insist upon it, to make what Tariff distinctions we like; and we feel sure that in this demand we shall have, not only the support of the people of Britain, but that of America, that great Republic, the foundations of whose greatness rest upon their War of Independence, waged to establish this very right. And, lastly, we claim that indemnities shall be exacted from Germany, who plunged the whole world into bloody war.
>
> Victory is ours—complete and overwhelming. We have fought for liberty, for right, and national safety; yet in the terms of Peace these rights and ideals are not safeguarded. All is vague and uncertain, where it should be clear and definite.
>
> Australia stands, after four years of dreadful war, her interests not guaranteed, her rights of self-government menaced, and with no provision made for indemnities. That is

Mr. Hughes.

> the position, and it can hardly be regarded as satisfactory.

What Australian will say that I did wrong? Who shall say that Australia, after having suffered over four and a half years of war, and having made such sacrifices, should not be clearly and freely guaranteed those things without which she could not live as a free nation? I did not say that President Wilson's fourteen points prevented us from getting these; I said that they did not guarantee them. They guaranteed to France the return of Alsace Lorraine, and to other nations many things. Later I shall show this House and the country how those fourteen points hampered and limited us throughout the Peace negotiations, and how great was the price we and the whole world paid for their adoption. I have always been one of the first to recognise the many and great services rendered by President Wilson to this world, and rendered by America in the war. I am one of those who believe that had America had a chance to express her opinion, she, too, like ourselves, would have been in favour of a victorious Peace, rather than one based on President Wilson's fourteen points.

Because this Treaty and this Conference differed from others in that it rested upon the foundations of open covenants, openly arrived at, I need make no apology for stating clearly to this House and to the people of this country, whom we all serve, some of those things which, in other Treaties, are placed in secret archives. It is only right that the whole world should know how this Treaty has been arrived at, and what it really means.

I have said that I thought it proper that Australia should have been consulted, as other belligerents have been, concerning the terms of Peace. It may be said, of course, that the terms of Peace were not based on President Wilson's fourteen points. But the facts speak for themselves. I shall quote some that will be sufficient. It was abundantly evident to my colleague and to myself, as well as to the representatives of other Dominions, that Australia must have separate representation at the Peace Conference. Consider the vastness of the Empire, and the diversity of interests represented. Look at it geographically, industrially, politically, or how you will, and it will be seen that no one can speak for Australia

but those who speak as representatives of Australia herself. Great Britain could not, in the very nature of things, speak for us. Britain has very many interests to consider besides ours, and some of those interests do not always coincide with ours. It was necessary, therefore—and the same applies to other Dominions—that we should be represented. Not as at first suggested, in a British panel, where we would take our place in rotation, but with separate representation like other belligerent nations. Separate and direct representation was at length conceded to Australia and to every other self-governing Dominion.

By this recognition Australia became a nation, and entered into a family of nations on a footing of equality. We had earned that, or, rather, our soldiers had earned it for us. In the achievement of victory they had played their part, and no nation had a better right to be represented than Australia. This representation was vital to us, particularly when we consider that at this world Conference thirty-two nations and over 1,000,000,000 people were directly represented. It was a Conference of representatives of the people of the whole world, excepting only Germany, the other enemy Powers, Russia, and a few minor nations. In this world Conference, the voice of this young community of 5,000,000 people had to make itself heard. In this gathering of men representing nations with diverse and clashing interests, Australia had to press her views, and to endeavour to insist upon their acceptance by other nations. Without such representation that would have been impossible.

Let me give honorable members some idea of the Conference, which consisted of more than seventy delegates—about as many as there are honorable members of this Chamber—men of all colours, and from every part of the world. There were representatives from China, Japan, Liberia, Hayti, Siam, Brazil, America, Britain, India, Roumania, Poland, and Greece. There were men speaking diverse tongues, and having ideals as far asunder as the poles. There were interests which had their origin in thousands of years of tradition, and in race and geographical position. Here was Australia, an outpost of the Empire, a great continent peopled by a handful of men, called upon to defend, amongst other things, a policy which could not be understood, and which was not understood, by those with whom we consorted. I speak of the policy of a White Australia. Imagine the difficulties of the position, and the clashing of warring interests; for, while the world changes, human nature remains ever the same. While there was a sincere desire to obtain a just Peace, each nation's conception of justice differed. Each nation desired what it considered necessary for its own salvation, though it might trench on the liberties, rights, or material welfare of others.

The full Conference was too unwieldy a body for the delicate and difficult work of drafting the Treaty, or arriving at agreements upon which it might be drafted. Therefore, the work was really done by the Council of Ten—that is to say, by the representatives of the five Great Powers, Great Britain, France, the United States of America, Italy, and Japan—by special Commissions of foreign Ministers dealing with territorial claims, and by informal diplomatic conversations and interviews between various delegates seeking to support and promote the welfare of their own countries. Commissions were appointed to deal with dozens of different matters. My right honorable friend, the Minister for the Navy (Sir Joseph Cook) was appointed upon the Czechc-Slovak Commission. I do not know whether he will speak to you now in the tongue of the Czecho-Slovaks, but, if so, we shall give him, if not an enthusiastic, at least a cordial reception. I had been chairman of the British Reparation Committee, which held its meetings in London prior to the Conference, and I was vice-chairman of the Allied Commission which met in Paris, and comprised representatives of all the nations chiefly interested in reparation.

The draft Treaty was presented to Germany on 7th May, 1919, and was, as you know, the subject of many communications between Count von Brockdorff Rantzau and the Allies. In its modified form it was finally accepted, and signed at Versailles on 28th June, 1919. The Treaty is before the House. It is a document monumental in more senses than one. It is not only the charter of a new world, it

6. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act. **Regulations.**

TREATY OF PEACE.

No. 20 of 1919.

An Act to carry into effect the Treaty of Peace with Germany.

[Assented to 28th October, 1919.]

WHEREAS at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace with Germany (including a protocol annexed thereto) a copy of which has been laid before each House of the Parliament, was signed by representatives of the Commonwealth of Australia on behalf of His Majesty the King, and it is expedient that the Government of the Commonwealth should have power to do all such things as are necessary and expedient for giving effect to the said Treaty on the part of the Commonwealth: **Preamble.**

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 :—

1. This Act may be cited as the *Treaty of Peace Act* 1919. **Short title.**

2. The Governor-General may make such regulations and do such things as appear to him to be necessary for carrying out and giving effect to the provisions of Part X. (Economic Clauses) of the said Treaty. **Regulations.**

3. The regulations may provide for the punishment of offences against the regulations, by the impositions of the following penalties :— **Contraventions of regulations.**

(*a*) If the offence is prosecuted summarily—a fine not exceeding Five hundred pounds or imprisonment for any term not exceeding twelve months; or both ;

(*b*) If the offence is prosecuted upon indictment—a fine of any amount or imprisonment for not more than seven years, or both.

Duration of *Judiciary Act* 1915.

3. Section one of the *Judiciary Act* 1915 is amended by omitting sub-section (4.) thereof, and that Act shall continue in force as if that sub-section had not been enacted.

4. After section thirty-three of the Principal Act the following section is inserted :—

Awards may be made Rules of Court.

"33A. The High Court may by order direct that an award in an arbitration in respect of any matter over which the High Court has original jurisdiction, or in respect of which original jurisdiction may be conferred upon the High Court, shall be a Rule of the High Court.".

Jurisdiction of State Courts in criminal cases.

5. Section sixty-eight of the Principal Act is amended—

(*a*) by inserting in sub-section (1.) thereof, after the word "shall" the words ", subject to this section,"; and

(*b*) by adding at the end thereof the following sub-section :—

"(4.) The several Courts of a State exercising the jurisdiction conferred upon them by this section shall, upon application being made in that behalf, have power to order, upon such terms as they think fit, that any information laid before them in respect of an offence against the laws of the Commonwealth shall be amended so as to remove any defect either in form or substance contained in that information.".

TREATY OF PEACE (GERMANY).

No. 39 of 1920.

An Act to amend the *Treaty of Peace Act* 1919.

[Assented to 10th November, 1920.]

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

Short title and citation.

1.—(1.) This Act may be cited as the *Treaty of Peace* (*Germany*) *Act* 1920.

(2.) The *Treaty of Peace Act* 1919, as amended by this Act, may be cited as the *Treaty of Peace* (*Germany*) *Act* 1919–1920.

Commencement.

2. This Act shall be deemed to have commenced on the day on which the *Treaty of Peace Act* 1919 commenced.

3. After section one of the *Treaty of Peace Act* 1919 the following section is inserted :—

Application of Act to Territories.

"1A. This Act shall apply to the Territories under the authority of the Commonwealth, including any territory governed by the Commonwealth under a mandate.".

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

TRICK OR TREATY? COMMONWEALTH POWER TO MAKE AND IMPLEMENT TREATIES

Report by the
Senate Legal and Constitutional References Committee

November 1995

capacity.[11] The British Foreign Office rejected this view, on the grounds that both before and after federation, treaties were made in the name of the monarch of Great Britain, and this had not changed. The Secretary of State for Foreign Affairs stated:

> A Treaty binding upon an Australian Colony, prior to Federation, was not from an international point of view between the particular colony and the particular foreign country concerned, but between the British Government and that power. The obligation of the Sovereign was in respect of a certain portion of his Dominions, viz. a certain Australian Colony, and that obligation was not based upon the particular character of the government in force in that Colony, nor can it be lessened by the entry of the Colony into a Federation, which is also part of his Dominions.[12]

4.12 .During World War I, the significant contributions of the Dominions to the war effort resulted in them being invited to participate in the Imperial War Cabinet and the Imperial War Conference. The Imperial War Conference passed a resolution in 1917 that a subsequent Imperial Conference be convened which would consider the 'readjustment of the constitutional relations of the component parts of the Empire' and base any readjustment on the recognition of the Dominions as 'autonomous nations of an Imperial Commonwealth' with the right to 'an adequate voice in foreign policy and in foreign relations'.[13]

4.13 After the First World War, Australia was separately represented at the Peace Conference, and the Dominions began to exercise greater powers in the area of external affairs. Australia became an independent member of the League of Nations and the International Labour Organisation in 1919.[14] In both these fora, the Dominions were given separate votes and their representatives were accredited by, and responsible to, their own Dominion Governments, rather than the Imperial Government. They did not always vote

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11 Opinion dated 16 January 1902, Attorney-General's Department, *Opinions of the Attorneys-General of the Commonwealth of Australia,* Vol 1, AGPS, Canberra, 1981: p 47.

12 Quoted in: G. Doeker, *The Treaty-Making Power in the Commonwealth of Australia,* The Hague, Martinus Nijhoff, 1966: p 50.

13 G. Doeker, *The Treaty-Making Power in the Commonwealth of Australia,* The Hague, Martinus Nijhoff, 1966: p. 10.

14 For a discussion on the status of the Dominions in signing the Treaty of Versailles and becoming separate members of the League of Nations, see: A.B. Keith, *Responsible Government in the Dominions,* 2nd ed., Clarendon Press, Oxford, 1928: pp. 877-893; and P.J.N. Baker, *The Present Juridical Status of the British Dominions in International Law,* Longmans, Green & Co., 1929: pp. 67-81.

in the same manner as Great Britain.[15] This admission to the League and the International Labour Organisation involved recognition by other countries that Australia was now a sovereign nation with the necessary 'international personality' to enter into international relations.[16]

4.14 At the Imperial Conference in 1923, it was recognised that the different Governments of the Empire had the right to make treaties with foreign powers, subject to a duty to consider any potential effect on other parts of the Empire, and a duty to inform other Empire Governments of their intentions. Bilateral treaties which imposed obligations on one part of the Empire only, could be signed by a representative of that part of the Empire. Treaties negotiated at international conferences were to be signed by representatives on behalf of all the governments of the Empire represented at the Conference.[17]

4.15 The Imperial Conference resolution of 1923 made the following statement about ratification of treaties:

> (a) The ratification of treaties imposing obligations on one part of the Empire is effected at the instance of the government of that part;
>
> (b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the governments of those parts of the empire concerned. It is for each government to decide whether Parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that government.[18]

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15 M. Lewis, 'The International Status of the British Self-Governing Dominions' (1922-23) 3 *British Year Book of International Law,* 21 at p. 33.

16 H.V. Evatt, *The Royal Prerogative,* Law Book Co., 1987: p. 151; J.G. Starke, 'The Commonwealth in International Affairs' in R. Else-Mitchell (ed.), *Essays on the Australian Constitution,* 2nd ed., Law Book Co., Sydney, 1961, 343, at 349. See also the statement made by the British Prime Minister, Mr Lloyd George, at the 1921 Conference of Prime Ministers, quoted in R. Stewart, *Treaty Relations of the British Commonwealth of Nations,* MacMillan Co., New York, 1939: pp. 152-3.

17 See copy of the Conference Resolution in: J.G. Latham, *Australia and the British Commonwealth,* MacMillan and Co. Ltd, London, 1929: pp 131-133.

18 J.G. Latham, *Australia and the British Commonwealth,* MacMillan and Co. Ltd, London, 1929: p 133.

ANNEXURE 14

COPY OF FULL POWERS DOCUMENTS ISSUED TO AUSTRALIAN PLENIPOTENTIARIES ATTENDING THE UNITED NATIONS CONFERENCE IN SAN FRANSISCO, 1945

W H E R E A S the Government of the Commonwealth of Australia has accepted the invitation issued by the Government of the United States of America on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the Republic of China, to send representatives to the Conference of the United Nations which is now being held at San Francisco to prepare a charter for a general international organization for the maintenance of international peace and security A N D W H E R E A S it is expedient that fit persons should be invested with Full Power to sign for and on behalf of the Government of the Commonwealth of Australia any agreement or agreements which may be adopted at the said Conference N O W T H E R E F O R E T H E S E P R E S E N T S C E R T I F Y that the RIGHT HONOURABLE FRANCIS MICHAEL FORDE is duly named constituted and appointed as a Plenipotentiary and Representative having Full Power and Authority to sign for and on behalf of the Government of the Commonwealth of Australia subject if necessary to ratification any agreement or agreements which may be adopted at the United Nations Conference on International Organization.

IN WITNESS WHEREOF I, NORMAN JOHN OSWALD MAKIN, Acting Minister of State for External Affairs have executed these presents.

D A T E D this day of June in the year of Our Lord one thousand nine hundred and forty-five.

W H E R E A S the Government of the Commonwealth of Australia has accepted the invitation issued by the Government of the United States of America on behalf of itself and of the Governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the Republic of China, to send representatives to the Conference of the United Nations which is now being held at San Francisco to prepare a charter for a general international organization for the maintenance of international peace and security A N D W H E R E A S it is expedient that fit persons should be invested with Full Power to sign for and on behalf of the Government of the Commonwealth of Australia any agreement or agreements which may be adopted at the said Conference N O W T H E R E F O R E T H E S E P R E S E N T S C E R T I F Y that the RIGHT HONOURABLE HERBERT VERE EVATT, K.C., LL.D., is duly named constituted and appointed as a Plenipotentiary and Representative having Full Power and Authority to sign for and on behalf of the Government of the Commonwealth of Australia subject if necessary to ratification any agreement or agreements which may be adopted at the United Nations Conference on International Organization.

IN WITNESS WHEREOF I, NORMAN JOHN OSWALD MAKIN, Acting Minister of State for External Affairs have executed these presents.

D A T E D this day of June in the year of Our Lord one thousand nine hundred and forty-five.

ANNEXURE 15

COPY OF CHARTER OF THE UNITED NATIONS ACT 1945

CHARTER OF THE UNITED NATIONS ACT 1945 - TABLE OF PROVISIONS

TABLE OF PROVISIONS

Section

PART 1 - PRELIMINARY

1. Short title
2. Interpretation
3. Extension to external Territories
4. Act binds the Crown

PART 2 - APPROVAL OF CHARTER

5. Approval

PART 3 - REGULATIONS TO APPLY SECURITY COUNCIL SANCTIONS

Division 1 - Making and effect of regulations

6. Regulations may apply sanctions
7. Regulations may have extra-territorial effect
8. Regulations expire when sanctions resolution ceases to bind Australia
9. Effect of regulations on earlier Commonwealth Acts and on State and Territory laws
10. Later Acts not to be interpreted as overriding this Part or the regulations
11. Other instruments giving effect to Security Council decisions

Division 2 - Enforcing the regulations

12. Offences
13. Injunctions

THE SCHEDULE
CHARTER OF THE UNITED NATIONS

CHARTER OF THE UNITED NATIONS ACT 1945

1 The Charter of the United Nations Act 1945 comprises Act No. 32, 1945 amended as indicated in the Tables below.

Table of Acts

Act	Date	Date of of assent year	Application commencement	Number and saving or transitional provisions
Charter of the United Nations Act 1945	32, 1945	24 Sept 1945	22 Oct 1945	
Charter of the United Nations Amendment Act 1993	30, 1993	9 June 1993	9 June 1993	

Table of Amendments

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

Provision affected	How affected
Title	rs. No. 30, 1993
Preamble	rep. No. 30, 1993
Heading to Part 1	ad. No. 30, 1993
S. 3	rs. No. 30, 1993
S. 4	ad. No. 30, 1993
Part 2 (s. 5)	ad. No. 30, 1993
S. 5	ad. No. 30, 1993
Part 3 (ss. 6-13)	ad. No. 30, 1993
Ss. 6-13	ad. No. 30, 1993

CHARTER OF THE UNITED NATIONS ACT 1945 - LONG TITLE

An Act to approve the Charter of the United Nations, and to enable Australia to apply sanctions giving effect to certain decisions of the Security Council

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Charter of the United Nations Act 1945.*1*
SEE NOTES TO FIRST ARTICLE OF THIS CHAPTER.

Interpretation

2. In this Act "the Charter of the United Nations" means the instrument so entitled which was signed at the city of San Francisco on the twenty-sixth day of June, One thousand nine hundred and forty-five and which provides for the establishment of an international organization to be known as the United Nations.

Extension to

3. This Act extends to every external Territory.

Act binds the Crown

4. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
(2) Nothing in this Act renders the Crown in any right liable to be prosecuted for an offence.

PART 2 - APPROVAL OF CHARTER

Approval

5. The Charter of the United Nations (a copy of which is set out in the Schedule) is approved.

PART 3 - REGULATIONS TO APPLY SECURITY COUNCIL SANCTIONS

Division 1 - Making and effect of regulations

Regulations may apply sanctions

6. The Governor-General may make regulations for and in relation to giving effect to decisions that:
(a) the Security Council has made under Chapter VII of the Charter of the United Nations; and
(b) Article 25 of the Charter requires Australia to carry out; in so far as those decisions require Australia to apply measures not involving the use of armed force.

Note: Articles 39 and 41 of the Charter provide for the Security Council to decide what measures not involving the use of armed force are to be taken to maintain or restore international peace and security.

Regulations may have extra-territorial effect

7. (1) The regulations may be expressed to have extra-territorial effect.
(2) If they are so expressed, they have effect accordingly, and so does Division 2 of this Part.

Regulations expire when sanctions resolution ceases to bind Australia

8. (1) In so far as the regulations provide for or in relation to giving effect to a particular decision of the Security Council:
(a) they cease to have effect when Article 25 of the Charter of the United Nations ceases to require Australia to carry out that decision; and
(b) they do not revive, even if Australia again becomes required to carry out the decision.
(2) However, to avoid doubt, nothing in this section prevents the repeal of regulations, or the making of regulations that are the same in substance as regulations that have ceased to have effect because of this section.

Effect of regulations on earlier Commonwealth Acts and on State and Territory laws

9. The regulations have effect despite:
(a) an Act enacted before the commencement of this section; or
(b) an instrument made under such an Act (including such an instrument made at or after that commencement); or
(c) a law of a State or Territory; or
(d) an instrument made under such a law; or
(e) any provision of the Corporations Act 1989 or of the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, of the Australian Capital Territory; or
(f) an instrument made under such a provision.

Later Acts not to be interpreted as overriding this Part or the regulations

10. (1) An Act enacted at or after the commencement of this section is not to be interpreted as:
(a) amending or repealing, or otherwise altering the effect or operation of, a provision of this Part or of the regulations; or
(b) authorising the making of an instrument amending or repealing, or otherwise altering the effect or operation of, a provision of this Part or of the regulations.
(2) Subsection (1) does not affect the interpretation of an Act so far as that Act provides expressly for that Act, or for an instrument made under that Act, to have effect despite this Act, despite the regulations, or despite a specified provision of this Act or of the regulations.

Other instruments giving effect to Security Council decisions

11. To avoid doubt, the validity or operation of an instrument made under another Act is not affected merely because the instrument was made in connection with giving effect to a decision of the Security Council.

DIVISION 2 - Enforcing the regulations

Offences

12. (1) The regulations may prescribe penalties of not more than 50 penalty units for offences against the regulations.

(2) The limitation on penalties in subsection (1) does not prevent the regulations from requiring someone to make a statutory declaration.

Injunctions

13. (1) If a person has engaged, is engaging, or proposes to engage, in conduct involving a contravention of the regulations, a superior court may by order grant an injunction restraining the person from engaging in conduct specified in the order.

(2) An injunction may only be granted on application by the Attorney-General.

(3) On an application, the court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the court is satisfied that subsection (1) applies.

(4) A superior court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.

(5) A court is not to require the Attorney-General or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.

(6) A court may discharge or vary an injunction it has granted.

(7) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in such conduct; and

(b) whether or not the person has previously engaged in such conduct.

(8) In this section:

"superior court" means the Federal Court of Australia or the Supreme Court of a State or Territory.

THE SCHEDULE

CHARTER OF THE UNITED NATIONS

WE THE PEOPLES OF THE UNITED NATIONS

DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS
to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS
Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

ANNEXURE 16

1. Copies of letters from Office of Attorney General

2. Copies of letters from Australian Government Solicitor

Office of Attorney-General

2 7 OCT 1997

20/97087084

Mr Wolter Joosse
6 Apsley Place
SEAFORD VIC 3198

Dear Mr Joosse

I refer to your letter to the Queen's private secretary, Sir Robert Fellows, dated 17 July 1997. You have sought information about the constitutional bases of the roles of the Queen and her 'vice-regal' representatives in Australian government. As you would be aware, your letter was forwarded to the Official Secretary to the Governor-General and then to the office of the Attorney-General. I have been asked to reply on the Attorney-General's behalf.

As you state in your letter, Australia is an independent nation and is recognised as such internationally. Nevertheless, the Queen retains a place in Australian government. Section 1 of the Commonwealth Constitution states that the Commonwealth Parliament consists of a House of Representatives, a Senate and the Queen. Under section 2 the Queen is empowered to appoint the Governor-General as her representative. Under section 61 the executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General. The Queen is Australia's head of state.

Despite the terms of the Constitution, the Queen does not play a day to day role in Australian government. Those few functions which the Queen does perform are performed in accordance with advice from the Commonwealth government of the day. It is in practice the Governor-General who performs a broader range of functions, also on the advice of the government. For example, under section 64, the Governor-General appoints ministers and creates departments of state. As mentioned, section 61 provides that the executive power of the Commonwealth is exercisable by the Governor-General.

Returning to the Queen's role, the Constitutional Commission observed in its Final Report of 1988 that the disappearance of the British empire has meant that the Queen is now sovereign of a number of separate countries such as the United Kingdom, Canada, Australia and New Zealand. The Commission pointed out that, as Queen of Australia, the Queen holds an entirely distinct and different position from that which she holds as Queen of the United Kingdom (or any other country). You might be interested to note the Commission's acknowledgment of a statement by a former Chief Justice of the High Court in *Pochi v Macphee* (1982) 151 CLR 101, 109. The former Chief Justice stated that '[t]he allegiance which Australians owe to Her Majesty is owed not as British subjects but as subjects of the Queen of Australia'.

You have asked in particular about the practice of issuing letters patent in relation to the office of 'Governor'. I am advised that letters patent 'constituting' the office of Governor-General of Australia were issued on 29 October 1900 under the great seal of the United Kingdom by Queen Victoria as Queen of the United Kingdom. Amendments of the letters patent issued in 1900, made on 4 December 1958, were approved by Queen Elizabeth II on the advice of the Australian government. On 24 August 1984 the letters patent issued in 1900 were revoked and new letters patent were issued by Queen Elizabeth II as Queen of Australia under the great seal of Australia, once again on the advice of the Australian government. Other letters patent, since revoked, were issued in 1954 and 1973.

The Constitutional Commission has noted that the letters patent of 29 October 1900 'constituting' the office of Governor-General duplicated a number of the provisions in the Constitution conferring powers on the Governor-General, and also granted some other powers which are now clearly among the powers embraced by section 61 of the Constitution. The Commission has observed that the letters patent of 21 August 1984 eliminated these redundant clauses and at the same time revoked the royal instructions to the Governor-General dated 29 October 1900.

I am advised that the state constitutions also reflect the central role of the Crown as part of the parliament and executive government of each state and that the office and powers of a state Governor are established or continued by either letters patent issued by the monarch or by state constitutional legislation. I am also advised that, under section 7 of the *Australia Act 1986*, the state Governors are appointed by the Queen on the advice of state Premiers.

However, arrangements relating to the appointment of state Governors may vary between states and I am not in a position to provide further information about those arrangements.

You have also asked about the Queen's role in the appointment of judges and of 'Queen's Counsel'. At present, all federal judges are appointed by the Governor-General under subsection 72(i) of the Constitution. Queen's counsel for the Commonwealth have been appointed with the approval of the Governor-General on the recommendation of the Attorney-General by letters patent signed by the Governor-General and counter-signed by the Attorney-General. I am advised that the Governor-General's power to make such appointments derives from section 61 of the Constitution.

Once again, I am unable to provide information about particular state arrangements.

I trust this information is of assistance.

Yours sincerely

Hugh Funder
Senior Adviser

Office of Attorney-General

20/97087084

Mr Wolter Joosse
6 Apsley Place
SEAFORD VIC 3198

Dear Mr Joosse

I refer to your letter to Mr Funder of this office dated 30 October 1997. Mr Funder wrote to you on 27 October 1997 concerning the constitutional bases of the roles of the Queen and her vice regal representatives in Australian government. However, you still have some concerns about the validity of the Commonwealth Constitution. Mr Funder has asked me to reply to your letter on his behalf.

Your concern continues to stem from the fact that Australia's fundamental law - the Commonwealth Constitution - was originally enacted as part of an Act of the United Kingdom Parliament. As I understand it, you see the continued observance of the Constitution, and the laws made under it, as inconsistent with Australia's status as an independent nation. You ask by what 'authority' the Constitution continues to operate in Australia.

I should begin by pointing out that it was necessary to enact the Constitution as part of an Act of the United Kingdom Parliament because, to that point, Australia had been a collection of self-governing British colonies. Ultimate legal authority over those colonies rested with Britain. Nevertheless, the Constitution was approved by the electors in the Australian colonies before it commenced in 1901.

The new entity created by the Constitution - the Commonwealth of Australia - retained its colonial status for some time after federation. It was accepted that, as a colony (or 'Dominion'), Australia remained subject to some Imperial statutes. However, Australia developed an independent status in international affairs over the course of the century. I am advised that Australia's participation at the Peace Conference following the First World War, and at the Imperial Conferences of 1926 and 1930, marked important steps along the path to attaining a separate international personality.

I am advised that the *Statute of Westminster, 1931* (UK) embodied many of the recommendations of the Imperial Conferences regarding the progress of the Dominions toward full independence. It included provisions affirming the power of the Dominion parliaments to make laws having extra-territorial effect; and providing that no law of the United Kingdom Parliament should extend to a Dominion otherwise that at the request and consent of the Dominion. The relevant provisions of the Imperial Act were adopted in Australia under a Commonwealth (ie, Australian) Act, the *Statute of Westminster Adoption Act 1942*, having retrospective effect from 1939. At least since the passage of the Australia Acts in Australia and the United Kingdom (severing a number of remaining formal links between Australia and the United

Kingdom), the United Kingdom Parliament has had no authority at all in relation to Australian affairs.

However, the fact remains that our system of national government is given its basic structure by the Constitution. That structure has continued largely unchanged since federation. Those changes which have been made have been made by the Australian people at referendum in accordance with section 128 of the Constitution. I am advised that the character of the Constitution as Australia's fundamental law can now be seen to derive from its acceptance by the Australian people, rather than the fact that the Constitution was originally enacted by the United Kingdom Parliament.

The Australian people may, of course, choose to make further changes to the Constitution. One possibility is a republican form of government for the Commonwealth. As you are aware, that possibility will be discussed by delegates at the Constitutional Convention in Canberra in February.

As to the 'authority' for these comments, I am advised that they simply reflect basic and generally accepted constitutional and legal principles. The Attorney-General's Department has indicated that they may be verified in any reasonably comprehensive text book dealing with Australian constitutional law.

I hope you find these comments helpful.

Yours sincerely

Adele Byrne
Adviser

Office of Attorney-General

20/97071622

16 JAN 1998

Mr Peter Batten
PO Box 1333
RENMARK SA 5341

Dear Mr Batten

I refer to your letters to the Attorney-General dated 7 November 1997, 12 December 1997 and 18 December 1997 concerning Australia's status as an independent nation. The Attorney-General has asked me to respond to your letters on his behalf.

I refer also to my letter to you on this matter dated 21 October 1997. I am sorry that you did not find that response to be satisfactory.

Your concern continues to stem from the fact that Australia's fundamental law - the Commonwealth Constitution - was originally enacted as part of an Act of the United Kingdom Parliament. As I understand it, you see the continued observance of the Constitution, and the laws made under it, as inconsistent with Australia's status as an independent nation. You have also referred to the operation of the *Statute of Westminster, 1931* (UK) and the *Australia Act 1986* (UK).

You say that Australia 'became an independent sovereign nation on the 10th January 1920' and ask by what 'authority' the laws just mentioned continue to have 'validity' in Australia.

As I pointed out in my last letter, it was necessary to enact the Constitution as part of an Act of the United Kingdom Parliament because, to that point, Australia had been a collection of self-governing British colonies. Ultimate legal authority over those colonies rested with Britain. Nevertheless, the Constitution was approved by the electors in the Australian colonies before it commenced in 1901.

The new entity created by the Constitution - the Commonwealth of Australia - retained its colonial status for some time after federation. It was accepted that, as a colony (or 'Dominion'), Australia remained subject to some Imperial statutes. However, Australia developed an independent status in international affairs over the course of this century. I am advised that Australia's participation at the Peace Conference following the First World War, and at the Imperial Conferences of 1926 and 1930, marked important steps along the path to attaining a separate international personality.

So far as the *Statute of Westminster, 1931* (UK) is concerned, I am advised that it embodied many of the recommendations of the Imperial Conferences regarding the progress of the Dominions toward full independence. It included provisions affirming the power of Dominion parliaments to make laws having extra-territorial effect; and

providing that no law of the United Kingdom Parliament should extend to a Dominion otherwise than at the request and consent of the Dominion. The relevant provisions of the Imperial Act were adopted in Australia under a Commonwealth (ie, Australian) Act, the *Statute of Westminster Adoption Act 1942*, having retrospective effect from 1939. At least since the passage of the Australia Acts in Australia and the United Kingdom, the United Kingdom Parliament has had no authority at all in relation to Australian affairs.

However, the fact remains that our system of national government is given its basic structure by the Constitution. That structure has continued largely unchanged since federation. Those changes which have been made have been made by the Australian people at referendum in accordance with section 128 of the Constitution. As I indicated in my earlier letter, the character of the Constitution as Australia's fundamental law can now be seen to derive from its acceptance by the Australian people, rather than the fact that the Constitution was originally enacted by the United Kingdom Parliament.

The Australian people may, of course, choose to make further changes to the Constitution. One possibility is a republican form of government for the Commonwealth. As you are aware, that possibility will be discussed by delegates at the Constitutional Convention in Canberra in February.

As to the 'authority' for these comments, I am advised that they simply reflect basic and generally accepted constitutional and legal principles. The Attorney-General's Department has indicated that they may be verified in any reasonably comprehensive text book dealing with Australian constitutional law.

I have enclosed a copy of an essay written by Professor Zines (and included in a collection of essays entitled *Commentaries on the Australian Constitution*) that may be of interest. The essay was published in 1977 and therefore does not deal with the effect of the Australia Acts. Nevertheless, it includes relevant discussion (particularly sections 5 and 6) about the growth of Australian nationhood in the earlier part of this century.

I hope you find these comments helpful.

Yours sincerely

Adele Byrne
Adviser

97106621/M175897/176122

22 January 1998

Mr Paul A. Johnson
Lot 2 Princes Highway
WOLUMLA NSW 2550

Dear Mr Johnson

SOURCES OF AUSTRALIAN LAW

Thank you for your letter to the Attorney-General dated 11 November 1997 regarding the bases of Australian law. Your letter to the Governor-General on the same matter has also been forwarded to the office of the Attorney-General. The Attorney-General has asked me to respond to your letters on his behalf.

In your letters you have identified a number of significant steps on Australia's path towards national independence. Your concern relates to the formal basis of Australian law since Australia attained that independence. You have noted that the *Commonwealth of Australia Constitution Act 1900* (UK) - which contains the Commonwealth Constitution - is an Act of the British parliament. You have also noted that, at least since the passage of the Australia Acts in 1985, the British parliament can no longer legislate for Australia. On that basis, you have asked 'what document(s) provide for the basis of law in Australia'.

It has been said that when the first fleet arrived at Sydney Cove in January 1788 and formed the new colony of New South Wales it brought the English system of law with it. Certainly, a great deal of British common law and statute law was 'received' by the colonies at the time of settlement. That law has been changed and developed in many respects by Australian courts and legislatures. Those changes began well before the Commonwealth Constitution commenced and the Commonwealth of Australia was created in 1901. There are now various State Acts (eg, the *Imperial Acts Application Act 1969* (NSW)) dealing with the application of received laws in the States.

As you would be aware, it was necessary to enact the Constitution as part of a British Act of parliament because, before 1900, Australia was a collection of self-governing British colonies. Ultimate power over those colonies rested with the British parliament. Nevertheless, the 'federation' movement began in the colonies and the terms of the Constitution had been approved by the people of the colonies by the time it came into effect.

Since Australia has attained its independent status, the character of the Constitution as Australia's fundamental law can be seen as resting predominantly on the Australian people's decision to approve and be bound by its terms, and not on the status of the Constitution as an Act of the British parliament. What has been described as 'the sovereignty of the Australian people' is recognised by section 128 of the Constitution, which provides that any change to the Constitution must be approved by the people of Australia.

I hope these comments are of assistance.

Yours sincerely

James Faulkner
A/g Senior General Counsel

190349/191681

24 June 1999

Ms/Mr J P Anderson
Suite 346
131 Old Cleveland Road
Capalaba 4157

Dear Ms/Mr Anderson

I refer to your letter dated 19 April 1999 addressed to the Governor General. As you are aware from a letter to you from the Acting Official Secretary to the Governor-General on 29 April 1999, your letter was passed in May to the Attorney-General for reply direct. The Attorney has asked me to reply on his behalf.

On 16 June a further votergram in precisely the same terms addressed to the Hon. Philip Ruddock MP, Minister for Immigration and Multicultural Affairs, was also passed to the Attorney for reply as it related to his portfolio responsibilities. Please regard this letter as a reply also to your votergram to Mr Ruddock.

In your letters to the Governor-General and Mr Ruddock you express the view that Australian and State governments do not have authority to impose British law upon Australian citizens or, say, a GST.

The Constitution of the Commonwealth of Australia is Australia's fundamental law. It is contained in section 9 of the Commonwealth of Australia Constitution Act, which was enacted by the United Kingdom Parliament.

The *Australia Act 1986* of the Commonwealth, and the Australia Act 1986 of the United Kingdom, brought the constitutional arrangements governing the Commonwealth and the States into conformity with the status of Australia as a sovereign, independent and federal nation. Section 1 of the Australia Act precludes any Act of the United Kingdom Parliament passed after the commencement of the Australia Act from extending to Australia.

I mention for your information that in a case in late 1998, *Joosse v Australian Securities and Investment Commission* [1998] HCA 77, the High Court considered, and rejected, arguments to the effect that some kind of break in Australia's sovereignty occurred over the course of the twentieth century, with the results that the Constitution ceased to be fundamental law and that legislation passed by Australian legislatures was invalid.

In its decision on 23 June 1999 in the Sue v Hill and Sharples v Hill litigation, the High Court also upheld the status of Australia as a sovereign and independent nation, having a binding Constitution.

Yours sincerely

Sandra Power
A/g Assistant Secretary
Constitutional Policy Unit

Office of Attorney-General

191513

-6 JUL 1999

Mr R G McCulloch
C/- M & A Camilleri
M/S 895 Sugar Shed Road
MACKAY Qld 470

Dear Mr McCulloch

I refer to your letter dated 19 May 1999 to the Attorney-General, the Hon. Daryl Williams AM QC MP, enclosing a document with the heading 'Question to the Federal Parliament', regarding the validity of Australian law. The Attorney-General has asked me to reply to you on his behalf.

The paper enclosed with your letter asserts that Australia became an independent nation when it became a member of the League of Nations and that this invalidated legislation in force in Australia, including the Commonwealth Constitution. On the assumption this assertion is correct, you then ask what documents form the basis of law in Australia after that event.

The view outlined in the document is misconceived. The Constitution remains the fundamental law of Australia, and laws made in accordance with it are valid. The constitution is contained in section 9 of the Commonwealth of Australia Constitution Act, which was enacted by the United Kingdom Parliament.

The *Australia Act 1986* of the Commonwealth, and the *Australia Act 1986* of the United Kingdom, brought the constitutional arrangements governing the Commonwealth and the States into conformity with the status of Australia as a sovereign, independent and federal nation. The United Kingdom Parliament enacted its Australia Act at the request, and with the consent, of the Commonwealth Parliament and the concurrence of all State Parliaments. Section 1 of both Acts acknowledge the complete legislative independence of the Commonwealth and the States and terminate the power of the United Kingdom Parliament to legislate for any part of Australia.

Australia's development into an independent nation did not terminate existing laws in force in Australia, nor did it render subsequent laws invalid. This is demonstrated by the High Court's recent decision in *Joosse v Australia Securities and Investments Commission* [1998] HCA 77. In this case, the High Court considered, and rejected, arguments to the effect that some kind of break in Australia's sovereignty occurred over the course of this century, with the results that the Constitution ceased to be fundamental law and that legislation passed by Australian legislatures was invalid. This case is reported in volume 159 of the *Australian Law Reports*, p.260 ff. More recently still, in *Sue v Hill* [1999] HCA 30 a decision given by the High Court on 23 June 1999, the High Court described the development of Australia as an independent and sovereign nation under the Constitution and the Crown.

An assent copy of the Commonwealth of Australia Constitution Act (a copy signed by Queen Victoria) is kept in Parliament House, Canberra, and is generally on public

display there.. Copies of the Constitution are available at many public libraries and book stores.

I hope this information is of assistance to you.

Yours sincerely

J Power

Janet Power
Adviser

Attention Wayne Levick
and. Say Lawrence.

Good Morning gentlemen.

I am faxing this letter to you as I think you will find it interesting I am considering sending a copy back for the Hon Daryl Williams to sign personally.

I would like to hear your opinions.

All the best
L. G. McCulloch.
Ph. 0418776927

ANNEXURE 17

1. Copy of UN Resolution 2131, 1965

1. Copy of UN Resolution 2625, 1970

YEARBOOK OF THE UNITED NATIONS

1965

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UNITED NATIONS, NEW YORK

A/6220. Report of First Committee.

RESOLUTION 2131(XX), as proposed by First Committee, A/6220, adopted by Assembly on 21 December 1965, meeting 1408, by roll-call vote of 109 to 0, with 1 abstention, as follows:

In favour: Afghanistan, Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Burundi, Byelorussian SSR, Cameroon, Canada, Central African Republic, Ceylon, Chad, Chile, China, Colombia, Congo (Brazzaville) Democratic Republic of the Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, El Salvador, Ethiopia, Finland, France, Gabon, Ghana, Greece, Guatemala, Guinea, Haiti, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Kuwait, Laos, Lebanon, Liberia, Libya, Luxembourg, Madagascar, Malawi, Malaysia, Maldive Islands, Mali, Mauritania, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Singapore, Somalia, Spain, Sudan, Sweden, Syria, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian SSR, USSR, United Arab Republic, United Republic of Tanzania, United States, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zambia.

Against: None.

Abstaining: United Kingdom.

"*The General Assembly,*

"*Deeply concerned* at the gravity of the international situation and the increasing threat to universal peace due to armed intervention and other direct or indirect forms of interference threatening the sovereign personality and the political independence of States,

"*Considering* that the United Nations, in accordance with their aim to eliminate war, threats to the peace and acts of aggression, created an Organization, based on the sovereign equality of States, whose friendly relations would be based on respect for the principle of equal rights and self-determination of peoples and on the obligation of its Members to refrain from the threat or use of force against the territorial integrity or political independence of any State.

"*Recognizing* that, in fulfilment of the principle of self-determination, the General Assembly, in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in resolution 1514 (XV) of 14 December 1960, stated its conviction that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, and that, by virtue of that right, they freely determine their political

status and freely pursue their economic, social and cultural development,

"*Recalling* that in the Universal Declaration of Human Rights the General Assembly proclaimed that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, without distinction of any kind,

"*Reaffirming* the principle of non-intervention, proclaimed in the charters of the Organization of American States, the League of Arab States and the Organization of African Unity and affirmed at the conferences held at Montevideo, Buenos Aires, Chapultepec and Bogotá, as well as in the decisions of the Asian-African Conference at Bandung, the First Conference of Heads of State or Government of Non-Aligned Countries at Belgrade, in the Programme for Peace and International Co-operation adopted at the end of the Second Conference of Heads of State or Government of Non-Aligned Countries at Cairo, and in the declaration on subversion adopted at Accra by the Heads of State and Government of the African States,

"*Recognizing* that full observance of the principle of the non-intervention of States in the internal and external affairs of other States is essential to the fulfilment of the purposes and principles of the United Nations,

"*Considering* that armed intervention is synonymous with aggression and, as such, is contrary to the basic principles on which peaceful international co-operation between States should be built,

"*Considering further* that direct intervention, subversion and all forms of indirect intervention are contrary to these principles and, consequently, constitute a violation of the Charter of the United Nations,

"*Mindful* that violation of the principle of non-intervention poses a threat to the independence, freedom and normal political, economic, social and cultural development of countries, particularly those which have freed themselves from colonialism, and can pose a serious threat to the maintenance of peace,

"*Fully aware* of the imperative need to create appropriate conditions which would enable all States, and in particular the developing countries, to choose without duress or coercion their own political, economic and social institutions,

"*In the light of the foregoing considerations*, *solemnly declares:*

"1. No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

"2. No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

"3. The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

"4. The strict observance of these obligations is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter of the United Nations but also leads to the creation of situations which threaten international peace and security.

"5. Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

"6. All States shall respect the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms. Consequently, all States shall contribute to the complete elimination of racial discrimination and colonialism in all its forms and manifestations.

"7. For the purpose of the present Declaration, the term 'State' covers both individual States and groups of States.

"8. Nothing in this Declaration shall be construed as affecting in any manner the relevant provisions of the Charter of the United Nations relating to the maintenance of international peace and security, in particular those contained in Chapters VI, VII and VIII."

CHAPTER VII

REGIONAL ACTION TO IMPROVE RELATIONS BETWEEN EUROPEAN STATES WITH DIFFERENT SOCIAL AND POLITICAL SYSTEMS

The question of "Actions on the regional level with a view to improving good neighbourly relations among European States having different social and political systems" was first placed on the agenda of the General Assembly in 1963 at its eighteenth session. This was done at the request of Romania.

On that occasion, the Assembly decided, in

YEARBOOK OF THE UNITED NATIONS

Volume 24

1970

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ANNEX

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations

PREAMBLE

The General Assembly,

Reaffirming in the terms of the Charter of the United Nations that the maintenance of international peace and security and the development of friendly relations and co-operation between nations are among the fundamental purposes of the United Nations,

Recalling that the peoples of the United Nations are determined to practise tolerance and live together in peace with one another as good neighbours,

Bearing in mind the importance of maintaining and strengthening international peace founded upon freedom, equality, justice and respect for fundamental human rights and of developing friendly relations among nations irrespective of their political, economic and social systems or the levels of their development,

Bearing in mind also the paramount importance of the Charter of the United Nations in the promotion of the rule of law among nations,

Considering that the faithful observance of the principles of international law concerning friendly relations and co-operation among States and the fulfilment in good faith of the obligations assumed by States, in accordance with the Charter, is of the greatest importance for the maintenance of international peace and security and for the implementation of the other purposes of the United Nations,

Noting that the great political, economic and social changes and scientific progress which have taken place in the world since the adoption of the Charter give increased importance to these principles and to the need for their more effective application in the conduct of States wherever carried on,

Recalling the established principle that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means, and mindful of the fact that consideration is being given in the United Nations to the question of establishing other appropriate provisions similarly inspired,

Convinced that the strict observance by States of the obligation not to intervene in the affairs of any other State is an essential condition to ensure that nations live together in peace with one another, since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security,

Recalling the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State,

Considering it essential that all States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Considering it equally essential that all States shall settle their international disputes by peaceful means in accordance with the Charter,

Reaffirming, in accordance with the Charter, the basic importance of sovereign equality and stressing that the purposes of the United Nations can be implemented only if States enjoy sovereign equality and comply fully with the requirements of this principle in their international relations,

Convinced that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security,

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality,

Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter,

Considering the provisions of the Charter as a whole and taking into account the role of relevant resolutions adopted by the competent organs of the United Nations relating to the content of the principles,

Considering that the progressive development and codification of the following principles:

(*a*) The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

(*b*) The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

(*c*) The duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter,

(*d*) The duty of States to co-operate with one another in accordance with the Charter,

(*e*) The principle of equal rights and self-determination of peoples,

(*f*) The principle of sovereign equality of States,

(*g*) The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

so as to secure their more effective application within the international community, would promote the realization of the purposes of the United Nations,

Having considered the principles of international law relating to friendly relations and co-operation among States,

1. *Solemnly proclaims* the following principles:

The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

A war of aggression constitutes a crime against the peace, for which there is responsibility under international law.

In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

Every State likewise has the duty to refrain from the threat or use of force to violate international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is a party or which it is otherwise bound to respect. Nothing in the foregoing shall be construed as prejudicing the positions of the parties concerned with regard to the status and effects of such lines under their special régimes or as affecting their temporary character.

States have a duty to refrain from acts of reprisal involving the use of force.

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

Every State has the duty to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State.

Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force.

The territory of a State shall not be the object of military occupation resulting from the use of force in contravention of the provisions of the Charter. The territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal.

Nothing in the foregoing shall be construed as affecting:

(*a*) Provisions of the Charter or any international agreement prior to the Charter régime and valid under international law; or

(*b*) The powers of the Security Council under the Charter.

All States shall pursue in good faith negotiations for the early conclusion of a universal treaty on general and complete disarmament under effective international control and strive to adopt appropriate measures to reduce international tensions and strengthen confidence among States.

All States shall comply in good faith with their obligations under the generally recognized principles and rules of international law with respect to the maintenance of international peace and security, and shall endeavour to make the United Nations security system based on the Charter more effective.

Nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful.

The principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States shall accordingly seek early and just settlement of their international disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. In seeking such a settlement the parties shall agree upon such peaceful means as may be appropriate to the circumstances and nature of the dispute.

The parties to a dispute have the duty, in the event of failure to reach a solution by any one of the above peaceful means, to continue to seek a settlement of the dispute by other peaceful means agreed upon by them.

States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

International disputes shall be settled on the basis of the sovereign equality of States and in accordance with the principle of free choice of means. Recourse to, or acceptance of, a settlement procedure freely agreed to by States with regard to existing or future disputes to which they are parties shall not be regarded as incompatible with sovereign equality.

Nothing in the foregoing paragraphs prejudices or derogates from the applicable provisions of the Charter, in particular those relating to the pacific settlement of international disputes.

The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the régime of another State, or interfere in civil strife in another State.

The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention.

Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.

Nothing in the foregoing paragraphs shall be construed as affecting the relevant provisions of the Charter relating to the maintenance of international peace and security.

The duty of States to co-operate with one another in accordance with the Charter

States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

To this end:

(a) States shall co-operate with other States in the maintenance of international peace and security;

(b) States shall co-operate in the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms of religious intolerance;

(c) States shall conduct their international relations in the economic, social, cultural, technical and trade fields in accordance with the principles of sovereign equality and non-intervention;

(d) States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter.

States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress. States should co-operate in the promotion of economic growth throughout the world, especially that of the developing countries.

The principle of equal rights and self-determination of peoples

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order:

(*a*) To promote friendly relations and co-operation among States; and

(*b*) To bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

Every State has the duty to promote through joint and separate action universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter.

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compli-

ance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.

The principle of sovereign equality of States

All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

In particular, sovereign equality includes the following elements:

(*a*) States are juridically equal;

(*b*) Each State enjoys the rights inherent in full sovereignty;

(*c*) Each State has the duty to respect the personality of other States;

(*d*) The territorial integrity and political independence of the State are inviolable;

(*e*) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(*f*) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States.

The principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter

Every State has the duty to fulfil in good faith the obligations assumed by it in accordance with the Charter of the United Nations.

Every State has the duty to fulfil in good faith its obligations under the generally recognized principles and rules of international law.

Every State has the duty to fulfil in good faith its obligations under international agreements valid under the generally recognized principles and rules of international law.

Where obligations arising under international agreements are in conflict with the obligations of Members of the United Nations under the Charter of the United Nations, the obligations under the Charter shall prevail.

GENERAL PART

2. *Declares* that:

In their interpretation and application the above principles are interrelated and each principle should be construed in the context of the other principles.

Nothing in this Declaration shall be construed as prejudicing in any manner the provisions of the Charter or the rights and duties of Member States under the Charter or the rights of peoples under the Charter, taking into account the elaboration of these rights in this Declaration.

3. *Declares further* that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.

CHAPTER III

THE QUESTION OF DEFINING AGGRESSION

CONSIDERATION BY SPECIAL COMMITTEE

In accordance with a General Assembly decision of 12 December 1969,[1] the Special Committee on the Question of Defining Aggression continued its work in 1970.

Meeting at Geneva, Switzerland, from 13 July to 14 August 1970, the Special Committee discussed the three draft proposals which had been submitted to it at its 1969 session, namely: (1) a USSR proposal; (2) a 13-power proposal (Colombia, Cyprus, Ecuador, Ghana, Guyana, Haiti, Iran, Madagascar, Mexico, Spain, Uganda, Uruguay and Yugoslavia); and (3) a six-power proposal (Australia, Canada, Italy, Japan, the United Kingdom and the United States).[2]

After a general discussion of the three proposals, the Special Committee decided to consider them paragraph by paragraph according to the concepts on which they were based.

The main points considered by the Special Committee were the following:

(1) Application of the definition of aggression: (*a*) the definition and the power of the Security Council; (*b*) political entities to which the definition should apply.

(2) Acts proposed for inclusion in the definition: (*a*) the question of "direct or indirect" aggression;

[1] See Y.U.N., 1969, p. 774, text of resolution 2549(XXIV).

[2] *Ibid.*, pp. 768-71, for information on the draft proposals.

ANNEXURE 18

COPY OF COVENANT OF THE LEAGUE OF NATIONS

PART I.

THE COVENANT OF THE LEAGUE OF NATIONS.

THE HIGH CONTRACTING PARTIES

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,
by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and
by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organised peoples with one another,

Agree to this Covenant of the League of Nations.

ARTICLE 1.

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

ARTICLE 2.

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Article 3.

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

Article 4.

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

Article 5.

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6.

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary General and such secretaries and staff as may be required.

The first Secretary General shall be the person named in the Annex ; thereafter the Secretary General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary General with the approval of the Council.

The Secretary General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 7.

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

ARTICLE 8.

The Members of the League recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due

regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

ARTICLE 9.

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.

ARTICLE 10.

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

ARTICLE 11.

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

ARTICLE 12.

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

ARTICLE 13.

The Members of the League agree that whenever any dispute shall arise between them which they recognise to be suitable for submission to arbitration and

which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

ARTICLE 14.

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

ARTICLE 15.

If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the

Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

ARTICLE 16.

Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

Article 17.

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

Article 18.

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article 19.

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Article 20.

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article 21.

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace.

Article 22.

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best

administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

ARTICLE 23.

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League :

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisations ;

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control ;

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs ;

(*d*) will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest ;

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914-1918 shall be borne in mind ;

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease.

ARTICLE 24.

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

ARTICLE 25.

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross organisations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

ARTICLE 26.

Amendments to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

Annex.

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY OF PEACE.

UNITED STATES OF AMERICA.
BELGIUM.
BOLIVIA.
BRAZIL.
BRITISH EMPIRE.
  CANADA.
  AUSTRALIA.
  SOUTH AFRICA.
  NEW ZEALAND.
  INDIA.
CHINA.
CUBA.
ECUADOR.
FRANCE.
GREECE.
GUATEMALA.
HAITI.
HEDJAZ.
HONDURAS.
ITALY.
JAPAN.
LIBERIA.
NICARAGUA.
PANAMA.
PERU.
POLAND.
PORTUGAL.
ROUMANIA.
SERB-CROAT-SLOVENE STATE.
SIAM.
CZECHO-SLOVAKIA.
URUGUAY.

ANNEXURE 19

DOCUMENTS RELATING TO FAILURE TO REGISTER ACTS OF RECIPROCAL LEGISLATION AS EITHER INTERNATIONAL TREATIES OR ARRANGEMENTS:

1. Copy of letter of request to Attorney General
2. Copy of response from Attorney General
3. Copy of response from Office of Legal Affairs, United Nations
4. Copy of Statute of Westminster Adoption Act, 1942 with Statute of Westminster 1931 as a schedule of the Act.
5. Copy of Australia Act 1986 (Commonwealth)

21 May 1999

The Commonwealth Attorney General
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON
ACT 2600

Subject Matter of Letter: **Freedom Of Information Request**

Dear Mr Williams

On behalf of the Institute of Taxation Research I make a request under the Commonwealth Freedom of Information Act 1982.

Will you please provide **certified copies** of :-

1. The United Nations document of registration, required under the terms of Article 102, paragraph 1. of the Charter of the United Nations, of the international agreement, constituted by way of an Act of the Parliament of the Commonwealth of Australia being, Act No. 42 of 1985 which came into operation on March 3rd 1986 and which is known as the *Australia Act 1986* (Australia).
Or some other document which will serve to positively establish that registration with the UN Secretariat occurred.

2. The United Nations document of registration required under the terms of Article 102, paragraph 1,of the Charter of the United Nations of the international agreement enacted by the Parliament of the United Kingdom and is known as the *Australia Act 1986* (UK).
Or some other document which will serve to positively establish that the appropriate registration with the UN Secretariat occurred.

3. The League of Nations document of registration, required under the term of the Covenant of the League and specifically Article 18 of that Covenant, of the Act of United Kingdom Law known as the '*Statute of Westminster 1931*(UK)', which constitutes an international agreement.
Or some other document which will serve to positively establish that the appropriate registration with the League of Nations Secretariat occurred.

4. The League of Nations document of registration, required under the terms of the Covenant of the League and specifically Article 18 of that Covenant, of the Act of the Australian Parliament known as the '*Statute of Westminster Adoption Act 1942*' which constitutes an international agreement.
Or some other document which will serve to positively establish that the appropriate registration with the League of Nations Secretariat occurred.

Yours sincerely,

Peter Batten
ITR 7 Apsley Place
PO Box 9112 Seaford Mail Centre
SEAFORD
VICTORIA 3198

ANNEXURE 19

OIL99/4625

25 June 1999

Mr Peter Batten
Institute of Taxation Research
7 Apsley Place
PO Box 9112
Seaford Mail Centre
SEAFORD VIC 3198

Dear Mr Batten

FREEDOM OF INFORMATION REQUEST

I refer to your letter of 21 May 1999 to the Attorney-General, the Hon Daryl Williams AM QC MP, requesting documents under the *Freedom of Information Act 1982*. As you are aware, your request has been transferred to the Attorney-General's Department.

The documents that you note within your letter are either Acts of Parliament of the Commonwealth of Australia or of the Parliament of the United Kingdom. As such these documents are either documents of another government or widely available public documents copies of which do not need to be provided in accordance with section 12 of the *Freedom of Information Act* (copy attached).

Additionally, Acts of either Parliament would not be classed as a 'treaty' or 'international agreement' for the purposes of Article 102(1) of the Charter of the United Nations and are accordingly not required to be registered with the Secretariat of the United Nations. This view applies equally to Article 18 of the League of Nations Charter. There are accordingly no documents within the class requested, that is, documents evidencing the registration of these Acts of Parliament with either the Secretariat of the United Nations or with the League of Nations.

Accordingly, pursuant to section 24A of the *Freedom of Information Act* (copy attached), I am denying your request on the basis that the documents do not exist. Information on your rights of review of this decision is attached.

However, you may like to note that the Department of Foreign Affairs and Trade makes available the text of treaties to which Australia is a party including through the Australasian Legal Information Institute which can be accessed at:

<http://www.austlii.edu.au/au/other/dfat/> This site also provides the text of domestic legislation such as the *Freedom of Information Act* and the *Australia Act 1986*.

Yours sincerely

Renée Leon
Assistant Secretary
Public International Law Branch

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE:

19 July 1999

Dear Mr. Batten,

I refer to your letters of 21 May and 23 June 1999 regarding your query concerning the registration of the *Act to Constitute the Commonwealth of Australia 1900* and the *Australia Act 1986.*

As previously mentioned in our electronic message of 4 June 1999, no instruments entitled *Act to Constitute the Commonwealth of Australia 1900* or *Australia Act 1986* appear in our database as having been registered. In this respect it should be noted that internal domestic legislation is not subject to registration under the Charter.

Moreover, you conveyed in your letter the understanding that these instruments must be registered to legitimize the application of British domestic law in Australia. On this point, a clarification regarding the implications of registration under the Charter is required. **Registration of an instrument submitted by a Member State does not imply a judgement by the Secretariat on the nature of the instrument, the status of a party, or any similar question. It is the understanding of the Secretariat that its action does not confer on the instrument the status of a treaty or an international agreement if it does not already have that status and does not confer on a party a status which it would not otherwise have.** In other words, the legitimacy of a particular instrument must be found in the instrument itself. The issue of whether such an instrument is registered or not has no bearing upon the instrument's legitimacy.

Very truly yours,

for Sylvie Jacque
Palitha T.B. Kohona
Chief, Treaty Section
Office of Legal Affairs

Mr. Peter Batten
Research Officer
Australian Institute of Taxation Research
7 Apsley Place
P.O. Box 9122 Seaford Mail Centre
Seaford, Victoria
Australia 3182

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.

Statute of Westminster Adoption Act 1942

THE SCHEDULE

Section 3

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.

Statute of Westminster Adoption Act 1942

4. *No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.*[2]

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

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 merchant shipping. 57 and 58 Vict. c. 60.

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.

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

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.

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

(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.

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 for Constitution Acts of Australia and New Zealand.

9.—(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.

Saving with respect to States of Australia.

(2) *Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to 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, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.*[2]

(3) *In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.*[2]

10.—(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.

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

(2) *The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub-section (1) of this section.*[2]

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

Statute of Westminster Adoption Act 1942

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 (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 Kindgom, respectively, are as follows:

Australia	United Kingdom
Australia (Request and Consent) Act 1985	Australia Act 1986
Christmas Island (Request and Consent) Act 1957 .	Christmas Island Act, 1958
Cocos (Keeling) Islands (Request and Consent) Act 1954	Cocos Islands Act, 1955

AUSTRALIA ACT 1986

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

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:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. 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.

Legislative powers of Parliaments of States

2. (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.

Termination of restrictions on legislative powers of Parliaments of States

3. (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.

Australia Act 1986

(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.

Powers of State Parliaments in relation to merchant shipping

4. 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.

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. 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.

Manner and form of making certain State laws

6. 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.

Powers and functions of Her Majesty and Governors in respect of States

7. (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.

Australia Act 1986

(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.

State laws not subject to disallowance or suspension of operation

8. 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.

State laws not subject to withholding of assent or reservation

9. (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.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

11. (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,

Australia Act 1986

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.

Amendment of Statute of Westminster

12. 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.

Amendment of Constitution Act of Queensland

13. (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,".

Amendment of Constitution Act of Western Australia

14. (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)—

Australia Act 1986

(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".

Method of repeal or amendment of this Act or Statute of Westminster

15. (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.

Interpretation

16. (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;

Australia Act 1986

"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.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.[1]

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.[1]

NOTE

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).

   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 1985* and with the concurrence of all the States of Australia (*see* the Australia Acts Request Act 1985 of each State).

ANNEXURE 20

COPY OF ROYAL STYLES AND TITLES ACT, 1973

ROYAL STYLE AND TITLES ACT 1973

Reprinted as at 31 July 1983

TABLE OF PROVISIONS

Section
1. Short title
2. Assent to adoption of new Royal Style and Titles in relation to Australia

SCHEDULE

Royal Style and Titles

An Act relating to the Royal Style and Titles

WHEREAS, in accordance with the *Royal Style and Titles Act 1953*[1], Her Majesty, by Proclamation dated 28th May, 1953, adopted, as the Royal Style and Titles to be used in relation to the Commonwealth of Australia and its Territories, the Style and Titles set forth in the Schedule to that Act:

AND WHEREAS the Government of Australia considers it desirable to propose to Her Majesty a change in the form of the Royal Style and Titles to be used in relation to Australia and its Territories:

AND WHEREAS the proposed new Style and Titles, being the Style and Titles set forth in the Schedule to this Act, retains the common element referred to in the preamble to the *Royal Style and Titles Act 1953*:[1]

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

Short title

1. This Act may be cited as the *Royal Style and Titles Act 1973*.[2]

Assent to adoption of new Royal Style and Titles in relation to Australia

2. **(1)** The assent of the Parliament is hereby given to the adoption by Her Majesty, for use in relation to Australia and its Territories, in lieu of the Style and Titles set forth in the Schedule to the *Royal Style and Titles Act 1953*[1], of the Style and Titles set forth in the Schedule to this Act, and to the issue for that purpose by Her Majesty of Her Royal Proclamation under such seal as Her Majesty by Warrant appoints.

(P.R.A. 123/83) (R82/1418)—Cat. No. 83 0726 9–

(2) The Proclamation referred to in sub-section (1) shall be published in the *Gazette* and shall have effect on the date upon which it is so published.[2]

SCHEDULE

Section 2

Royal Style and Titles

Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

NOTES

1. **Preamble and s. 2 (1)—The *Royal Style and Titles Act 1953* was repealed by the *Statute Law Revision Act 1973* (No. 216, 1973).**

2. **Act No. 114, 1973; reserved for Her Majesty's pleasure, 14 September 1973; Queen's Assent, 19 October 1973; Queen's Assent proclaimed, 19 October 1973 (*see Gazette* 1973, No. 152).**

ANNEXURE 21

Copy of Letters Patent relating to Office of Governor-General of Australia

Copy of Commission of Appointment of Governor-General

No. S 334, Friday, 24 August 1984
Published by the Australian Government Publishing Service, Canberra
SPECIAL

ELIZABETH R

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.

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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

(L.S.)

By Her Majesty's Command,

BOB HAWKE

Prime Minister

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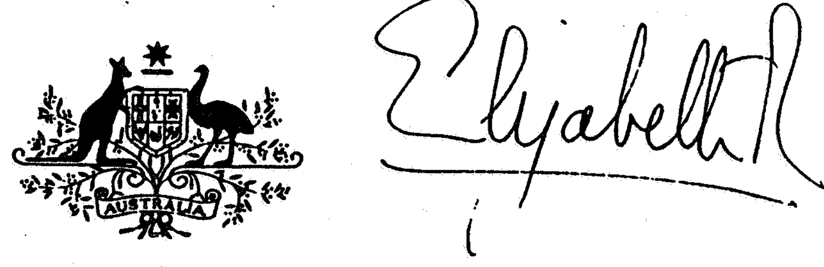

COMMISSION

Passed under the Royal Sign Manual and the Great Seal of Australia appointing

THE HONOURABLE SIR WILLIAM PATRICK DEANE, AC, KBE

to be the 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: To the Honourable Sir William Patrick Deane, Companion of the Order of Australia, Knight Commander of the Order of the British Empire,

Greeting:

WE DO, by this Our Commission under Our Sign Manual and the Great Seal of Australia, appoint you, Sir William Patrick Deane, to be, during Our pleasure, Our Governor–General of the Commonwealth of Australia.

AND WE DO authorise, empower and command you to exercise and perform all and singular the powers and directions contained in the Letters Patent dated 21 August 1984 relating to the office of Governor–General or in future Letters Patent relating to that office, according to such instructions as Our Governor–General for the time being may have received or may in future receive from Us, and according to such laws as are from time to time in force.

AND WE DO declare that the powers conferred by this Our Commission include any further powers that may in future be assigned to the Governor–General in accordance with section 2 of the Constitution of the Commonwealth of Australia.

AND, so soon as you shall have taken the prescribed oaths and have entered upon the duties of your office, this Our present Commission shall supersede Our Commission dated 4 January 1989 appointing the Honourable William George Hayden to be Governor–General of the Commonwealth of Australia and Commander–in–Chief of the Defence Force of the Commonwealth of Australia.

Given at Our Court

at Sandringham

on 29 December 1995

(L.S.)

By Her Majesty's Command,

Prime Minister

PROCLAMATION

WHEREAS Her Majesty Queen Elizabeth the Second has been graciously pleased by Commission under Her Royal Sign Manual and the Great Seal of Australia dated 29 December 1995 to appoint me, William Patrick Deane, Companion of the Order of Australia, Knight Commander of the Order of the British Empire, to be Governor-General of the Commonwealth of Australia:

NOW THEREFORE I proclaim that I have this day made the prescribed oath of allegiance and the prescribed oath of office of the Governor-General of the Commonwealth of Australia before the Honourable the Chief Justice of Australia, and that I have assumed that office accordingly.

Signed and sealed with the
Great Seal of Australia
on 16 February 1996.

(L.S.)

William Deane

Governor-General

By His Excellency's Command

Paul Keating

Prime Minister

ELIZABETH THE SECOND
QUEEN OF AUSTRALIA
AUSTRALIA

ANNEXURE 22

COPY OF AUSTRALIA ACT 1986 (COMMONWEALTH)

COPY OF AUSTRALIA ACT 1986 (UNITED KINGDOM)

AUSTRALIA ACT 1986

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

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:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. 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.

Legislative powers of Parliaments of States

2. (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.

Termination of restrictions on legislative powers of Parliaments of States

3. (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.

Australia Act 1986

(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.

Powers of State Parliaments in relation to merchant shipping

4. 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.

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. 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.

Manner and form of making certain State laws

6. 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.

Powers and functions of Her Majesty and Governors in respect of States

7. (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.

Australia Act 1986

(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.

State laws not subject to disallowance or suspension of operation

8. 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.

State laws not subject to withholding of assent or reservation

9. **(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.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

11. **(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,

Australia Act 1986

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.

Amendment of Statute of Westminster

12. 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.

Amendment of Constitution Act of Queensland

13. (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

Australia Act 1986

(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,".

Amendment of Constitution Act of Western Australia

14. (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)";
(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".

Method of repeal or amendment of this Act or Statute of Westminster

15. (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.

Interpretation

16. (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;

Australia Act 1986

"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.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.[1]

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.[1]

NOTE

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).

   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 1985* and with the concurrence of all the States of Australia (*see* the Australia Acts Request Act 1985 of each 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.

Short title and commencement

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Commonwealth and Other Territories: 26:4

Statutes in Force

Official Revised Edition

Australia Act 1986

CHAPTER 2

Complete text as at date of Royal Assent (17.2.1986)

BY AUTHORITY

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Australia Act 1986

CHAPTER 2

ARRANGEMENT OF SECTIONS

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2. Legislative powers of Parliaments of States.
3. Termination of restrictions on legislative powers of Parliaments of States.
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16. Interpretation.
17. Citation and commencement.

ELIZABETH II

Australia Act 1986

1986 CHAPTER 2

An Act to give effect to a request by the Parliament and Government of the Commonwealth of Australia.
[17th February 1986]

WHEREAS the Parliament and Government of the Commonwealth of Australia have, with the concurrence of the States of Australia, requested and consented to the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth:

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:—

Termination of power of Parliament of United Kingdom to legislate for Australia.

1. 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.

Legislative powers of Parliaments of States.

2.—(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.

Termination of restrictions on legislative powers of Parliaments of States.
1865 c. 63.

3.—(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 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.

Powers of State Parliaments in relation to merchant shipping.
1894 c. 60.

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

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected.
1900 c. 12.
1931 c. 4 (22 & 23 Geo. 5).

5. 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.

Manner and form of making certain State laws.

6. 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.

Powers and functions of Her Majesty and Governors in respect of States.

7.—(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.

State laws not subject to disallowance or suspension of operation.

8. 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.

State laws not subject to withholding of assent or reservation.

9.—(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.

Termination of responsibility of United Kingdom Government in relation to State matters.

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

Termination of appeals to Her Majesty in Council.

11.—(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:

1828 c. 83. The Australian Courts Act 1828, section 15

1833 c. 41. The Judicial Committee Act 1833

1844 c. 69. The Judicial Commitee Act 1844

1850 c. 59. The Australian Constitutions Act 1850, section 28

1890 c. 27. 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.

Amendment of Statute of Westminster. 1931 c. 4 (22 & 23 Geo. 5).

12. 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.

Amendment of Constitution Act of Queensland.

13.—(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

Australia Act 1986

(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,".

Amendment of Constitution Act of Western Australia.

14.—(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 ".

Australia Act 1986

(3) Section 51 of the Principal Act is amended—

(*a*) by omitting subsection (1); and

(*b*) 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 ".

Method of repeal or amendment of this Act or Statute of Westminster.

1931 c. 4 (22 & 23 Geo. 5).

15.—(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.

Interpretation.

16.—(1) In this Act—

" 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 of Australia;

1900 c. 12.

" the Commonwealth " means the Commonwealth of Australia as established under 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; 1900 c. 12.

"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;

"Territory" means a territory referred to in section 122 of the Constitution of the Commonwealth.

(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.

Citation and commencement.

17.—(1) This Act may be cited as the Australia Act 1986.

(2) This Act shall come into force on such day and at such time as the Secretary of State may by order made by statutory instrument appoint.

PRINTED IN ENGLAND BY W. J. SHARP, CB
Controller and Chief Executive of Her Majesty's Stationery Office and
Queen's Printer of Acts of Parliament

ANNEXURE 23

1. Copy of Letter Patent relating to Governor of South Australia

2. Copy of Letter Patent relating to Governor of Tasmania

3. Copy of Letter Patent relating to Governor of Victoria

4. Copy of Letter Patent relating to Governor of Queensland

5. Copy of Letter Patent relating to Governor of Western Australia

6. Identification of individual responsible for signature of OULTON

7. Copies of Letters of Appointment of last three Governors appointed to serve in the State of New South Wales where Letters Patent do not appear to have been issued

I certify that this is a true copy of the original held at Government House, Adelaide, S.A.

B Gerringe, AM
29th June 1999.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas by Letters Patent dated the 29th October, 1900 provision was made in relation to the office of the Governor of the State of South Australia:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of South Australia and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts"):

And whereas We desire to make new provisions relating to the office of Governor of the State of South Australia and for persons appointed to administer the government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

I. The Letters Patent dated the 29th October 1900 (as amended by Letters Patent dated the 2nd November 1934, Letters Patent dated the 10th January 1938 and Letters Patent dated the 2nd July 1970) relating to the office of Governor of the State of South Australia and Our Instructions to the Governor dated the 29th October 1900 are revoked.

II. There shall be a Governor of the State of South Australia.

III. The appointment of a person to the office of Governor shall be during Our Pleasure by Commission under Our Sign Manual.

IV. There shall be an Executive Council to advise the Governor in the government of the State.

V. The membership of the Executive Council shall be determined in accordance with the laws of the State.

VI. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to preside the member appointed by the Governor to preside, or in the absence of that member, the senior member in order of appointment actually present, shall preside.

Governor to preside over Executive Council.

VII. A meeting of the Executive Council shall not proceed unless it has been convened by the Governor and at least two members other than the Governor or any member presiding are present.

Quorum for Executive Council.

VIII. The Governor shall convene a meeting of the Executive Council if so advised by the Premier or Acting Premier.

Governor to convene meetings of Executive Council.

IX. There may be a Lieutenant-Governor of the State of South Australia.

Constitution of Office of Lieutenant-Governor.

X. In the event of—

Administration of government during vacancy, etc.

(*a*) a vacancy in the office of Governor;

(*b*) the assumption by the Governor of the administration of the government of the Commonwealth of Australia;
or

(*c*) the Governor being on leave, absent from the State or incapacitated (not having appointed a deputy under Clause XVII),

the Lieutenant-Governor shall assume the administration of the State as Administrator but if there is no Lieutenant Governor or if the Lieutenant-Governor is unable to act as Administrator or is incapacitated then the Chief Justice of South Australia or the next most senior Judge present in the State and able to do so shall act as Administrator.

XI. For the purposes of Clause X, there shall be a vacancy in the office of Governor if the Governor vacates the office.

Interpretation of Clause X.

XII. No person shall act as Administrator except at the request in writing of—

Administrator to act upon request.

(*a*) the Premier of the State;
or

(*b*) if the Premier is not available to make such a request—the Minister of the Crown of the State next in order of seniority who is available to make such a request.

XIII. A person may not act as Adminstrator without having taken the Oath of Allegiance and the Official Oath in the presence of the Chief Justice of South Australia or another Judge of the Supreme Court of the State.

Oaths to be taken by Administrator.

XIV. While administering the government of the State an Administrator shall have and may exercise and perform the powers and functions of the Governor.

Powers and functions of Administrator.

XV. A person shall cease to hold the office of Administrator when (as the case requires)—

Administrator ceasing to hold office.

(*a*) a person is appointed to fill the vacancy in the office of Governor and has taken the required oaths;

(*b*) the Governor ceases to administer the government of the Commonwealth of Australia;
or

(*c*) the Governor ceases to be on leave, absent from the State or incapacitated,

and the person holding office as Administrator is notified accordingly.

XVI. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual.

XVII. In the event that—

(*a*) the Governor is absent from the State or absent from the seat of government but not the State or is suffering from illness;
and

(*b*) the Governor has reason to believe that the duration of the absence or illness will not exceed 4 weeks,

the Governor may, by instrument in writing, appoint the Lieutenant-Governor or another suitable person to be the Governor's deputy during the absence or illness and in that capacity to exercise and perform on behalf of the Governor such of the powers and functions of the Governor as are specified in the instrument during the period specified in the instrument.

XVIII. The Governor shall not appoint a deputy except with the concurrence of—

(*a*) the Premier of the State;
or

(*b*) if the Premier is not available to give such a concurrence—the Minister of the Crown of the State next in order of seniority who is available to give such a concurrence.

XIX. The appointment of a person as deputy may be revoked by the Governor at any time.

XX. The powers and functions of the Governor shall not be abridged, altered or in any way affected by the appointment of a person as deputy.

XXI. All existing Commissions in relation to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force subject to these Our Letters Patent until revoked.

XXII. These Our Letters Patent and every Commission or appointment given or made pursuant to these Our Letters Patent shall be published in the Government Gazette of South Australia.

XXIII. The power to revoke, alter or amend these Our Letters Patent is reserved.

XXIV. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

OULTON

These Letters Patent were issued and approved under the corresponding provisions of the Australia Act 1986 of the Commonwealth of Australia (Section 7) and the Australia Act 1986 of the United Kingdom. The Letters Patent came into operation with the formal Assent to the Australia Act 1986 of the Commonwealth of Australia which was given by The Queen on March 3, 1986. Subsequently, as required by CLause XIX of the Letters Patent, they were published in a special Tasmanian Government Gazette dated 14 March 1986.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas by Letters Patent dated 29th October 1900 provision was made in relation to the Office of the Governor of the State of Tasmania;

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Tasmania and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts");

And whereas We desire to make new provisions relating to the Office of Governor and for persons appointed to administer the Government of the State.

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of existing Letters Patent and Instructions.

I. We revoke all earlier Letters Patent and amendments and Our Instructions relating to the Office of the Governor of the State of Tasmania.

Constitution of the Office of Governor.

II. There shall be a Governor in and over Our State of Tasmania and its dependencies in the Commonwealth of Australia comprising Our Island of Tasmania, and all islands and territories lying to the southward of Wilson's Promontory, in the State of Victoria, in thirty-nine degrees twelve minutes of south latitude, and to the northward of the forty-fifth degree of south latitude, and between the one hundred and fortieth and one hundred and fiftieth degrees of longitude east from Greenwich, and also Macquarie Island lying to the south-east of the said Island of Tasmania (which said State of Tasmania and its dependencies are hereinafter called the State) and the appointment of the Governor shall be during Our Pleasure by Commission under Our Sign Manual.

III. Before assuming office a person appointed to be the Governor shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State.

Oaths to be taken by Governor.

IV. The Governor shall keep the Public Seal of the State for sealing all instruments required to bear the Seal.

Public Seal.

V. There shall be an Executive Council to advise the Governor in the Government of the State.

Executive Council.

VI. The Members of the Executive Council shall be appointed by the Governor under the Public Seal of the State and shall hold office during the Governor's pleasure.

Appointment of Members of Executive Council.

VII. Before assuming office a person who has been appointed a Member of the Executive Council shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Governor or the person then acting as Administrator or before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State.

Oaths to be taken by Members of Executive Council.

VIII. A meeting of the Executive Council shall be convened by the Governor upon the request of the Premier or the Acting Premier and the Council shall not proceed to the dispatch of business unless at least two Members other than the Governor or the Member presiding shall be present and assisting throughout the meeting.

Quorum of Executive Council.

IX. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to do so the Member appointed by the Governor to preside or in the absence of such Member the most senior Member present shall preside.

Governor to preside over Executive Council.

X. The Governor with the consent of the Premier or the Acting Premier may appoint a Deputy Governor who may be the Lieutenant-Governor to perform some or all of the powers and functions of the Governor for a period not exceeding four weeks.

Appointment of Deputy Governor.

XI. An Administrator shall administer the Government of the State if and so long as there is a vacancy in the Office of Governor, or the Governor is administering the Government of the Commonwealth or is unable to act as Governor or, not having appointed a Deputy Governor, is on leave or is absent from the State.

Administration of Government during vacancy etc.

XII. For the purposes of Clause XI there shall be a vacancy in the Office of Governor if the Governor vacates the Office.

Interpretation of Clause XI.

XIII. For the purposes of Clause XI a Governor is not absent from the State whilst temporarily off the coast of the State or during his passage to or from the dependencies of the State.

Interpretation of Clause XI.

XIV. The Lieutenant-Governor shall be the Administrator but if there is no Lieutenant-Governor or if he is unable to act as Adminstrator then the Administrator shall be the Chief Justice of Tasmania or the next most senior Judge of the Supreme Court of the State who is present in the State and able to so act.

Administration.

Appointment of Lieutenant-Governor and Administrator.

XV. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual.

Assumption of office as Administrator.

XVI. No person shall assume office as Administrator unless required to do so by writing under the hand of the Premier or Acting Premier.

Oaths to be taken by Administrator.

XVII. Before assuming office as Administrator a person entitled to act in that office shall take the usual Oath or Affirmation of Office before the Chief Justice of Tasmania or some other Judge of the Supreme Court of the State.

Existing Commissions to continue in force.

XVIII. All existing Commissions in relation to the Office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force until revoked.

Publication of Letters Patent etc.

XIX. These Our Letters Patent and every Commission appointing a Governor, Lieutenant-Governor or Administrator and every appointment given or made pursuant to these Our Letters Patent hereafter, shall be published in the Tasmanian Government Gazette.

Reservation of power to revoke alter or amend.

XX. The power to revoke, alter or amend these Our Letters Patent is reserved.

Commencement of Letter Patent.

XXI. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual 1986

OULTON

Victoria Government Gazette 1117 No. 30—30 April 1986

LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR OF VICTORIA ISSUED BY HER MAJESTY THE QUEEN ON 14 FEBRUARY 1986 (Operative 3 March 1986)

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

To All to Whom these Presents shall come, Greeting!

Whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Victoria and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts"):

And whereas We desire to make new provisions relating to the office of Governor and for persons appointed to administer the government of the State.

Now know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Constitution of Office of Governor.

I. There shall be a Governor of the State of Victoria.

Revocation of Existing Letters Patent and Instructions.

II. The Letters Patent dated the 29th October 1900, as amended by Letters Patent dated the 30th April 1913, relating to the office of Governor of the State of Victoria, and Our Instructions to the Governor dated the 29th October 1900, as amended by Our Instructions dated the 30th April 1913, are revoked.

Executive Council.

III. There shall be an Executive Council to advise the Governor on the occasions when the Governor is permitted or required by any statute or other instrument to act in Council. The Premier (or in his absence the Acting Premier) shall tender advice to the Governor in relation to the exercise of the other powers and functions of Governor.

Oaths to be taken by Governor, Administrator and Deputy Governor.

IV. No person shall act as Governor without first taking before the Chief Justice or another Judge of the Supreme Court the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office.

Administration of Government during vacancy, etc.

V. An Administrator shall act as Governor if and so long as there is a vacancy in the office of Governor or the Governor is administering the Government of the Commonwealth or is unable or unwilling to act as Governor or not having commissioned a Deputy Governor is on leave or is out of the State.

Administrator.

VI. The Lieutenant-Governor shall be the Administrator but if there is no Lieutenant-Governor or if he is unable or unwilling to act as Governor then the Chief Justice shall be the Administrator and if there is no Chief Justice or if he is unable or unwilling to act as Governor then the next most senior Judge of the Supreme Court able and willing to act as Governor shall be the Administrator.

Administrator to act upon request.

VII. A request in writing under the hand of the Premier (or in his absence the Acting Premier) that the person named therein (being one of the persons referred to in Clause VI) shall assume office as Administrator shall be sufficient authority for that person to do so.

Appointment of Deputy Governor.

VIII. The Governor with consent of the Premier (or in his absence the Acting Premier) may commission a Deputy Governor to perform and exercise for not more than two months some or all of the powers and functions of the Governor.

Existing Commissions to continue.

IX. The existing Commissions relating to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force until revoked.

Power to revoke, alter or amend.

X. The Governor in Council by Letters Patent may from time to time make alter or revoke any Letters Patent relating to the office of Governor.

Commencement of Letters Patent.

XI. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

(L.S.) OULTON

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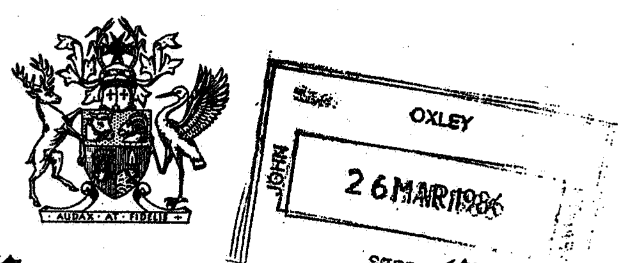

Queensland Government Gazette

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Vol. CCLXXXI] SATURDAY, 8 MARCH, 1986 [No. 39

PROCLAMATION OF LETTERS PATENT CONSTITUTING THE OFFICE OF GOVERNOR OF THE STATE OF QUEENSLAND

A PROCLAMATION

By His Excellency the Honourable Sir Walter Benjamin Campbell, one of Her Majesty's Counsel learned in the law, Governor in and over the State of Queensland in the Commonwealth of Australia.

[L.S.]
W. B. CAMPBELL,
Governor

WHEREAS by Letters Patent under the Great Seal of the United Kingdom, bearing the date at Westminster the fourteenth day of February, 1986, Her Majesty was graciously pleased to order and declare that there be a Governor in and over the State of Queensland in the Commonwealth of Australia, and that appointments to the said office be made by Commission under Her Majesty's Sign Manual and that the said Letters Patent be proclaimed at such place or places in the said State as the Governor of the said State shall think fit: Now, therefore, I, the Governor aforesaid, do, by this my Proclamation, proclaim and make known the said Letters Patent which are in the words following, that is to say:—

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas Her late Majesty Queen Victoria did, by Letters Patent under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing date at Westminster the sixth day of June 1859, erect certain territories therein described into a Colony by the name of the Colony of Queensland:

And whereas pursuant to Letters Patent under the said Great Seal, bearing date at Westminster the 30th day of May 1872, and Deed Poll and Proclamation, each bearing date at Brisbane in the said Colony the 22nd day of August 1872, made by the Governor of the said Colony all islands lying and being within sixty miles of the coasts of the said Colony were annexed to and became part of the said Colony:

And whereas pursuant to Letters Patent under the said Great Seal, bearing date at Westminster the 10th day of October 1878, and a law of the Legislature of the said Colony intituled The Queensland Coast Islands Act of 1879 and Proclamation, bearing date at Brisbane in the said Colony the 18th day of July 1879 made by the Governor of the said Colony certain islands in the Torres Straits and lying between the Continent of Australia and the Island of New Guinea were annexed to and became part of the said Colony:

And whereas upon the establishment of the Commonwealth of Australia (hereinafter called "the Commonwealth") on the First day of January 1901 the said Colony became the State of Queensland (hereinafter called "the State") within the Commonwealth:

And whereas by Letters Patent under the said Great Seal, bearing date at Westminster the 10th day of June 1925 His late Majesty King George the Fifth did constitute, order and declare that there should be a Governor in and over the State:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Queensland and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts") and provision is made in relation to the said office in the Constitution Act of 1867, as amended, of the State of Queensland:

And whereas We are desirous of making new provision relating to the office of Governor of the State and to persons appointed to administer the Government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of existing Letters Patent and Instructions.

I. We revoke the said Letters Patent dated the 10th day of June 1925 and the Instructions to the Governor in and over the State or to the Lieutenant Governor or other officer for the time being administering the Government of the State dated the 10th day of June 1925 from and after the proclamation of these Our Letters Patent as hereinafter provided.

Office of Governor.

II. We order and declare that—

(a) there shall be a Governor in and over the State; and

(b) the appointment of a person to the office of Governor in and over the State shall be during Our pleasure by Commission under Our Sign Manual and may be terminated only by instrument under Our Sign Manual, taking effect upon publication thereof in the Government Gazette of the State or at a later time specified therein in that behalf.

Authorities and Powers of Governor.

III. We authorise and command the Governor of the State to do and execute all things that belong to his office according to the tenor of these Our Letters Patent and of such Commission as may be issued to him under Our Sign Manual and according to such laws as are now or shall hereafter be in force in the State.

Publication of Governor's Commission; Declaration of Governor's allegiance.

IV. Every person appointed to the office of Governor of the State, before entering on any of the duties of his office and with all due solemnity—

(a) shall cause the Commission appointing him to be Governor to be read and published at the seat of government in the State, in the presence of the Chief Justice or the next senior Judge of the State and of at least two Members of the Executive Council of the State; and

(b) thereafter, then and there take in the presence of the persons referred to in paragraph (a) of this Clause the Oath of Allegiance and the Oath of Office subject to and in accordance with the law and practice of the State,

and the Chief Justice or next senior Judge aforesaid shall administer those Oaths or, where permitted by law, take Affirmations in lieu of those Oaths.

V. There shall be an Executive Council for the State, which shall consist of— **Executive Council.**

(a) the persons who immediately before the coming into operation of these Letters Patent, are Members of the Executive Council of Queensland;

and

(b) persons who may at any time be Members of the Executive Council of Queensland in accordance with a law enacted by the Legislature of the State and in force;

and

(c) such other persons as the Governor of the State shall, from time to time in Our name and on Our behalf and subject to any law enacted by the Legislature of the State and in force, appoint under the Public Seal of the State to be Members of the Executive Council of Queensland,

until their membership thereof be terminated by their resignation therefrom or their removal therefrom by the Governor of the State.

Seniority of members of the Executive Council shall be according to the order of their respective appointments as members thereof.

Meetings of Executive Council.

VI. The Governor of the State shall attend and preside at all meetings of the Executive Council unless he is prevented by some good and sufficient cause and, in his absence, such member of the Executive Council as he may appoint in that behalf or, in the absence of that member, the senior member of the Executive Council present at a meeting shall preside.

The Executive Council shall not proceed to dispatch business unless—

It has been duly summoned by authority of the Governor of the State;

and

two members thereof, at the least, exclusive of the Governor or member thereof presiding, are present and assisting throughout the whole of the meeting at which the business is dispatched.

Specific powers of Governor.

VII. We authorise and empower the Governor of the State—

(a) so far as We may lawfully do, upon cause appearing to him sufficient, to remove or suspend from office any person holding any office or place by virtue of any appointment made in Our name or under Our authority;

(b) in Our name and on Our behalf, as he shall see occasion, where an offender may be tried in the State in respect of an offence (not being an offence against the laws of the Commonwealth) to grant, either free or subject to lawful conditions, to the offender a pardon, a commutation of sentence, or a reprieve of execution of the sentence for such period as the Governor thinks fit, or a remission of any fine, penalty, forfeiture or other consequence of conviction of the offender:

Provided that, except where the offence is of a political nature unaccompanied by any other grave crime, the Governor shall not make it a condition of his exercising his authorities and powers under this subclause (b) that the offender shall absent himself or be removed from the State.

Administration of Government in absence etc, of Governor.

VIII. In the event of the office of Governor of the State becoming vacant;

or

in the event of the Governor of the State assuming the administration of the Government of the Commonwealth;

or

subject to Clause IX of these Letters Patent, in the event of the Governor of the State becoming incapable or being absent from the State,

the Lieutenant-Governor or, if there be no such officer in the State and able to act, such person or persons as We may appoint (either before or after the event) under Our Sign Manual shall, during Our

Pleasure, administer the Government of the State, first taking the Oaths or Affirmations hereinbefore directed to be taken by the Governor in the manner herein provided and otherwise complying with Clause IV of these Our Letters Patent; which being done, We authorise and command the Lieutenant-Governor and every other such Administrator as aforesaid to do and execute, during Our pleasure, all things that the Governor might do under and in accordance with these Our Letters Patent, any Commission issued under Our Sign Manual to such Administrator, and the laws enacted by the Legislature of the State and in force.

Appointment of deputy for Governor.

IX. If the Governor of the State has occasion to be temporarily absent for a short period from the State or from the seat of government but not from the State, except for the purpose of administering the Government of the Commonwealth;

or

if by reason of illness, which the Governor has reason to believe will be of short duration, the Governor considers it desirable so to do,

the Governor may by an Instrument under the Public Seal of the State constitute and appoint the Lieutenant-Governor or, if there be no such officer in the State and able to act, any other person appointed by Us as provided by Clause VIII aforesaid to administer the Government of the State or, if there be no such person so appointed in the State and able to act, any other person to be his deputy during his temporary absence or illness and in that capacity to exercise, perform and execute for and on behalf of the Governor during his absence or illness, and no longer, all such authorities and powers vested in the Governor of the State by these Our Letters Patent or otherwise as shall, in and by such Instrument, be specified and limited, and no other.

The authority and power of the Governor of the State shall not be abridged, altered or in any way affected by the appointment of a deputy as aforesaid, otherwise than as We may at any time hereafter think proper to direct.

Any such appointment as aforesaid of a deputy may be revoked by the Governor of the State at any time.

Interpretation clause.

X. Where in the course of his passage from one part of the State to another part of the State the Governor is beyond the boundaries of the State he shall be deemed not to be absent from the State for the purposes of Clauses VIII and IX of these Our Letters Patent.

An illness or absence by reason of which the Governor is authorised to appoint and has appointed a person to be his deputy shall, for so long as the appointment subsists, be deemed not to constitute incapacity or absence from the State of the Governor for the purposes of Clause VIII of these Our Letters Patent.

Letters Patent not to affect existing commissions etc.

XI. We direct that these Our Letters Patent shall take effect without affecting in any way the efficacy of any Commission or appointment given or made before the coming into operation of these Our Letters Patent, or of anything done pursuant to any such Commission or appointment, or of any Oath taken before the coming into operation of these Our Letters Patent for the purpose of any such Commission or appointment.

Publication and commencement of Letters Patent.

XII. We direct and enjoin that these Our Letters Patent be read and proclaimed at such place or places in the State as the Governor of the State shall think fit and that these Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual OULTON

Given under my Hand and Seal, at Government House, Brisbane, this sixth day of March, in the year of our Lord one thousand nine hundred and eighty-six, and in the thirty-fifth year of Her Majesty's reign.

By Command, JOH BJELKE-PETERSEN

God Save the Queen!

PROUDLY PRINTED IN QUEENSLAND

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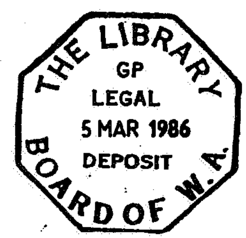


Government Gazette

OF

WESTERN AUSTRALIA

(Published by Authority at 3.45 p.m.)

No. 25] PERTH: FRIDAY, 28 FEBRUARY [1986

SPECIAL NOTIFICATION

Her Majesty the Queen has been pleased to grant fresh Letters Patent which are set out below relating to the Office of Governor of the State of Western Australia. The Letters Patent will take effect at the same time as the Australia Acts 1986 of the United Kingdom and the Commonwealth of Australia come into force.

Brian Burke,
PREMIER.

N.B. The Australia Acts 1986 are to come into force at 5 a.m. Greenwich Mean Time, 3rd March 1986.

LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR OF THE STATE OF WESTERN AUSTRALIA.

Dated 14th February, 1986.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING!

Whereas, by Letters Patent dated the 29th October, 1900 and by the Constitution Act, 1889 of the State of Western Australia provision was made in relation to the office of Governor of the State of Western Australia and its Dependencies extending from the parallel of thirteen degrees thirty minutes South latitude, to West Cape Howe in the parallel of thirty-five degrees eight minutes South latitude, and from the Hartog's Island on the Western Coast, in longitude one hundred and twelve degrees fifty-two minutes to one hundred and twenty-nine degrees of East longitude, reckoning from the meridian of Greenwich, including all the islands adjacent in the Indian and Southern Oceans within the latitudes aforesaid of thirteen degrees thirty minutes South, and thirty-five degrees eight minutes South, and within the longitudes aforesaid of one hundred and twelve degrees fifty-two minutes, and one hundred and twenty-nine degrees East from the said meridian of Greenwich:

And whereas by the Australia Act 1986 of the Commonwealth of Australia provision is made in relation to the office of the Governor of the State of Western Australia and corresponding provision will also be made in the Act which is expected to result from the Australia Bill at present before Parliament in the United Kingdom (which Acts are hereinafter together referred to as "the Australia Acts");

And whereas We desire to make new permanent provisions relating to the office of Governor of the State of Western Australia and for persons appointed to administer the government of the State:

Now Know Ye that We do hereby declare Our Will and Pleasure, and direct and ordain as follows:—

Revocation of existing Letters Patent and Instructions.

I. The Letters Patent dated the 29th October 1900, and Our Instructions to the Governor dated the 29th October 1900 are revoked.

Constitution of Office of Governor.

II. There shall be a Governor of the State of Western Australia who shall be Our representative in the State.

Powers and functions of Governor.

III. The Governor shall have and may exercise all the powers and functions which belong to the office of Governor or are to be performed by the Governor whether conferred by these Our Letters Patent, a law in force in the State or otherwise, including the power to constitute and appoint such Ministers, Judges, Magistrates, Justices of the Peace and other necessary officers as may be lawfully constituted or appointed by Us.

Public Seal.

IV. The Governor shall keep the Public Seal of the State for sealing all instruments required to bear the Seal.

Appointment of Governor.

V. The appointment of a person to the office of Governor shall be during Our pleasure by Commission under Our Sign Manual.

Executive Council.

VI. There shall be an Executive Council to advise the Governor in the government of the State.

Appointment of Executive Council.

VII. The members of the Executive Council shall be appointed by the Governor under the Public Seal of the State and shall hold office during the Governor's pleasure.

Governor to preside over Executive Council.

VIII. The Governor shall preside at meetings of the Executive Council but if the Governor is unable to preside the member appointed by the Governor to preside, or in the absence of such member, the senior member in order of appointment actually present, shall preside.

Publication of Letters Patent, etc.

XXI. These Our Letters Patent, each Commission appointing a Governor, Lieutenant-Governor or Administrator and each appointment of a deputy of the Governor shall be published in the Government Gazette of Western Australia.

Reservation of power to revoke, alter or amend.

XXII. The Power to revoke, alter or amend these Our Letters Patent is reserved.

Commencement of Letters Patent.

XXIII. These Our Letters Patent shall come into operation at the same time as the Australia Acts come into force.

In Witness whereof We have caused these Our Letters to be made Patent.

Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign.

By Warrant under The Queen's Sign Manual

OULTON

IX. A meeting of the Executive Council shall not proceed unless it has been convened by the Governor and at least two members other than the Governor or any member presiding are present. The Governor shall convene a meeting of Executive Council if so advised by the Premier or Acting Premier. *Quorum for Executive Council.*

X. There may be a Lieutenant-Governor of the State of Western Australia. *Constitution of Office of Lieutenant-Governor.*

XI. An Administrator shall administer the government of the State if and so long as there is a vacancy in the office of Governor or the Governor is administering the government of the Commonwealth of Australia or, not having appointed a deputy under Clause XVI, is unable to act as Governor or is on leave or is absent from the State. *Administration of government during vacancy, etc.*

XII. For the purpose of Clause XI— *Interpretation of Clause XI.*

(*a*) there shall be deemed to be a vacancy in the office of Governor if the Governor vacates the office, and

(*b*) the Governor is not absent from the State whilst temporarily off the coast of the State.

XIII. The Lieutenant-Governor shall be the Administrator, but if there is no Lieutenant-Governor or if the Lieutenant-Governor is unable to act as Administrator or is absent from the State then the Chief Justice of Western Australia or the next most senior Judge present in the State and able to act shall be the Administrator. *Administrator.*

XIV. Whilst administering the government of the State the Administrator shall have and may perform and exercise the powers and functions of the Governor. *Powers and functions of Administrator.*

XV. The appointment of a Lieutenant-Governor and of an Administrator shall be during Our Pleasure by Commission under Our Sign Manual. *Appointment of Lieutenant-Governor and Administrator.*

XVI. The Governor with the consent of the Executive Council may appoint the Lieutenant-Governor, or if there is no Lieutenant-Governor or if the Lieutenant-Governor is unable to act or is absent from the State then the Chief Justice of Western Australia or the next most senior Judge present in the State and able to act to be the deputy of the Governor and in that capacity to perform and exercise for a period not exceeding 6 weeks some or all of the powers and functions of the Governor. The appointment of a deputy of the Governor shall not affect the capacity of the Governor to exercise the powers and functions of the office of Governor. *Appointment of deputy of the Governor.*

XVII. Before assuming office a person appointed to be Governor or Lieutenant-Governor, and before assuming the administration of the government of the State an Administrator who is not the Lieutenant-Governor, shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office. Such Oaths and Affirmations shall be taken before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State. *Oaths to be taken by Governor, Lieutenant-Governor and Administrator.*

XVIII. Before performing or excercising any power or function of the Governor a person, who is not the Lieutanant-Governor, appointed to be the deputy of the Governor shall take the usual Oath or Affirmation of Allegiance and the usual Oath or Affirmation of Office before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State. *Oaths to be taken by deputy of the Governor.*

XIX. Before assuming office a person appointed a member of the Executive Council shall take the usual Oath or Affirmation of Allegiance and the usual Oaths or Affirmations of Office before the Governor or the Chief Justice of Western Australia or another Judge of the Supreme Court of the State. *Oaths to be taken by members of Executive Council.*

XX. All existing Commissions in relation to the office of Governor, Lieutenant-Governor and Administrator and all existing appointments to the Executive Council shall continue in force subject to these Our Letters Patent until revoked. *Existing Commissions to continue.*

OUGHTON, John Raymond Charles; Under Secretary, and Head, Prime Minister's Efficiency Unit, since 1993, Director, Efficiency and Effectiveness Group, since 1996, Office of Public Service, Cabinet Office; *b* 21 Sept. 1952. *Educ:* Reading Sch.; University Coll., Oxford (BA Mod. Hist. 1974). Joined MoD. 1974; Mem. UK Delegn, UN Law of Sea Conf., 1978; Asst Pvte Sec. to Minister of State for Defence, 1978–80; Principal, 1980; on secondment to Canadian Govt, 1980–81; Sales Policy, 1981–83; Office of Personal Advr to Sec. of State for Defence, 1984; Pvte Sec. to Minister for the Armed Forces, 1984–86; Sen. Principal, Directorate of Procurement Policy, 1986–87; Asst Sec., Dir of Procurement Policy, 1988–89; Head of Resources and Progs (Navy), 1990–93. FRSA. *Recreations:* squash, tennis, bridge, watching cricket and football. *Address:* Efficiency Unit, Office of Public Service, Cabinet Office, 70 Whitehall, SW1A 2AS. *T:* 0171–270 0257. *Clubs:* United Oxford & Cambridge University; Tottenham Hotspur Football, Middlesex CC.

OULTON, Sir (Antony) Derek (Maxwell), GCB 1989 (KCB 1984; CB 1979); QC 1985; MA, PhD; Permanent Secretary, Lord Chancellor's Office, and Clerk of the Crown in Chancery, 1982–89; barrister-at-law; Life Fellow, Magdalene College, Cambridge, since 1995 (Fellow, 1990–95); *b* 14 Oct. 1927; *y s* of late Charles Cameron Courtenay Oulton and Elizabeth, *d* of T. H. Maxwell, KC; *m* 1955, Margaret Geraldine (*d* 1989), *d* of late Lt-Col G. S. Oxley, MC, 60th Rifles; one *s* three *d*. *Educ:* St Edward's Sch., Oxford; King's Coll., Cambridge (scholar; BA (1st Cl.), MA; PhD 1974). Called to Bar, Gray's Inn, 1952, Bencher, 1982; in private practice, Kenya, 1952–60; Private Sec. to Lord Chancellor, 1961–65; Sec., Royal Commn on Assizes and Quarter Sessions, 1966–69; Asst Solicitor, 1969–75, Dep. Sec., 1976–82, and Dep. Clerk of the Crown in Chancery, 1977–82, Lord Chancellor's Office. Vis. Prof. in Law, Bristol Univ., 1990–91. Chm., Mental Health Foundn Cttee on the Mentally Disordered Offender, 1989–92. Trustee, Nat. Gallery, 1989–96. Pres., Electricity Arbitration Assoc., 1990–. Mem., Adv. Council, Inst. of Criminology, Cambridge, 1992–. *Publications:* (jtly) Legal Aid and Advice, 1971; (ed) Lewis, We the Navigators, 2nd edn 1994. *Address:* Magdalene College, Cambridge CB3 0AG. *T:* Cambridge (01223) 332100.

OULTON, Air Vice-Marshal Wilfrid Ewart, CB [illegible]; CBE 1953; DSO 1943; DFC 1943; FEng; FRIN; FIEE; Chairman, Medsales Executive Ltd, since 1982; *b* 27 July 1911; *s* of Llewellin Oulton, Monks Coppenhall, Cheshire; *m* 1st, 1935, Sarah (*d* 1990), *d* of Rev. E. Davies, Pitsea, Essex; three *s*; 2nd, 1991, [illegible] Sara Malcolm. *Educ:* University Coll., Cardiff; Cranwell. Commissioned, 1931; Director, Joint Anti-Submarine School, 1946–48; Joint Services Staff College, 1948–50; Air Attaché, Buenos Aires, Montevideo, Asuncion, 1950–53; idc 1954; Director of Operations, Air Ministry, 1954–56; commanded Joint Task Force "Grapple" for first British megaton weapon tests in the Pacific, 1956–58; Senior Air Staff Officer, RAF Coastal Command HQ, 1958–60; retd. *Publications:* Christmas Island Cracker, 1987; Technocrat, 1995. *Recreations:* music, travel, grandchildren and great-grandchildren. *Address:* Farthings, Hollywood Lane, Lymington, Hants SO41 9HD. *T:* Lymington (01590) 673498. *Clubs:* Royal Air Force; Royal Lymington Yacht.

OUNSTED, John, MA Cantab; HM Inspector of Schools, 1971–81, retired; *b* London, 24 May 1919; *e s* of late Rev. Laurence J. Ounsted, Dorchester Abbey, Oxon (ordained 1965; formerly with Sun Life Assurance); *m* 1940, Irene, 3rd *d* of late Rev. Alfred Newns; one *s* four *d*. *Educ:* Winchester (Scholar); Trinity College, Cambridge (Major Scholar). Math. Tripos Part I, 1st Class; Science Tripos Part II, 1st Class; Senior Scholarship, Trinity College. Assistant Master, King Edward's School, Birmingham, 1940–48; Headmaster, Leighton Park School, 1948–70. First layman ever to be Select Preacher, Oxford Univ., 1964. Page Scholarship to visit USA, 1965. Vice-Pres., Botanical Soc. of British Isles, 1989–93. Liveryman, Worshipful Company of Mercers. *Publications:* verses from various languages in the 2 vols of Translation, 1945 and 1947; contributions to Watsonia, The Proceedings of the Botanical Society of the British Isles, and various other educational and botanical periodicals. *Recreations:* botany, camping, being overtaken when motoring. *Address:* Apple Tree Cottage, Woodgreen Common, Fordingbridge, Hants SP6 2BD. *T:* Downton (01725) 512271.

See also Sir A. Foley Newns.

Government Gazette

EXTRAORDINARY

OF THE STATE OF

NEW SOUTH WALES

PUBLISHED BY AUTHORITY

No. 13] TUESDAY, 20 JANUARY [1981

PROCLAMATION

NEW SOUTH WALES, to wit

(L.S.)

J. A. ROWLAND, *Governor.*

By His Excellency Air Marshal Sir James Anthony Rowland, Knight Commander of the Most Excellent Order of the British Empire, upon whom have been conferred the decorations of the Distinguished Flying Cross and the Air Force Cross, Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia.

WHEREAS Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and Signet, bearing date at Saint James's, the fifteenth day of December, one thousand nine hundred and eighty, to appoint me, Air Marshal Sir JAMES ANTHONY ROWLAND, Knight Commander of the Most Excellent Order of the British Empire, upon whom have been conferred the decorations of the Distinguished Flying Cross and the Air Force Cross, to be Governor in and over the State of New South Wales and its Dependencies, in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Sir Laurence Whistler Street, Knight Commander of the Most Distinguished Order of St Michael and St George, Knight of Grace of the Most Venerable Order of Saint John of Jerusalem, Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this twentieth day of January, in the year of Our Lord, one thousand nine hundred and eighty-one, and in the twenty-ninth year of Her Majesty's Reign.

By His Excellency's Command,

N. K. WRAN.

GOD SAVE THE QUEEN!

Premier's Department, Sydney, 20th January, 1981.

HER Majesty's Commission appointing Air Marshal Sir JAMES ANTHONY ROWLAND, K.B.E., D.F.C., A.F.C., to be Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia, is published for general information.

N. K. WRAN, Premier.

ELIZABETH R.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, &c. &c. &c. To Our Trusty and Well-beloved Sir James Anthony Rowland, Knight Commander of Our Most Excellent Order of the British Empire, upon whom have been conferred the Decorations of the Distinguished Flying Cross and the Air Force Cross, Greeting.

I. We do, by this Our Commission under Our Sign Manual and Signet, appoint you, the said Sir James Anthony Rowland, to be, during Our pleasure, Our Governor in and over Our State of New South Wales and its Dependencies, in the Commonwealth of Australia, with all the powers, rights, privileges, and advantages to the said Office belonging or appertaining.

II. And We do hereby authorise, empower, and command you to exercise and perform all and singular the powers and directions contained in certain Letters Patent under the Great Seal, bearing date at Westminster the twenty-ninth day of October, 1900, constituting the office of Governor of the State of New South Wales and its Dependencies, and in certain other Letters Patent under the Great Seal, bearing date at Westminster the first day of December, 1909, the twenty-sixth day of February, 1935, the sixteenth day of November, 1938, and the fourteenth day of September, 1978, amending the same, or in any other Letters Patent adding to, amending, or substituted for the same, and according to such Orders and Instructions as the Governor of the said State for the time being hath already received, or as you may hereafter receive from Us.

III. And We do hereby appoint that so soon as you shall have taken the prescribed Oaths and have entered upon the duties of your Office, this Our present Commission shall supersede Our Commission under Our Sign Manual and Signet bearing date the thirty-first day of December, 1965, appointing Our Trusty and Well-beloved Sir Arthur Roden Cutler, upon whom has been conferred the Decoration of the Victoria Cross, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Knight Commander of Our Royal Victorian Order, Commander of Our Most Excellent Order of the British Empire, to be Our Governor of Our State of New South Wales and its Dependencies.

IV. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said State and its Dependencies, and all others whom it may concern, to take due notice hereof, and to give their ready obedience accordingly.

Given at Our Court at Saint James's this fifteenth day of December, 1980 in the twenty-ninth year of Our Reign.

By Her Majesty's Command,

CARRINGTON.

Commission appointing Air Marshal Sir JAMES ANTHONY ROWLAND, K.B.E., D.F.C., A.F.C., to be Governor of the State of New South Wales.

ISSN 0155-6320

SYDNEY:
Printed and Published by D. WEST, Government Printer, Harris Street, Ultimo, 20th January, 1981

Government Gazette

EXTRAORDINARY

OF THE STATE OF

NEW SOUTH WALES

PUBLISHED BY AUTHORITY

No. 4] FRIDAY, 20 JANUARY [1989

PROCLAMATION

NEW SOUTH WALES, to wit (L.S.) D. J. MARTIN, *Governor.*

By His Excellency Rear Admiral Sir David James Martin, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Officer of The Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.

WHEREAS Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and The Public Seal of The State, bearing date at Saint James's, the nineteenth day of December, one thousand nine hundred and eighty-eight, to appoint me, Rear Admiral Sir David James Martin, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Officer of The Order of Australia, to be Governor in and over the State of New South Wales in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this twentieth day of January, in the year of Our Lord, one thousand nine hundred and eighty-nine.

By His Excellency's Command,

NICK GREINER.

GOD SAVE THE QUEEN! (9079)

(9080) Premier's Department, Sydney, 20th January, 1989.

HER Majesty's Commission appointing Rear Admiral Sir DAVID MARTIN, K.C.M.G., A.O., to be Governor of the State of New South Wales, in the Commonwealth of Australia, is published for general information.

NICK GREINER, Premier.

90111-42884

ELIZABETH R.

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth, To Our Trusty and Well-beloved Rear Admiral Sir David James Martin, K.C.M.G., A.O., Greeting.

I. We do, by this Our Commission under Our Sign Manual and the Public Seal of the State of New South Wales, appoint you, the said Rear Admiral Sir David James Martin, K.C.M.G., A.O., to be during Our pleasure, Our Governor in and over Our State of New South Wales, in the Commonwealth of Australia, with all the powers, rights, privileges and advantages to the said Office belonging or appertaining.

II. And We do hereby authorise, empower, and command you to exercise and perform all and singular the powers and functions appertaining to the said Office contained in the Constitution Act 1902, of the said State, the Australia Act 1986, of the Commonwealth of Australia, and the Australia Act 1986, of the United Kingdom.

III. Further We do hereby appoint that so soon as you shall have taken the Oaths prescribed by the said Constitution Act 1902, and have entered upon the duties of your Office, this Our present Commission shall supersede the Commission under Our Sign Manual and Signet, bearing date the fifteenth day of December, 1980, appointing Our Trusty and Well-beloved Sir James Anthony Rowland, Companion of Our Order of Australia and Knight Commander of Our Most Excellent Order of the British Empire, upon whom have been conferred the Decorations of the Distinguished Flying Cross and the Air Force Cross, to be Governor of Our State of New South Wales.

IV. And We do hereby command all and singular Our Officers, Ministers, and loving subjects in Our said State, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of Saint James's, this nineteenth day of December, nineteen hundred and eighty-eight, in the thirty-seventh year of our Reign.

By Her Majesty's Command,

NICK GREINER, Premier of New South Wales.

Commission appointing Rear Admiral Sir DAVID JAMES MARTIN, K.C.M.G., A.O., to be Governor of the State of New South Wales. (9081)

1005

Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 28
Friday, 1 March 1996

Published under authority by the Government Printing Service

SPECIAL SUPPLEMENT

Proclamation

NEW SOUTH WALES,
to wit
(L.S)
G. Samuels,
Governor.

By His Excellency The Honourable Gordon Samuels, Companion of the Order of Australia, Governor of the State of New South Wales in the Commonwealth of Australia.

Whereas Her Majesty has been graciously pleased, by Commission under Her Royal Sign Manual and The Public Seal of The State, bearing date at Saint James's the 20th day of January one thousand nine hundred and ninety six, to appoint me The Hon Gordon Samuels, Companion of the Order of Australia, to be Governor in and over the State of New South Wales in the Commonwealth of Australia: Now, therefore, I, the Governor aforesaid, do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Chief Justice of the Supreme Court of the said State, and that I have assumed the said office of Governor accordingly.

Given under my Hand and Seal, at Sydney, this first day of March,
one thousand nine hundred and ninety six.

By His Excellency's Command,

BOB CARR

God Save the Queen!

Premier's Department, Sydney, 1st March, 1996

HER Majesty's Commission appointing the Honourable Gordon Samuels, AC, to be Governor of the State of New South Wales, in the Commonwealth of Australia, is published for general information.

Bob Carr, Premier.

ELIZABETH R.

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her Other Realms and Territories, Head of the Commonwealth,
To Our Trusty and Well-beloved,
The Honourable Gordon J Samuels, AC, QC.
Greeting;

I. We do, by this Our Commission under our Sign Manual and the Public Seal of the State of New South Wales, appoint you the said Honourable Gordon J Samuels, AC, QC, to be during Our pleasure, Our Governor of Our State of New South Wales in the Commonwealth of Australia, with all the powers, rights, privileges and advantages to the said position belonging or appertaining.

II. And We do hereby authorise, empower and command you to exercise and perform all and singular the powers and functions appertaining to the said Office contained in the Constitution Act, 1902 of the said State, the Australia Act, 1986, of the Commonwealth of Australia, and the Australia Act, 1986, of the United Kingdom.

III. Further We do hereby appoint that so soon as you shall have taken the Oaths prescribed by the said Constitution Act, 1902, and have entered upon the duties of your Office, this Our present Commission shall supersede the Commission under Our Sign Manual and the Public Seal of the State of New South Wales, bearing date the 2nd day of July, 1990, appointing Our Trusty and Well-beloved Rear Admiral Peter Ross Sinclair, Companion of Our Order of Australia, to be Governor of Our State of New South Wales.

IV. And We do hereby command all and singular Our Officers, Ministers and loving subjects in Our Said State, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of St James's this 20th day of January, one thousand nine hundred and ninety six, in the Forty Fourth year of Our Reign.

By Her Majesty's Command,

Bob Carr, Premier of New South Wales,

COMMISSION appointing the Honourable Gordon J Samuels A C, Q C, to be Governor of the State of NEW SOUTH WALES

ISSN 0155-6320

Authorised to be printed
R. J. MILLIGAN, Government Printer

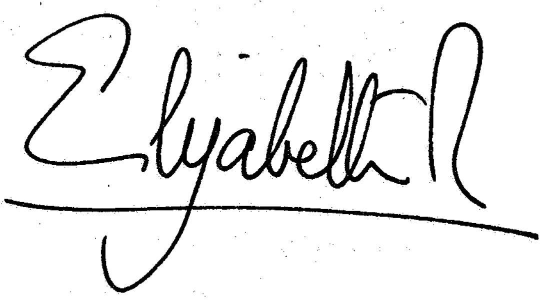
ANNEXURE 24

1. Copy of Commission of Appointment of Governor of South Australia

2. Copy of letter from Official Secretary to Governor of South Australia

3. Copies of Letters from Governors of Queensland and Western Australia claiming immunity from accountability

4. Copy of form letter Constitution Freedom of Information request



COMMISSION
passed under the Royal Sign Manual
appointing
Sir Eric James Neal, A.C., C.V.O.
to be Governor of the State of South Australia
in 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

To Our Trusty and Well-beloved Sir Eric James Neal,
Companion of the Order of Australia, Commander of the Royal
Victorian Order

Greeting

1. We do, by this Our Commission under Our Sign Manual, appoint you the said Sir Eric James Neal to be, during Our pleasure, Our Governor in and over Our State of South Australia in the Commonwealth of Australia with all the powers, rights, privileges and advantages belonging or appertaining to that Office.

2. And We do hereby authorise, empower and command you to exercise and perform the powers and functions appertaining to that Office.

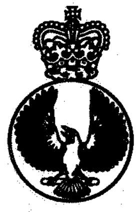
3. And We do hereby declare that, so soon as you enter upon the duties of your Office, this Our present Commission will supersede the Commission appointing Our Trusty and Well-beloved Dame Roma Flinders Mitchell, Companion of the Order of Australia, Dame Commander of Our Most Excellent Order of the British Empire, to be Governor of Our State of South Australia.

4. And We do hereby command all Our Officers, Ministers and loving subjects in Our State of South Australia, and all others whom it may concern, to take due notice hereof and to give their ready obedience accordingly.

Given at Our Court of Saint James's,

BY HER MAJESTY'S COMMAND

COMMISSION appointing
Sir Eric James Neal, A.C., C.V.O.
to be Governor of the State
of SOUTH AUSTRALIA



GOVERNMENT HOUSE

ADELAIDE

8th June, 1999

Mr. P. Batten
PO Box 23A
SOMERS VIC 3972

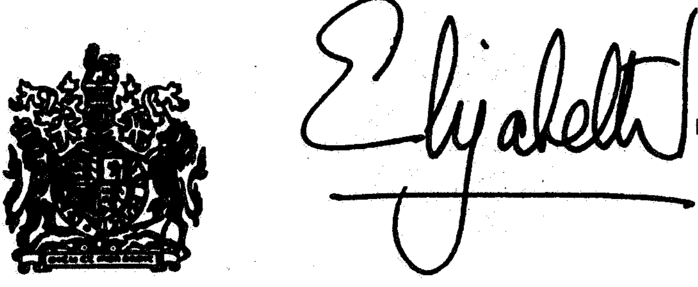
Dear Mr. Batten,

Thank you for your letter of 30th May, 1999 requesting a copy of the original document of Appointment of His Excellency the Governor, Sir Eric Neal, AC, CVO, complete with seal/s affixed.

Please find enclosed a copy of the Appointment, the original being held personally by His Excellency, and on which there are no seals attached.

Yours sincerely,

Ms. Penny M. Stratmann
OFFICIAL SECRETARY



COMMISSION

passed under the Royal Sign Manual and the

Public Seal of the State of Tasmania

appointing

THE HONOURABLE SIR GUY GREEN AC, KBE

to be Governor of the State of Tasmania

and its Dependencies in 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,

To Our Trusty and Well-beloved the Honourable Sir Guy Green, AC, KBE

By His Excellency The Honourable Sir Guy Stephen Montague Green, Companion of the Order of Australia, Knight Commander of the Most Excellent Order of the British Empire, Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia.

PROCLAMATION

WHEREAS Her Majesty The Queen of Australia has been graciously pleased, by Commission under Her Royal Sign Manual and Signet, bearing date at Saint James's the thirty first day of August, One Thousand nine hundred and ninety-five, to constitute and appoint me, THE HONOURABLE SIR GUY STEPHEN MONTAGUE GREEN, Companion of the Order of Australia, Knight Commander of the Most Excellent Order of the British Empire, Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia: Now I, the Governor aforesaid do hereby proclaim and declare that I have this day taken the prescribed Oaths before the Honourable Mr Justice William John Ellis Cox, Chief Justice of the Supreme Court of the said State, and that I have assumed the Administration of the Government accordingly.

GIVEN under my hand at Hobart in Tasmania aforesaid this second day of October One thousand nine hundred and ninety-five.

G.S.M. Green

GOVERNOR

By His Excellency's Command,

R J Groom.

PREMIER

GOVERNMENT HOUSE
QUEENSLAND

20th July 1999

Mr Peter Batten
PO Box 23A
SOMERS VIC 3872

Dear Mr Batten

I am replying, on behalf of His Excellency the Governor, to your letter of 1 July 1999 requesting access to documents relating to "the Powers and Direction vested in ... the Office of the Governor of Queensland" under the *Freedom of Information* Act 1982. In response to your request I advise as follows.

Documents relating to the Office of the Queensland Governor do not fall within the jurisdiction of the Commonwealth *Freedom of Information* Act 1982 as it is not a Commonwealth office. Therefore, I directed my attention to the Queensland *Freedom of Information* Act 1992 (the FOI Act), which covers access to information held by the Queensland Government.

The FOI Act applies to 'documents of an agency'. The Office of the Governor is not an 'agency' pursuant to section 8(1) of the FOI Act as it is not a department, local government or public authority. Further, section 11(1)(a) of the FOI Act states that the FOI Act does not apply to the Governor. As such, the FOI Act does not apply to the Office of the Governor. Therefore, your letter is not a valid request under the FOI legislation.

The Office of the Queensland Governor is unable to assist you further in this matter. Accordingly, I return the documentation and cheque previously forwarded to this Office by you.

Yours sincerely

Justin O'Connor
OFFICIAL SECRETARY

GOVERNMENT HOUSE
PERTH

Our Ref: 0107

26 July 1999

Mr Peter Batten
PO Box 23A
SOMERS VIC 3927

Dear Mr Batten

I acknowledge receipt of your letter dated 1 July 1999 addressed to the Governor of Western Australia.

The Freedom of Information Act in Western Australia does not apply to the Governor or Office of the Governor; an exclusion under Schedule 2 of the Act. Your cheque numbered 207 is therefore returned herewith.

Yours sincerely

Carol Buckley
ACTING OFFICIAL SECRETARY

Enc.

RECEIVED

1st July 1999

Major General Peter M Arnison O.A.
The Governor of Queensland
Government House
BRISBANE
QUEENSLAND 4000

Subject Matter of letter: **Freedom of Information request**

Dear Governor Arnison

My requests have been made to you as Head of State. The information that I require is from you as Head of State. To refer me to the Department Premier and Cabinet is to evade the responsibilities of your public Office. Your correspondence of the 24th June is unacceptable.
Accordingly I fully restate my request in the form of a request under the Freedom of Information Act 1982.

For the purposes of the research in which I am currently engaged I require certified copies of the **original documents** directly pertaining to your appointment to, and the exercising of powers as, the Office of Governor of Queensland

I stress, for my purposes reproductions of notices from Government Gazettes are insufficiently definitive and therefore will not suffice.

I further stress that this request is made of you as Head of State. Deflection of this request to, and any subsequent response from, the Head of Government or Department of Premier and Cabinet will not be acceptable.

The documents required will include:
1) A copy of the original Letters Patent bearing the date at Westminster 14th February 1986.

2) A copy of the original notice of the repeal of the 1986 Letters Patent if indeed they have been nullified.

3) A copy of the original replacement document/s of authority, **from whatever source**, if the 1986 Letters Patent have indeed been repealed.

4) A copy of the original document/s of your original Appointment.

5) If there has been an adjustment to your Appointment then I require a copy of the document of repeal of your original appointment as well as a copy of your current document of Appointment.

In other words, I require a complete statement appertaining to the totality of the Powers and Directions vested in your Office, that is the Office of the Governor of Queensland, together with the originating source of those Powers and Directions. By necessity this statement will define all changes that have occurred since your original appointment.

Please note that should it be that the reproduction of the seal/s affixed to these documents lack/s clarity then identification by way of description will be necessary.

All of the required Letters Patent/Royal Instruction, Documents of Authority and Document/s of Appointment associated with your public office constitute public property. It is therefore disappointing that it has been necessary to pursue my lawful request to this length.
I now look forward to prompt and satisfactory outcome in this matter.

To ensure that my requirements are fully met find enclosed cheque no....209...... to the value of $30 to formalise this Freedom of Information request.

Yours sincerely,

Peter Batten
Institute of Taxation Research
PO Box 9112
Seaford Mail Centre
SEAFORD
Victoria 3198

ANNEXURE 25

AN ILLUSTRATION OF BUREAUCRACY OUT OF CONTROL

Herald Sun
Sunday

July 18, 1999 $1.30*

PAY US FOR YOUR RAIN

VICTORIAN farmer Julian Kaye has been told he must pay $30,000 as a result of a rural water authority's ruling that it owns the rain that falls on his property.

He has been slugged to use rainwater from his own dam.

Described by angry locals as an audacious attempt to privatise rain, Wimmera-Mallee Water's claim has been condemned as a deterrent to rural investment.

It has shocked Mr Kaye, who built the dam on his farm at Elmhurst, near Stawell, to provide water for new grapevines.

He has refused to pay, saying: "It is just ludicrous."

But the water authority insists the rain would have run into the river system, if not for the dam. And Mr Kaye would have paid for using it from the river.

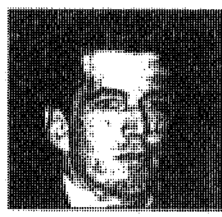
Allowing Mr Kaye to have the dam without paying would be like allowing him free access to water from the Wimmera River, it has argued.

Mr Kaye's supporters say the rain should remain free.

Ararat council claims uncertainty on water rights has undermined developments worth $20 million.

Report, Page 4

Cash for splash: Farmer Julian Kaye has been told to pay for what fills his rain gauge and dam. Picture: MATTY BOUWMEESTER



Kennedy Jr death fear

BOSTON: A small plane carrying John F Kennedy Jr to Martha's Vineyard was reported missing early today, sparking a search off New York's Long Island.

Jamie Gaspar, an operations specialist at Martha's Vineyard Airport, said the alarm was raised when Kennedy's plane failed to arrive at midnight, NY time, as scheduled.

It was thought Kennedy (pictured), son of the assassinated president, was piloting his wife, Carolyn, and one other person.

"I'm a little worried, because I know him personally," said Gaspar, who said he was told the plane took off from New Jersey.

NBC reported the Coast Guard had picked up a beeper signal from a beacon off Long Island and was carrying out an intensive search.

Eddie Martin, a family friend, said he was told Kennedy was headed for Martha's Vineyard, an island east of New York, and was then to go to the wedding of a cousin, Rory, daughter of the late Sen. Robert F. Kennedy.

Continued, Page 2

WEATHER: Mainly fine. Partly cloudy with moderate to fresh north to north-westerly wind. Expected top: 15. Details, Page 87.

Farmer ordered to pay for rain

By KATE ASHLEY-GRIFFITHS

A RURAL water authority says a farmer must pay almost $50,000 for rain that falls on his Elmhurst property.

Grape-grower Julian Kaye said Wimmera-Mallee Water had declared his eroded paddock a waterway so it could claim ownership of rain collected in his new dam and charge him fees for the water.

Mr Kaye said the authority claimed the 45-megalitre dam would trap water destined to flow into the Wimmera River catchment, so it should be compensated.

It wants an upfront fee of $650 a megalitre and yearly charges of $4 a megalitre for water pumped from the dam.

But a defiant Mr Kaye, who built the dam to provide water for 10ha of grapevines on his property near Stawell in central Victoria, is refusing to pay.

Angry locals have backed his fight, accusing the water authority of a "Big Brother" attempt to privatise rain.

The State Government has demanded an urgent investigation to resolve the dispute.

Mr Kaye said the authority was using him as a guinea pig to test a new interpretation of the Water Act in a bid to raise revenue and undermine private water rights.

"In the past, a waterway always looked like a river or stream," Mr Kaye said. "Now they've changed their interpretation to get us to pay for water running off our own place that we have caught in a dam.

"Their new definition of a waterway is everything that has water running off it.

"It is just ludicrous.

"It's not like we are asking for water out of the system. We are putting in our own infrastructure — they're not doing a bloody thing.

What a nerve: Julian Kaye with the dam on his property near Stawell. Picture: ROB LEESON

"I feel like I should bill them for the rest of the water that flows off my place into the Wimmera River."

Mr Kaye said he was struggling to earn an income and could not afford to spend almost $30,000 on the dam.

Elmhurst publicans John and Marion Cooper, of the Pyrenees Hotel, said many people in the community were angry that the authority was trying to claim ownership of Victoria's rain.

"You are being asked to pay for something that falls from the sky," Mrs Cooper said.

Mr Cooper branded the authority's stance a "money-grabbing exercise".

But Wimmera-Mallee Water general manager John Koulings said there was evidence of "a well-defined depression and gullies" on Mr Kaye's property and therefore any rainwater that washed over the paddocks belonged to the Crown.

Mr Koulings said this meant the authority had the right to impose a licence fee of about $440 a megalitre on water that could be trapped in the dam. He said all Wimmera River water was already allocated for use and the fee would allow the authority to improve catchment systems to boost supplies for the region.

Allowing Mr Kaye to have the dam without paying would be like allowing him to freely pump water directly out of the Wimmera River supply.

There had been an explosion of interest in vineyard developments in the region, a prime shiraz-growing area, and the authority had to control dam construction to protect water supplies.

"There are others seeking many hundreds of megalitres for further development and the community is concerned about what effect that will have on the Wimmera River," Mr Koulings said.

Ararat Council, which approved plans for Mr Kaye's dam in April, said uncertainty about water rights in the region in the past three months had cost Victoria $20 million in lost investment.

The council's economic development manager Ivan Burridge said the water authority's new interpretation of the Water Act had sent prospective vineyard developers interstate, where access to water was easier to secure.

Mr Burridge said Wimmera-Mallee Water's interpretation of a waterway "flies in the face of common law".

"Under the new interpretation, every small gully or shallow depression can be classified as a waterway," Mr Burridge said.

"If you have got a vegetable garden where water pools for a small amount of time, that could be a waterway."

A spokesman for Resources Minister Pat McNamara said a three-member panel would be set up to consider Mr Kaye's case and resolve the matter.

The spokesman said the panel would report to Mr McNamara "on an urgent basis".

Editorial, Page 42

Herald Sun **Sunday**

We urge the State Government to intervene to restore Mr Kaye's peace of mind and the confidence of an important rural industry.

Editorial, Page 42

The sky is the limit

MORE than their city cousins, farmers value rain. They think about it, talk about it, plan for it, even regulate their lives by its cycles. Never do they take it for granted. It is too crucial to their livelihoods for that.

They expect to pay for the rain that is recycled to them through water channels, irrigation schemes and pipelines. They accept their obligation to buy water pumped from rivers the rest of us regard as little more than scenery.

In a sense, they also pay a premium for rainfall because rural property prices are greater in temperate regions than in those bordering deserts, reflecting superior crop yields or greater stock carrying capacities.

Water is not free — farmers and orchardists understand that better than most. But they baulk at the financial consequences of bureaucrats seeking to reinterpret the laws of nature, and water authorities seeking to hijack that which does not belong to them. They object to audacious claims on resources.

High farce

For instance, it makes no sense to Elmhurst grape-grower Julian Kaye that he should be charged $30,000 for the rain that falls from the clouds and lands, without intervention by any municipal authority or service provider, in a dam in his paddock.

It makes no sense to his neighbors, to the general farming community, nor to distressed bush families who suspect they will soon be slugged for rain running from their roofs to their water tanks.

It makes no sense to the *Sunday Herald Sun*, a supporter of rural Victoria, and we urge the State Government to intervene to restore Mr Kaye's peace of mind and the confidence of an important rural industry.

Wimmera-Mallee Water is out of line. Claiming ownership of the rain in his dam has the potential to ruin Mr Kaye, who is being punished for his wisdom in switching to new agricultural pursuits. It will also put a brake on investment in rural areas.

The water authority's demand for a licence fee, based on a legalistic view of the topography of Mr Kaye's property, on which an eroded section has been declared a waterway, is at best high farce. At worst, it is highway robbery.

In determining who owns the falling rain, Wimmera-Mallee Water may be better to hire philosophers than lawyers, for its argument so far is extremely wet.

ANNEXURE 26

COPY OF JUDGEMENT MASTER OF AUSTRALIAN CAPITAL TERRITORY SUPREME COURT NO. SCA 5 OF 1996

IN THE SUPREME COURT OF THE)
)
AUSTRALIAN CAPITAL TERRITORY) No. SCA 5 OF 1996

BETWEEN: GEOFFREY DOUGLAS SKELTON
Plaintiff

AND: REGISTRAR OF MOTOR VEHICLES
Defendant

ORDER

Coram: : Master T Connolly

Date of Order: : 4 April 1996

Where Made: : Canberra ACT

THE COURT ORDERS THAT:

1. The appeal be struck out.
2. The appellant pay the respondent's costs of this application.

This is an application to strike out documents filed in this Court purporting to be an appeal from a decision of Magistrate Hardiman affirming a parking infringement imposed on Mr Skelton under authority of the Registrar of Motor Vehicles.

In documents filed in support of the appeal and in oral argument before me Mr Skelton made it clear that his ground of challenge is of a most fundamental kind. Mr Skelton contends that the Motor Traffic Act is invalid, because, he says, the Constitution of the Commonwealth of Australia is invalid. His argument is that the Motor Traffic Act, and the Constitution, are based on the authority of the British Parliament, and that as an Australian citizen he can not be subject to any law which traces its authority to the British Parliament. He concedes that it follows from this argument that all laws of the Commonwealth, the Australian Capital Territory and the States equally have no application. The inconvenience of this legal void he expects to be resolved when the United Nations hands down an "interim Australian Constitution".

It is clear to me that this appeal has no possibility of success, and that I should strike out these proceedings. Mr Skelton does not present any case that is arguable. I indicated this to Mr Skelton at the outset of this hearing, and he has flagged his intention to pursue the issue through the forums of the United Nations.

The proposition that the structure of government and laws in Australia is invalid because it is now based on a foreign parliament is totally inconsistent with authority. The evolution of Australia from the status of a series of colonies of the British Crown to a sovereign independent nation has been extensively set out by learned authors (e.g. *The Evolution of Australia's International Personality* by D P O'Connell and James Crawford, K W Ryan (Editor) *International Law in Australia* (1984), *A Sovereign People, A Public Trust* by P D Finn in Finn (Editor) *Essays on Law and Government* (1995)) and has been recognised by the High Court in *Mabo v Queensland* (1992) 175 CLR 1.

The ultimate source of constitutional authority in Australia is now derived, not from the Parliament of the United Kingdom, but from the Australian people -

> "the doctrine of representative government which the Constitution incorporates is not concerned merely with electoral processes. As has been said, the central thesis of the doctrine is that the powers of government belong to, and are derived from, the governed, that is to say, the people of the Commonwealth. The repositories of governmental power under the Constitution hold them as representatives of the people under a relationship; between representatives and represented, which is a continuing one"

(per Deane and Toohey JJ in *Nationwide News v Wills* (1992) 177 CLR 1 at 72).

This passage answers Mr Skelton's contentions. Mr Skelton is liable for prosecution if he parks his car illegally, not because a British Parliament said

so, but because the law that imposes the parking fine is a law passed by, and deriving its authority from, a democratic legislature. The "continuing" relationship between the people and their parliaments is the source of this authority - it is the reason we obey the law.

The clearest exposition of the present source of authority for Australian governance is set out in the judgment of Mason CJ in *Australian Capital Television v The Commonwealth* (1992) 177 CLR 106 at 137-8:

> "The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives. In the case of the Australian Constitution, one obstacle to the acceptance of that view is that the Constitution owes its legal force to its character as a statute of the Imperial Parliament enacted in the exercise of its legal sovereignty; the Constitution was not a supreme law proceeding from the people's inherent authority to constitute a government, notwithstanding that it was adopted, subject to minor amendments, by the representatives of the Australian colonies at a convention and approved by a majority of the electors in each of the colonies at the several referenda. Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative government for Australia in which the elected representatives exercise sovereign power on behalf of the Australian people. Hence, the prescribed procedure for amendment of the Constitution hinges upon a referendum at which the proposed amendment is approved by a majority of electors and a majority of electors in a majority of the States (s.128). And, most recently, the *Australia Act* 1986 (UK) marked the end of the legal sovereignty of the Imperial Parliament and recognized that ultimate sovereignty resided in the Australian people. The point is that the representatives who are members of Parliament and Ministers

> of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act."

Mr Skelton's arguments must therefore fail.

But there is a further, and perhaps more fundamental reason why I must strike out this appeal. Mr Skelton's argument is premised on the invalidity of the Constitution - it is a challenge to the very order under which this Court derives its authority (*Spratt v Hermes* (1965) 114 CLR 226). A similar fundamental challenge to the source of sovereign authority of this country was rejected by Mason CJ in *Coe v Commonwealth* (1993) 118 ALR 193 at 200 citing Jacobs J in an earlier challenge (*Coe v Commonwealth* (1979) 24 ALR 118) where His Honour said of paragraphs in a statement of claim challenging the sovereignty of Australia that they were

> "...not matters of municipal law but of the law of nations and are not cognisable in a court exercising jurisdiction under that sovereignty which is sought to be challenged"

(at 132).

I strike out this appeal and order that the appellant pay the respondent's costs of this Motion.

I certify that this and the three (3) preceding pages are a true copy of the Reasons for Judgment herein of The Master, Mr. T Connolly

[signature]

Associate

Dated: 12 April 1996

ANNEXURE 27

1. Copy of evidence given in South Australian Magistrates Court
2. Appellant's presentation given in South Australian Supreme Court
3. Justice Bleby's Judgement
4. Copy of presentation given to second Magistrates Court
5. Documents establishing validity of argument
6. Magistrate's ruling
7. Appellant's presentation by way of affidavit
8. Respondent's response
9. Appellant's presentation to court
10. Justice Debelle's judgement

EVIDENCE TO BE GIVEN AT TRIAL
SET DOWN FOR 10am January 15th 1998
in MAGISTRATES COURT CHRISTIES BEACH

Police -v- Batten
CASE REFERENCE: MCCHB -97- 6993

before...

Complainant: A MEMBER OF THE POLICE FORCE of ADELAIDE
Defendant: PETER BATTEN of VICTOR HARBOR

INTRODUCTION

Because that which I have to present to the court is so totally contrary to the basis, indeed the very foundations of the politico/judicial system which has been in use in Australia since federation I fear the court may tend to dismiss my representation from the outset. However, I am hopeful that the court has become aware that very much more important people than me have presented similar evidence in much higher places both within Australia and in the international arena and so will accommodate my indulgence.

I am accused of committing an offence and under the Road Traffic Act and under the Expiation Act 1996, have been subjected to a penalty.

I do not intend to address the specific charge that has been brought against me.

Rather it is my intention to establish that the laws which the court has been established to interpret and/or administer are invalid and cannot be rectified by the current Commonwealth or State Parliaments or any other government elected under the current political system.

It was believed that after the presentation of a fairly detailed statement relating to the stance being adopted, the Court would have agreed that, on at least two grounds, it does not have the jurisdiction to proceed with the hearing and that because of this it was duty bound to adjourn the case.

However, since the Court has decided to proceed it is reminded that it is doing so in the face of historical facts and in contravention of the very law which the court has used to make the decision to proceed.

The Court is further reminded that it is proceeding in a jurisdiction which is the preserve of superior courts. Those being, the High Court of Australia and the International Court of Justice.
This is so because, as the court has been advised, the arguments which will be put involve matters relating, firstly, to questions concerning the validity of Letters Patent and the Constitutions of both the State of South Australia and the Commonwealth and secondly, to International Treaties and hence International Law.

Under Article 36 of the Statute of the International Court of Justice the hearing of matters relating to the interpretation of a treaty or any question of international law are specifically reserved for that court.
And Section 78B of the Federal Judiciary Act 1903 requires a court not to proceed where a cause involves a matter arising under the Constitution or involves its interpretation, until the Attorneys-General of both the Commonwealth and the States have been informed and invited to intervene in the proceedings.

As agreed with a former member of the High Court I present an explanatory statement, as prepared by him, to the Court.

I also present for the court record, statements by way of statutory declarations, pertaining to the historical facts and their association with international law and, a formal objection to the action which the court is taking and its possible infringement of the 1947 Geneva Convention.

OVER VIEW OF THE CASE FOR DEFENCE

The purpose of the British Colony of the Commonwealth of Australia Constitution Act 1900 UK (full title) was to provide limited, centralised self-government of the colonies while maintaining full control over the Colony of Australia via the eight conditional (covering) clauses of the Act. The Colony had limited control over clause 9 of the Act only, that is, The Constitution. If any of the eight conditional clauses cease to be valid then the Act is invalid.

Referendums conducted in the colony in the 1890's were for the sole purpose of deciding for or against a federation or centralised form of self-government and had nothing to do with sovereignty.

In mid July 1995 The lord Chancellor, in answer to a parliamentary question about the Australian Constitution stated,:

"The British Colonies Constitution Act 1900 was the basis for self government. It was never intended to be and is not suitable to be the basis for independence.

The right to repeal this act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or Member State of the United Nations . Indeed, the United Nations Charter precludes any such action."

It is clear that the sovereign nation, Australia does not have superior control over its constitution. Since the States only exist in the context of the Australian Constitution it follows that all Australian municipal law remains dependent on United Kingdom law.
So it is that all laws being enforced by the court are dependent upon British law, in the form of the Commonwealth and State constitutions, for their validity.

However, under international law this colonial law ceased to have effect within the sovereign nation of Australia following its achievement of independent sovereign nation status on the signing of the Treaty of Versailles on the 28th June 1919 and when the Accessions to the League of Nations came into effect on the 10th January 1920.

A second international treaty which is in force, the United Nations Charter, which is also international law, is again superior to municipal law (High Court - Teoh Case 1994) and again prevents the application of colonial law to member states of the United Nations under Articles 2.1 and 2.4. The Australia Act 1986 is municipal law and not superior to this treaty.

'The Queen of Australia and Her other Realms and Territories' is not a sovereign recognised by the Commonwealth Constitution Act (UK) 1900 and in any case legislation passed by the Commonwealth Parliament without Prior approval at a referendum cannot alter the constitution contained in that Act to give recognition to such a sovereign.

Under the Immigration Act 1972-73 (UK) Australians are declared as "aliens" and citizens of a foreign power and that Australia is specifically excluded from the list of territories of the United Kingdom. It is therefore clear, that despite whatever the historical ties and appearances may be, the Queen of the United Kingdom no longer reigns over the sovereign nation of Australia.

AND YET---------

The Letters Patent appointing the Governor of South Australia and his deputies were issued by *"ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland........"*
"Witness Ourself at Westminster the fourteenth day of February in the Thirty-fifth year of Our Reign. (that is, 1986!)
By Warrant under The Queens Sign Manual" OULTON
These Letters Patent were signed by Sir Anthony Derek Maxwell Oulton QC, a British citizen, appointed under the British Civil Service Act and employed by the Government of the United Kingdom which is a foreign power! Not only that, but these Letters Patent are dependent on an especially prepared Act of the Parliament of the United Kingdom. The law of a foreign power. As established by the High Court - Woods case 1988. And, if that's not bad enough in itself, that Act had not even been passed at the time that these Letters Patent were signed!
Apart from all of that, these Letters Patent revoke the 1900 Letters Patent which remain the only ones referred to in the South Australian Constitution so effectively nothing deriving from the South Australian Constitution can be given Royal Assent.

Now as the Court is aware, Under UK and international law a Sovereign issues Letter Patent to one of her subjects imposing duties in relation to her citizens and/or Kingdom. It is a long time since a person serving as Governor of South Australia was a British citizen and even if these people were "Her" subjects, Australia is definitely no longer part of "Her" Kingdom, and those of us who live here are, almost without exception, not Her subjects!
And so we are confronted with a very serious question :-
What section in international law allows the Queen of the United Kingdom to issue Letters Patent to a foreigner, an Australian citizen, to act as Governor on her behalf, over citizens of Australia, an independent sovereign nation member state of the United Nations , in contravention of the United Nations Charter Article 2, paragraphs 2 and 4 ?
and:-
Since other Letters Patent for delegated appointments, such as judicial officers, are issued by the Governor so appointed a further serious question presents itself------
Under what section of international law and what constitutional power do such Australian citizens derive their authority as officers of the Queen. a Queen who is the Monarch of a foreign power?
So, I have produced substantive arguments which have to be answered, but:

because international treaties and a breach of international law have been sighted as defence , the Court is again reminded that if it proceeds it will itself be in breach of article 36 of the Statute of the International Court of Justice.

And also, since the defendant is challenging the validity of both the Federal and State Constitutions as well as Letters Patent then, the court is once again reminded that under Section 78B of the Federal Judiciary Act 1903, the Court is obliged to not proceed in the face of such a challenge until notice of the cause, specifying the nature of the matter has been given to Attorneys-General of the Commonwealth and the States, for consideration by them, of the question of intervention in the proceedings or removal of the cause to the High Court.

THE COURT'S CONUNDRUM

If despite these dilemmas the Court chooses to proceed it seems it will be faced with something of a conundrum. It seems the Court will either have to rule that foreign law applies in an independent Australia or reach a decision which effectively rules itself out of existence.

If it is the wish of the Court, the defendant will proceed with a detailed presentation of his defence.
This will result in a conclusion that, all Australian municipal law remains British colonial law. That International Law is not only valid law by is the only valid law applicable in Australia. And that the Letters Patent under which the Court has been set up are invalid. They are in contravention of International law.

Municipal laws have no validity and even if they were, the court has no authority to administer or impose them on citizens of the sovereign independent nation of Australia.

Of course, if the Court finds that any of this is so it will have effectively ruled itself out of existence.

If on the other hand, the Court, under any circumstance rules that an offence has been committed and imposes a penalty and costs, or just costs, it will have applied foreign law in the sovereign nation of Australia. So in addition to the complaint to the Commonwealth Attorney General, an appeal will be lodged with the Supreme Court and a complaint will be made to the United Nations. This will be accompanied by a request for action to be taken by the appropriate body within that Organisation.

DETAILED PRESENTATION OF DEFENCE

It is my intention to draw the courts attention to the fact:

1. that International Law is Australian Law.

2. that Australia is an independent sovereign nation

3. that the United Kingdom of Great Britain and Northern Ireland is a foreign power and sees itself as such.

4. that the "British colony of the Commonwealth of Australia Constitution Act U.K. 1900" is and remains British law and that it ceased to have valid application when Australia achieved independent sovereign nation status on 10th January 1920.

4a. and that because the State of South Australia only exists in the context of the Commonwealth, the Constitution of that state ceased to have valid application at the same time.

5. that the Statute of Westminster 1931 and the Australia Acts 1986 are both in contravention of International Law.

6. that the Queen of Australia is not an office recognised by the Australian Constitution.

7. that the Letters Patent 1984 appointing the Governor General are in breech of Article 2 paragraphs 1 and 4 of the United Nations Charter and the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty*(resolution 2131(XX) of 21 December 1965) , and the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* (resolution 2625 (XXV) of 24 October 1970).

8. that the current Letters Patent 14th February 1986 appointing the Governor of South Australia have no legal standing because they have been issued by the Monarch of a foreign power and claimed, in contravention of both International and United Kingdom law, by Australian citizens, as their source of authority.

9. that even if these Letters Patent are ruled 'valid' they are not recognised by the South Australia Constitution Act 1934 (Reprint No. 6) and that having been issued by the Queen of the United Kingdom they are not recognised by the Australia Act 1986 either.

10. that since valid Letters Patent do not exist, and can't exist, then traffic laws and expiation laws don't exist either. So no offence has been committed.

1. International law is Australian law and is superior to municipal law.
If there was ever any question about this the Franklin Dam case and the Teoh case of 1994 put it beyond doubt. In its summation the high Court, amongst other things said, " *Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes.* "
Australia was a signatory to the Treaty of Versailles and became a foundation member of the League of Nations. Article X of that treaty, the Covenant of the League of Nations guarantees the political independence of all member states. the Covenant served to formalise international law. This occurred on the 10th January 1920.
Australia signed the United Nations Charter in 1945. Ratification gave the treaty force of law in Australia. Article 2.1 and 2.4 of this treaty also guarantees the independence and sovereignty of member states.
In answer to correspondence relating to the question of sovereignty, Paul Szasz, acting Director in the UN Office of Legal Affairs has responded:-
"The General Assembly of the United Nations has further developed this principle by proclaiming, inter alia, a duty of non-intervention in the internal and external affairs of other States. This duty has been spelled out in numerous declarations and resolutions, the most important of which are Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (resolution 2131(XX) of 21 December 1965), and the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation amongst States in Accordance with the Charter of the United Nations (resolution 2625 (XXV) of 24 October 1970) The latter declaration, in particular, provides inter alia that:-
"No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights, and to secure from it advantages of any kind".
The Charter of the United Nations includes the Statute of the International Court of Justice. The Charter has been ratified by Australia and is therefore Australian law.

2. Australia is an independent sovereign Nation State.

State and Federal Governments, the United Nations and the High Court all say Australia is independent. In fact no legal authority is prepared to publicly argue that Australia is not independent. Australia's internationally recognised independence commenced on 28th June 1919 when it became one of the nation signatory to the Treaty of Versailles. This independent status was further confirmed on the 10th January 1920, the day that Australia became a foundation member of the League of Nations.
Opening addresses at the first session of the League of Nations welcomed the "four newly independent countries" as did speakers such as U.S. President Woodrow Wilson who commented on the noise being made by "that little independent country down there" bringing Billy Hughes' famous reposte, " I speak for 60,000 dead! who do you speak for?" This was a continuation of the sentiment that Hughes put into train in an address to the Commonwealth Parliament on the 10th September 1919 when he said "Australia has now entered into a family of nations on a footing of equality . Australia has been born in a blood sacrifice."

3. that the United Kingdom of Great Britain and Northern Ireland is a foreign power and sees itself as such.
It really cannot be doubted that the UK is a foreign power. But if an incident needs to be quoted to establish that this is so, the finding by he High Court in 1988 that the British citizen Wood could not serve as a senator for N.S.W. the Court ruled that the United Kingdom of Great Britain and Ireland is a foreign power, its citizens are foreigners not Australians.
The Immigration Act 1972 UK defines Australian Citizens as "Aliens." This, in itself, is a sufficient illustration to demonstrate Britain's perceived relationship to Australia.

4. ***that the "British colony of the Commonwealth of Australia Constitution Act U.K. 1900" is and remains British law and it ceased to have valid application when Australia achieved independent sovereign nation status during the events of 28th June 1919 and 10th January 1910.***
The preamble to the Act remains as it has always been and includes the following clear statement as to who "owns" the Act.
" 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:-"
While the earlier reference drawn from the July 1995 statement of the Lord Chancellor in response to a parliamentary question about the Australian Constitution, viz:

" The right to repeal this act remains the sole prerogative of the Parliament of the United Kingdom. There is no means by which under United Kingdom or international law this power can be transferred to a foreign country or a member state of the United Nations. Indeed, the United Nations Charter precludes any such action. " is a clear confirmation that this Act remains solely the property of the United Kingdom. This of course is really just a confirmation of that which is clear from a full examination of the preamble and the eight covering clauses contained in the Act.

In a letter from the Federal Attorney-General's Office dated 21 October 1997 it is stated that the prior to the establishment of the Commonwealth *"Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.*

However, 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 deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australian People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed. "

This attempt to state that all is in order fails on several counts. The most significant is the overlooking of the Acts conditional clauses and in particular, clause 8 : **" 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."**

Clearly Australia, instead of being a number of self governing colonies became a single self-governing colony with the ultimate power still resting with the British Parliament. **And nothing has changed!**

A letter from the UK Foreign and Commonwealth Office dated 11 December 1997 states : *" The continuing role of the Australia Constitution Acts as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.*

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made. "

So there we have it. The Act itself, the Australian government and the UK government all confirm that the British Colony of Australia Constitution Act remains British law. And it is confirmed that it remains subject to the authority of the Government of the UK. Both of the government sources quoted also confirm that Australia is an entirely independent nation.

So the court must decide, is Australia an independent nation with no constitution? , or does Australia by continuing to use an Act of British law as its supreme law, remain a British colony ?

NO!
It is clear that it is an independent country being administered by illegal governments using a redundant constitution.

It is an independent nation in which, by circumstance of history, the only valid law is international law.
And this law clearly invalidates the Commonwealth of Australian Constitution Act UK 1900 as from 10th January 1920.

•

4a. and that because the state of South Australia only exists in the context of the Commonwealth, the Constitution of that state ceased to have valid application at the same time.
Any legal argument that the "states" of Australia are separate from the Commonwealth of Australia is extinguished by clause 6 of the conditional clauses of the Commonwealth of Australia Constitution Act (UK) 1900 which clearly defines the states to be part of the Commonwealth at its establishment. Continuance of state law depends on section 106 and 108 of this Act. Because this Act ceased to be applicable on the 10th January 1920 the States and all State laws, in the legal sense, disappeared on the same day!

5. that the Statute of Westminster 1931 and the Australia Acts 1986 are both in contravention of International Law.
Paragraph 4 of the Statute of Westminster Act 1931 contravenes Article X of the Covenant of the League of Nations. Paragraph 1 of the Australia Act 1986 contravenes Article 2 paragraphs 1 and 4 of the Charter of the United Nations. In addition, the Statute of Westminster Act 1931, The Statute of Westminster Adoption Act and the Australia Act 1986 were signed by Australian politicians using legislation (Commonwealth Constitution Act (UK) 1900) invalidated under international law some eleven and sixty six years earlier. The continued use of UK law in an attempt to validate an anomaly amounts to a compounding of the political interference by a foreign government in the affairs of a fellow Member State of the League of Nations/United Nations, contrary to Article X of the League of Nations Covenant and Article 2, paragraphs 1 and 4, of the United Nations Charter as well as a number of specific resolutions. Such usage contravenes all internationally accepted definitions of a sovereign State and, interestingly, falls within the legal definition of a "War Crime"
To maintain that these Acts allow the continued use of British law in contravention of Article X of the League of Nations Covenant, the United

Nations Charter and international law requires a legal authority superior to the United Nations Charter and the Treaty of Versailles. No such authority exists. Further both treaties require that any dispute relating to these matters can only be heard by the International Court of Justice. Reference to the International Court of these matters is compulsory under Article 36 of the Statute of the International Court. The Statute, part of the United Nations Charter, has been ratified by Australia and is therefore Australian law.

6. That the "Queen of Australia" is not an office recognised by The Australian Constitution Act (UK) 1900.

The preamble to the Act opens thus:
"*WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessings 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:*"
Covering clause 2 states " *The provisions of this Act referring to the Queen shall extend to Her Majesties heirs and successors in the sovereignty of the United Kingdom.* "
Clearly the Monarchy of the United Kingdom is the only one recognised by the Constitution.

7. That the Letters Patent 1984 appointing the Governor General are invalid and are in breach of Article 2 paragraphs 1 and 4 of the United Nations Charter and resolution 2131 (XX) of 21 December 1965 and resolution 2625(XXV) of 24 October 1970.

The greeting is from "*Elizabeth the Second, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth.*"
The very next paragraph states: " ***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.*"
As already established the only Monarch that can be recognised by the Constitution is Queen Victoria's " *heirs and successors in the sovereignty of the United Kingdom.* " (Conditional clause 2)
I have been informed that the Keeper of the Royal Seals, Lord Huntington, has advised that only the Queen of the United Kingdom can issue Letters Patent covering the Constitution of the Commonwealth of Australia. However, I must add that my request to Buckingham Palace for confirmation of this was deflected to the Australian Attorney-General who, in turn, has avoided offering a definitive answer

So these Letters Patent being issued by 'The Queen of Australia' can have no application for, as already established, the Commonwealth of Australia Constitution Act only recognises the Monarch of the United Kingdom of Great Britain and Northern Ireland.
Anyway from an examination of these instructions, it is clear that despite the greeting from the 'Queen of Australia' the second paragraph of the document (The Letters Patent to the Governor-General) vests authority "*by the Constitution*", *ie,* that is, vests authority in the monarch of the United Kingdom.
Clearly this is a situation which contravenes Article 2 paragraphs 2 and 4 of the Charter of the United Nations as well as various resolutions .In particular, Resolution 2625 of December 1970, in particular provides inter alia that: " No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights, and to secure from it advantages of any kind.".(It is here that an interesting question presents itself. By issuing these Letters Patent along with those dealt with in 8. below, has the Queen of the UK committed a war crime?)

8. The Letters Patent (14th February 1986) to the Governor of South Australia have no standing in law.

These Letters Patent were issued by: " *ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith*"
They were signed OULTON on the fourteenth day of February in the Thirty-fifth year of Our Reign. That is, February 13th 1986.
According to 'Who's Who 1997' , OULTON is Sir Anthony Derek Maxwell Oulton QC, who was Permanent Secretary, Lord Chancellors Office and Clerk of the Crown Chancery from 1982 to 1989. When he signed these Letters Patent, Sir Derek was a British civil servant!
He like Queen Elizabeth II of the U.K. is a British citizen, not an Australian. They are both foreigners!

So even despite attempts by Whitlam to prop up the ailing colonial system in 1973, by creating a 'Queen of Australia' and attempts by Prime Minister Hawke to give legitimacy to the Governor General's 1984 Letters Patent by issuing a greeting in the name of the "Queen of Australia" here, two years later, is a blatant example of a State Government allowing a foreign government to interfere in the internal affairs of this independent sovereign country, my country, Australia.

The debacle surrounding the situation is heightened by the fact that under British and International Law a Sovereign may only issue Letters Patent to her Subjects, that is, British citizens and even then they can only have application in the United Kingdom and Her Territories . It is a long time since Governors of South Australia have been British citizens and of course Australia is specifically excluded from the list of Her Realms and Territories. By allowing this travesty to continue both the State and Federal governments as well as those individuals accepting an appointment as Governor of South Australia are surely guilty co-conspiritors against the people of Australia.

The basis for all international law is that no sovereign country can be subject to the law of another sovereign country.
There can be no argument to the contrary. The current Letters Patent from which Dame Roma Mitchell drew her authority to give assent to the Expiation Act 1996 and on which Sir Eric Neal relied to make regulations have no standing in law.

9. that even if by some illogical twist these Letters Patent are ruled 'valid' they are then not recognised by the South Australian Constitution Act 1934 (Reprint No 6) and that having been issued by the Monarch of the United Kingdom they are not recognised by the Australia Act either.
Section 69 (2) of the South Australian Constitution Act states:-
*" **the Letters Patent**" means the Letters Patent passed under the Great Seal of the United Kingdom of Great Britain and Ireland, bearing the date of October, 1900 whereby permanent provision was made for the office of Governor in the State of South Australia and its dependencies in the Commonwealth of Australia."*
Clause I of the current Letters Patent entirely revokes the Letters Patent of October 1900.
It is clear that since the issuing of the current Letters Patent appropriate measures have not been taken to amend the South Australian Constitution Act to accommodate them. So it is that the South Australian Constitution does not recognise these 1986 letters Patent!
But even if this is considered of no import and the argument that the Australia Act 1986 is invalid is rejected these Letters Patent still fall foul for clause 10 of that Act states, *" After the commencement of this Act Her Majesties Government in the United Kingdom shall have no responsibility for the government of any State." !!!!!!!*
I repeat, the current Letters Patent were signed by a British public servant, one Sir Anthony Derek Maxwell Oulton QC, Permanent Secretary, Lord Chancellors Office and Clerk of the Crown Chancery from 1982 to 1989.

Clearly the Government of South Australia has allowed the Government of the United Kingdom to take ultimate responsibility for government in this State. Which ever scenario one cares to accept there is no doubt that what has occurred has been contrary to both Australian municipal law and international law and may well constitute a treasonable act against the people of sovereign, independent and federal nation of Australia.

!0. that since valid Letters Patent do not exist, and can't exist, then traffic and expiation laws don't exist either. So no offence has been committed.
United Kingdom law specifies that the writ of a Sovereign only exists during the lifetime of the sovereign who issued them.
So in revoking (by way of the Letters Patent 1986) the Letters Patent 1900 the Queen Of the United Kingdom has simply withdrawn a document which had, under United Kingdom law 'died' and was interred with Queen Victoria 97 years ago! This Queen Elizabeth II could validly do.
What she could not do, and the Government of South Australia was remiss in asking her to do was to issue new ones. And it must be remembered that under United Kingdom and International law that Monarch can only issue instructions to British subjects and then only for application within The United Kingdom and her territories. Australia is specifically excluded from this list. The Governor who assented to the Expiation Act 1996 and the Governor who made the regulation applicable to this act were not British Citizens. They assumed power with out the authority of the People. Without legitimate authority they created a law over the People. They have acted in contravention of municipal law (clause 10 of the Australia Act 1986, if it is that the court chooses to insist that it is valid) and international law (Charter of the United Nations Article 2 paragraphs 2 and 4 and various resolutions).

So it is that all of the Acts under which I have been brought before this Court, including those used to establish the court are therefore invalid. And so no offence can possibly have been committed by the defendant.

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Peter Batten

APPELLANT'S PRESENTATION

MAGISTRATES APPEAL
File No SCCIV-98-183
to be heard in the
SUPREME COURT of SOUTH AUSTRALIA
on Wednesday, 11th March 1998 at 10. 15 am.
BEFORE Hon. Justice Bleby
APPELLANT Peter Batten

GROUNDS of APPEAL
It is alleged that the Magistrate presiding over case Court File No MCCHB-97-6993 erred in law by proceeding in the face of legal argument which clearly established that the court was under an obligation to refer the matter to the International Court of Justice.

And that even if the Magistrate chose to ignore this obligation his court was required to adjourn under conditions spelt out in the Judiciary Act 1903 (Commonwealth)

In essence, the defendant presented argument which established;

**** that, Australia is a sovereign independent nation member State of the United Nations.***
**** that, the United Kingdom of Great Britain and Northern Ireland is a foreign power.***
**** that, the Australian Constitution is but part of a current act of the UK Government***
**** that, the Australian Constitution remains British law.***
**** that, all Australian domestic law is dependent on the Australian Constitution.***
**** that, because of this all Australian domestic law remains British colonial law.***
**** that, sovereign nation status extinguishes colonial legislation is fundamental to the operation of the United Nations.***
**** that, the UN Charter is international law and because Australia is a signatory to the Charter then,***
**** international law deriving from the Charter is Australian law.***
**** that, under international law the Australian Constitution became redundant at the same time that Australia achieved independence.***
**** that all Australian domestic law is invalid,***
**** and that, that includes the laws and procedures used to establish the court along with all of the laws that the court has been established to implement and administer.***

THIS ARGUMENT IS REINFORCED THUS,

**** the Governor of South Australia and the Governor-General's Letters Patent, being drawn from the authority of the Queen of the United Kingdom of Great Britain and Northern Ireland, a foreign power, clearly breach Article 2 paragraphs 1 and 4 of the United Nations Charter.***
**** this renders the authority of these Offices invalid, in turn, this means the entire political and legal system is invalid.***
**** So, there being no valid law, then no legally definable offence can have been committed.***

Clearly the situation is such that when the above argument is put to an Australian court it is faced with a conundrum----
Rule in favour and the court effectively rules itself out of existence.
Rule against and the court rules that foreign law is valid law in an independent Australia.
Clearly an adjournment 'sine die' is a wise magistrates alternative.

However, by choosing not to adjourn the Magistrate effectively placed the court under an obligation to abide by :-
Article 36, paragraphs (1) and (2) and Article 37 of the Statute of the International Court of Justice which states that the International Court of Justice has sole jurisdiction in any legal matters concerning the United Nations Charter or the Covenant of the League of nations. The Magistrate failed to respect this obligation.
This occurred despite the clear fact that no court(s) in Australia may hear a case which involves any legal argument with respect to the validity of the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) (full title).

This appeal is as the result of the alleged victimisation of an Australian citizen by a magistrate who presided over an incompetent court administering invalid laws and who failed in his obligations under international law.
Any Australian court at any level , will, by the same argument, not possess the competence to hear on this appeal.

Thus, by necessity of law, this appeal must be referred to the International Court of Justice.

****

To substantiate this bald assertion the following statement together with supporting and explanatory documents, presented initially to Mr Johansen's Court, is offered to this Court of Appeal.

BRIEF SUMMATION::
THE AUSTRALIAN CONSTITUTION AND INTERNATIONAL LAW

The Australian Constitution is the 9th clause of the 9 clause British Colony of the Commonwealth of Australia Constitution Act (UK) 1900 (full title). The preamble and the preceding 8 clauses set conditional limitations on the application of clause 9 -- the Constitution. Section 128 of clause 9, the Constitution, permits limited amendment to the constitution. It does not give license to alteration of the preamble or any of the 8 conditional clauses.
The act permits limited self Government. It contains no element of sovereignty. Except for minor amendments to clause 9 , the Constitution, the Act remains exactly as it was when enacted in 1900.

It remain an Act of colonial law.
The appellant maintains that it is clear that, in contravention of the UN Charter and International Law, the sovereign independent and federal nation member state of the United Nations, Australia, continues to be governed under British colonial law.
Because of this, under International Law the 'Australian Government' does not possess valid authority.
The Australian Government is not a legal entity.
Thus the victim claims 'The Australian Government' does not represent the State, that in fact, in the prevailing situation, the People constitute the State of Australia.

That the, **British colony of the Commonwealth of Australia Constitution Act (UK) 1900 (full title)** is current legislation of the Parliament of the United Kingdom of Great Britain and Northern Ireland is confirmed in correspondence to the victim from both the Office of the Australian Attorney-General,——— (21st October 1997)....
".. the Constitution remains part of an Act of the British Parliament. That Act has not been repealed."
and the Foreign and Commonwealth Office of the UK Government,— (11th December 1997)...
"The Commonwealth of Australia Constitution Act was enacted in the United Kingdom.. There are at present no plans to repeal the Constitution Act. The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth Constitution Act if a request to that effect were made by the Government of Australia."

The Emeritus Professor I.M. Cumpston, Reader in Commonwealth History at the University of London and prolific writer on the history of the Commonwealth states in his book (History of Australian Foreign Policy 1901-1991 vol.1 P3, Uni. of London ISBN 0646245686)
"The legal and historical description of the Commonwealth of Australia Constitution Act 1900, is a statute of the British Parliament containing eight covering clauses with the ninth being the Constitution. The Commonwealth of Australia, as a colony of the UK had limited self-government in 1901"

The appellant holds correspondence (19th December 1997) from the Office of Legal Affairs within the Office of the Secretary-General of the UN which states,
"Australia's was an original Member of the United Nations having signed the Charter on 26 June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce."
While in turn, the Office of the Secretary-General of the UN has offered, ***"Australia is a member State of the United Nations and as such is a sovereign nation under International Law. It became a sovereign nation under International Law as a foundation member of the League of Nations in 1919. The fact that sovereign nation status extinguishes colonial legislation is fundamental to the operation of the United Nations."***

The chief law officer of the United Kingdom, the Lord Chancellor has stated,
" In hindsight, there is no doubt that the International Court of Justice would declare The Commonwealth Constitution Act (UK) 1900 to be a colonial law of the UK and as such, usage of this law in Australia would be invalidated under both the League of Nations Covenant and the United Nations Charter. This International legal Position was recognised by the UK government when it presented the act to Australia as a piece of memorabilia in

1988 to celebrate the 200th anniversary of the landing of Captain Cook. This act always remains an act of the UK Parliament. The right of repeal is the sole prerogative of the UK Parliament. There is no means by which this act can be transferred from one country to another. The UK Parliament, International Law and the United Nations Charter precludes any such action."

On this quotation an interesting but pertinent response was offered in a letter to the appellant by the Foreign & Commonwealth office of the UK Government (11th Dec. 1997)
"We have been unable to locate the source of the quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1990 not in 1988, although the Act was on loan to Australia at this latter date..
The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation."

Further the appellant has been advised, the British Government states and has provided documentation with regard to the legislative powers of the Parliament of the United Kingdom.
"No act of parliament of the United Kingdom or Act that looks to the Parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom and the Charter of the United Nations (Article 2 Paragraphs 1 and 4)."

When asked specifically about the validity of the following acts, the British Government referred to their previous reply as stated above.
(1) The Commonwealth of Australia Constitution Act (UK) 1900.
(2) The Westminster Act of 1931 (UK).
(3) All Australian "State" constitutions.
(4) The Australia Bill 1986 (UK).

Article 36, paragraphs (1) and (2) and Article 37 of the Statute of the International Court of Justice state the International Court of Justice has sole Jurisdiction in any legal matter concerning the United Nations Charter or the League of Nations Covenant.
Clearly no court(s) in Australia may hear a case which involves any legal argument with respect to the validity of the Commonwealth of Australia Constitution Act (UK) 1900, or the continuing application in Australia of other legislation that looks to the Parliament of the UK for its authority.

The Appellant an AUSTRALIAN CITIZEN VICTIMISED AS THE RESULT OF A BREACH OF THE COVENANT of the LEAGUE of NATIONS and the CHARTER of the UNITED NATIONS

***IN GENERAL TERMS* it is alleged by the appellant, the victim, that while serving as a magistrate, *Mr Clynton A. Johansen, of the Magistrates Court of South Australia... 96 Dyson Road, Christies Beach, SOUTH AUSTRALIA, AUSTRALIA 5165* did, on the 15th day of January 1998, apply British colonial law to an Australian citizen in the sovereign independent and federal nation of Australia. A nation which is a member State of the United Nations.**

The legal existence of the State of South Australia is dependent on conditional clause 6 of the Commonwealth of Australia Constitution Act (UK) 1900 and Chapter V sections 106 and 108 of clause 9 (the Constitution) of that Act.
At the time that the Australian Constitution became redundant so did those of the states.

Despite being presented with extensive argument together with substantial documentation and a formal objection to any action taken by his court (see documents 1- 43 pages and 2- 17 pages) **Mr Johansen proceeded to hear, convict and subject the victim to penalty without even identifying the victim as being in control of the vehicle that was alleged to have been involved in the road traffic offence!.**

Mr Johansen, without establishing that he possessed valid legal authority applied British colonial laws to victimise an Australian citizen.

It is interesting to note that amongst these was a law (EXPIATION OF OFFENCES ACT 1996) assented to as late as 2nd May 1996.
It was assented to ***"In the name of and on behalf of Her Majesty"*** by one Dame Roma Mitchell QC acting as Governor and holding a set of instructions, **Letters Patent, issued on the 14th February 1986 in the name of Queen Elizabeth the Second of the United Kingdom of Great Britain and Northern Ireland.** (document 1.28 to 1.32)
(It will be noted that here there was not even any pretence of the existence of a Queen of Australia 'a la' the Governor-General's 1984 Letters Patent!)

These instructions were signed ***" at Westminster" on 14th of February 1986....***
"By Warrant under The Queen's Sign Manual —— OULTON".
That is, they were signed by one Sir Anthony Derek Maxwell Oulton QC. MA. PhD. who, at the time was Permanent Secretary in the Lord Chancellor's Office of the Government of the United Kingdom of Great Britain and Northern Ireland.

In February 1986, at the time of signing these Letters Patent, Oulton was in the employ of the government of a power foreign to the sovereign independent nation of Australia.
Under both UK and International Law he, like the Queen, is a British citizen!
Clearly such Letters Patent had, and have, no validity in Australia, either to give, (in defiance of both British and International law), an Australian Citizen ("Governor" Dame Roma Mitchell, or any other Australian citizen) the authority to assent to legislation, or to appoint a magistrate (in particular Mr Clynton A. Johansen), or any Judge or any policeman to administer, or apply, any law dependent on any such legislation or for that matter any other legislation.

So it is maintained that all Domestic law in Australia, whether so pointedly colonial or not, is dependent on a current Act of the UK Parliament. That is the, British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) and illegal Letters Patent. Considering these facts and the argument advanced, it is clear all domestic law currently applied in Australia is British colonial law which, under international law, cannot be valid in a sovereign, independent Australia.

SPECIFIC ALLEGATIONS RELATING TO BREACHES OF INTERNATIONAL LAW

It is alleged that Mr Johansen, did, on the 15th January 1998 illegally subject, convict and penalise an Australian citizen under laws which were properly British colonial laws and as such invalid in the independent sovereign nation of Australia. And that by so doing Mr Johansen offended;
Article X of the Covenant of the League of Nations ,
Article 2, Paragraphs 1 and 4 of the Charter of the United Nations and abused,
Article 14 of the International Covenant of Civil and Political Rights.

Additionally it is alleged that, while in possession of no other authority than that drawn, via the Governor of South Australia from the Queen of the United Kingdom of Great Britain and Northern Ireland, a power foreign to Australia, Mr Johansen did, on the 15th day of January 1998, preside over a court which tried, convicted and penalised an Australian citizen. And that, in so doing Mr Johansen, an Australian citizen, contravened both British and international law, namely, Article 2 paragraphs 1 and 4 of the United Nations.

It is also alleged that, Mr Johansen by refusing, when requested by the victim, both verbally and in writing, to provide documentation which defined the basis for his authority and thus establish that his was a "competent court" which was legally established (under both municipal and international law) did commit an offence under Article 14 of the International Covenant on Civil and Political Rights.

(Since the ICCPR was ratified by Australia in 1980 and Australia having deposited its instrument of accession to the Optional Protocol in 1991 then Australian citizens can rightfully expect protection under that Covenant.)

Finally, in the light of the argument and supporting documents presented to Mr Johansen, he, to reach his finding, necessarily had to either ignore or make conscious decisions on matters relating to the interpretation of the UN Charter and International Law and that in so doing he contravened Article 36 of the Statute of the International Court of Justice.

<u>NOTE OF CAUTION TO THE COURT:</u>

<u>Since all of the facts presented to the South Australian Magistrates Court at Christies Beach, (and represented here via 'supporting and explanatory' documents) have equal application to this Court of Appeal, the Court is advised that, if it chooses not to adjourn 'sine die' and if it proceeds to reach a finding other than to refer the case to the International Court of Justice then, the General Assembly, the Security Council and the International Crimes Commission of the United Nations will be so advised.</u>

<u>At the same time a complaint will be advanced with a request that it become an adjunct to the complaint relating to Mr Johansen's Christies Beach Court which has already been submitted to the Human Rights Committee of the UN.</u>

****

<u>DOMESTIC LAW</u>

If by some twist of the facts as presented, this Appeals Court chooses to ignore international law and its place in the Australian judicial system, (as did Mr Johansen) and does not adjourn 'sine die' or refer the case to the International Court of Justice then it is asked to examine allegations that the very same domestic law that the appellant maintains is invalid was breached by Presiding Magistrate Johansen.

<u>FIRSTLY</u>

Under the preamble to **Schedule 2 of the Human Rights And Equal Opportunities Commission Act 1986 (Commonwealth)**, and specifically the paragraph "***Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant***" and Article 14 of that Covenant, the appellant rightfully asked the Presiding Magistrate to provide documentation which identified the basis for the power that he was exercising. (document 3- 3pages) Such documentation being necessary to verify that, in fact, the court possessed valid and legal authority (that is, in the terms of the Covenant 'possessed competence') to hold an Australian citizen to trial.

This requirement was called for because of the knowledge that persons presiding over courts draw their warrant, commission, charter, instruction, or Letters Patent -- their authority, directly from the Governor of South Australia or the Governor in Council, and that the Governor in turn relies on Letters Patent issued under the Monarchy of the United Kingdom of Great Britain and Northern Ireland. A power as legally foreign to Australia as is Cuba. Under both British and International Law such Letters Patent only have application in the UK and her sovereign dependencies, and even then, can only be issued to British subjects who, in turn can only apply such instructions to British citizens. Australia is specifically omitted from the Schedule of British Administrative Divisions and Dependencies. (document 4- 1 page)

Advance notification of intent was given. Formal verbal, as well as a written request was made at the time of the trial. Mr Johansen refused to provide the information sought.

SECONDLY

Intrinsic to the argument presented are questions pertaining to the interpretation and validity of the Australian Constitution. From an examination of the material presented it will be clear that matters *"arising under the Constitution (and) involving its interpretation"* have been advanced and that under **78B of the Judiciary Act 1903 (Commonwealth)** (see document 1.43) *"it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause has been given to the Attorney s- General of the Commonwealth and of the States,"* etc.etc... Mr Johansen proceeded without allowing such communication to occur.
Despite Mr Johansen's attention being drawn to the existence of this Act he proceeded in the Cause.

SPECIFIC ALLEGATIONS OF BREACHES OF DOMESTIC LAW

It is alleged that by refusing a lawful request to identify the source of the authority that he was exercising to preside over a court, Mr Johansen breached Schedule 2 (the International Covenant on Civil and Political Rights) of the Human Rights and Equal Opportunities Act 1986 (Commonwealth). And that he thereby infringed the right of the appellant to an assurance that he was to be tried by a competent court.

It is alleged that Mr Johansen, through the rejection of the appellant's argument and the subsequent failure to adjourn to permit notification to, and the extension of an invitation to all of the State and the Federal Attorneys-General to intervene in proceedings resulted in a breach of the Judiciary Act 1903 (Commonwealth). And that by so doing he infringed on the right of the appellant to a fair trial under the law.

****

I declare that this document was presented at an appeal hearing presided over by Honourable Justice David Bleby in the South Australian Supreme Court, No 1 Gouger Street ADELAIDE, South Australia AUSTRALIA.
Postal Address, GPO Box 1068, ADELAIDE, South Australia, AUSTRALIA 5001

Peter Batten Date

SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeals: Criminal)

BATTEN v POLICE

Judgment of the Honourable Justice Bleby (ex tempore)

11 March 1998

CONSTITUTIONAL LAW — THE NON-JUDICIAL ORGANS OF GOVERNMENT — THE LEGISLATURE — GENERALLY — EXAMINATION OF VALIDITY OF LEGISLATION BY COURTS

Appellant convicted of exceeding designated speed - Road Traffic Act ss49(1)(a) and 79B - appeal against conviction - challenge to constitutional validity of Road Traffic Act - international law - jurisdiction of magistrate to hear the charge - no serious question arising under Judiciary Act - nothing requiring proceedings to be transferred to High Court - appeal dismissed.

Road Traffic Act 1961 ss49(1)(a), 79B; *Summary Procedure Act 1921* s62ba; *Judiciary Act 1903 (Cth)* ss38, 40; *Human Rights and Equal Opportunity Commission Act 1986 (Cth)* , referred to.

BATTEN v POLICE

Magistrates' Appeal

Bleby J

HIS HONOUR: The appellant was charged on complaint dated 23 September 1997 with driving a vehicle at a speed greater than 60 kilometres per hour in a municipality contrary to s49(1)(a) and 79B of the *Road Traffic Act* 1961. The speed at which the vehicle was recorded was a speed of 78 kilometres per hour. The offence was detected by photographic device, namely, a speed camera which is provided for in s79B of the Act. The offence occurred on 14 July 1997 on Kenihan Road at Happy Valley.

The complaint was listed for hearing in the Magistrates Court of South Australia at Christies Beach on 27 October 1997. The appellant had been given notice that if he intended to plead not guilty the matter would not be dealt with on that day, but that it would be adjourned to another date to be fixed on that day. The appellant did not appear in the Magistrates Court on that day but had sent a letter to the Court dated 10 October 1997 in which he challenged the validity of the law under which he was charged, and claimed that the court possessed no jurisdiction to hear the charge. The learned magistrate properly took that as notice of an intention to plead not guilty, and did not proceed to hear the complaint. He adjourned it for trial on 15 January 1998 at 10.00am. The appellant was advised that he would have to appear on that date and that he would have to bring his witnesses if he proposed to call any.

On 15 January 1998, the appellant was present when the matter was called on at 10.30am. The appellant asked the magistrate to identify the source of his authority to hear the matter and continued to allege the invalidity of the law under which he was charged. When asked by the magistrate whether he drove the car, as alleged in the complaint, the appellant apparently gave no answer. The matter was left in the list to be dealt with later in the day as a plea of not guilty.

The matter was called on again at 11.30 that morning. The appellant, at that time, did not appear. The matter proceeded ex parte in his absence. The magistrate recorded a conviction and imposed a fine of $180 with court fees of $73, criminal compensation levy of $28, and prosecution costs of $100, a total of $381 which he directed was payable within 1 month of that date.

The grounds of appeal alleged in the appellant's notice of appeal against both his conviction and sentence are:

> "The Presiding Magistrate erred in law. In ignoring legal argument and proceeding to reach his finding he:
>
> (1) breached *The Human Rights & Equal Opportunities Act* (sic) (Commonwealth)
>
> (2) breached the *Judiciary Act* 1903 (Commonwealth)

(3) ignored High Court rulings

(4) breached Article 36 of the Statute of the International Court of Justice

(5) breached Article 2 of the United Nations Charter (a legal treaty binding Australia."

The appellant conducted his own appeal before me and submitted a voluminous written submission which I read before the hearing commenced. He elaborated on that briefly with some oral submissions.

As I understand his argument, he suggests first that the Commonwealth and State Constitutions rely on United Kingdom law for their efficacy and validity. Secondly, that that law, for some reason, ceased to have effect when Australia signed the Treaty of Versailles on 26 June 1919, and that the charter of the United Nations, to which Australia is a signatory, also prevents the application of colonial law to member States of the United Nations.

His submission is that somehow that renders invalid the domestic law under which he was charged, as well as the Acts constituting the Magistrates Court and this Court, either because the State and Federal constitutions are invalid or because they are Acts of the United Kingdom Government. Any domestic law must also be so characterised and must be unable to be given effect to because of the effect to the treaties to which I have referred.

He further submits that the current Letters Patent to the Governor of South Australia, dated 14 February 1986, being exercised by the Queen of the United Kingdom are also invalid, and so therefore are the purported Acts of the Governor performed in that capacity.

He further suggests that the whole argument raises a question in which the learned magistrate was obliged to refer forthwith for hearing to the High Court under the provisions of the *Judiciary Act* 1903 (Cth), or that the matter should have been adjourned pending such removal. I presume that he relies on s38(a) of the *Judiciary Act* which confers exclusive jurisdiction on the High Court in matters arising directly under any treaty.

I do not believe that any serious question arises which under the *Judiciary Act* 1903 or the constitution requires removal of these proceedings, or which required removal of the Magistrates Court proceedings, to the High Court. In any event, any such application would have to be made to the High Court: s40 *Judiciary Act* (1903) (Cth).

Notwithstanding the written grounds of appeal, the written argument also suggested that the learned magistrate was obliged to refer the matter to the International Court of Justice. He suggested that I, of course, was required to do likewise in respect of this appeal.

I am not prepared to accede to any of Mr Batten's arguments. In my opinion they display a fundamental misunderstanding of Australian constitutional law and history, of the Constitution and the constitutional history of this State, and of the effect of laws validly passed both by the Commonwealth and State Parliaments which have effect in this State.

The argument also displays a lack of understanding of the nature and effect of international laws and treaties and their effect in this country.

There is no doubt in my mind of the validity of the law which Mr Batten broke or of the laws constituting the Magistrates Court of South Australia and this court. Nor is there any doubt in the appointment of Mr Johansen as a magistrate of the Magistrates Court, or of any appointment to this court.

I invited Mr Batten to make any further submissions he might wish to in relation to the learned magistrate's finding that the charge was proved and in his recording of a conviction. Apart from addressing some procedural matters to which I have referred, in respect to which I again consider there is no substance, he did not wish to elaborate further on the findings of the magistrate.

I also invited him to make any submissions he might wish to make on the question of the penalty imposed by the learned magistrate, but he chose to make no further submissions.

The appellant did not raise, either at the hearing or before me on this appeal, any of the possible statutory defences to the offence with which he was charged and which might have been available under s79B(2) of the *Road Traffic Act*.

The matter, as I indicated, was heard ex parte by the magistrate pursuant to s.62ba of the *Summary Procedure Act* 1921. In those circumstances, the allegations contained in the complaint and summons were sufficient evidence of the matters alleged: s62ba(1), *Summary Procedure Act* 1921.

It follows, in my opinion, there was no error on the part of the learned magistrate and the appeal will have to be dismissed.

Ms Martin, do you make any application?

MS MARTIN: I am instructed to seek costs.

HIS HONOUR: Mr Batten, Ms Martin has sought an order that you pay the costs of this appeal, normally those are fixed at $150. Is there anything you wish to say about whether or not an order in those terms should be made?

MR BATTEN: Sir, you have ruled that your court is a valid forum, and because you have ruled so there is little point in me saying that I believe that under the material that I presented to you, and from the material I have presented to you, there is sufficient substantial evidence to raise a serious question over your ruling.

However, because anything that I may say in relation to the costs that have come from the Crown counsel, questions from the Crown counsel will obviously have no effect.

I repeat sir -

HIS HONOUR: They would not have no effect. Normally in this court costs of the proceedings follow the event. That is not an absolute rule. If there is some matter, some extraordinary matter you wish to put to me which might suggest that there needs to be some variation of that in these circumstances I will listen to you.

MR BATTEN: Yes, sir, there is an extraordinary matter, I am a poor man - no, not at all. I do not believe that I have sufficient knowledge of the fine detail of the domestic law to be dealing with it here sir, therefore there is not anything that I could say that would be of any advantage I think to my own position.

I would, seeing that you are allowing me to speak with you, indicate that it will be necessary for me to proceed on the matter that has occurred in the court here. Even if it is only under s75 of our Constitution, which is the fundamental law of the land which says that "In all matters arising under any treaty the High Court shall have original jurisdiction". Thank you very much for being tolerant and listening to me.

HIS HONOUR: The formal order of the court will be:

1. Appeal dismissed.

2. The appellant is to pay to the respondent the costs of the appeal fixed at $150. I direct payment of that to be made to the Crown Solicitor within one month of today.

SOUTH AUSTRALIA

IN THE MAGISTRATES COURT
MURRAY BRIDGE

REF: MCMUB-97-1666

ON SUMMONS to appear before a Magistrates Court at Murray Bridge in the State of South Australia.

IN THE MATTER of a complaint made on 19th day of June 1997 wherein **DARRYL KEITH CROSSMAN** a member of the Police Force of Adelaide is the complainant and **PETER BATTEN** of 31 George Main Road Victor Harbor in the said State is the defendant. Address for serving notices P.O. Box 1333
RENMARK
South Australia 5341

BETWEEN :

DARRYL KEITH CROSSMAN
Complainant

and

PETER BATTEN
Defendant

I, **PETER BATTEN** of Victor Harbor in the said State of South Australia, Citizen of the sovereign independent and federated nation of Australia, a **Member State** of the **UNITED NATIONS,** do hereby under **INTERNATIONAL LAW** solemnly declare and affirm as follows:

The open signalling of my defence, well in advance of the hearing, through this declaration and presentation of wholly verifiable facts which together result in an indisputable argument is made in the hope that involved individuals will take heed of its content and act in a manner which will not

cause them to become the subject of complaint under any aspect of International law which Australia has made its law.
In offering this statement no overt threat or intimidation is intended. In fact this cannot be so because, when all is said and done, the presentation of truth cannot possibly be a threat to any court established to dispense justice.

The presentation of this defence is not primarily designed to avoid the payment of a nominal fine. Rather it is intended to establish that laws being applied in Australia are, under International law, (which is Australian law), invalid.

The Document 'An Explanatory Statement' (see annexure 1) is not offered as evidence in defence. It was prepared by an retired member of the High Court who desires to remain unidentified. It is offered by him as his attempt to provide protection to those of his colleagues who choose, as he has done, to test the substance, (rather than rely on the opinion of another) of the contention that ***"the current legal and political system in use in Australia and its States and Territories has no basis in law."***
In relation to this statement it needs be noted that the existence of Letters Patent issued to the State Governors after 1900 was concealed from the learned Judge at the time that he conducted his research. Their existence came to light after he had completed his investigations and prepared the document.

HISTORY OF MATTER MCMUB-97-1666

1. On receipt of Expiation Notice C 1029851 served by Police Sergeant ID No. 031024 of Police Station Mannum in the State of South Australia on 30th April 1997, the Sergeant was informed that the matter would be contested and the grounds for doing so outlined. A letter dated 30th April 1997 was sent to 'The senior Officer in Charge, Expiation Notice Branch, GPO Box 2029, Adelaide 5001'.
This letter made a clear statement that if a summons was issued it would be argued that the law under which it was purported the offence occurred has no validity. This was accompanied by a brief outline of the grounds supporting this claim.

2. A summons was duly issued by Darryl Keith CROSSMAN. The conviction and penalty that eventuated were duly struck out by Presiding Magistrate Patrick who heard the appeal for a re-hearing.
Magistrate Patrick was clearly learned in the argument.
In referring to the 12 page submission which accompanied the written plea of, 'Not Guilty to Any Offence', he recognised and stated the argument it

The following quote is from that letter, (Annexure 2. 1)

"You would be aware that the Commonwealth Constitution Act was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over these colonies rested with the British Parliament.
However, 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 deriving not from its status as an Act of (the) British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia(n) people."
Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed." (emphasis by affidavit author)

This has been mirrored by eminent constitutional authorities, Professor Cheryl Saunders and Sir Ninian Stevens in 'Fact Sheet 1.5' prepared by them for distribution by the Constitution Centenary Foundation, 155 Barry Street, Carlton, 5053. Tel: (03) 9349 1846 Fax (03) 9349 1779. Internet address **http://www.centenary.org.au** Email address cc2001@ibm.net

"In strictly legal term, the Australian Constitution gets its authority from the British Parliament, because the Constitution is part of the Commonwealth of Australia Constitution Act, a British Act. (emphasis by author of Affidavit)
There is also an argument which says that the power of the Constitution comes from the original and continuing agreement of the Australian people to be bound by it."

<u>The claim that the Constitution has been accepted by the people is false.</u>

2. Before proceeding, the claim by politicians, academics and judges that somehow the Australian people have, in some extra-parliamentary way, adopted the Constitution thereby making it a legal constitution, needs to be examined.
Clearly this interpretation represents nothing more than a politically convenient argument.
It is not legally sound because:-

The 1898 referendum was a referendum on federation not sovereignty.
The referendum <u>vote</u> out of a population of 3,773,801 (census figures) was 328,000 (split 2:1 in favour of federation. <u>But Note</u>: the number of votes does

not reflect the number of people involved since the franchise system used permitted individuals to cast multiple votes, some as many as six.)
By whatever system of analysis one might choose to adopt, how, with less than 8.69% of the population being involved in voting for something which the colonial office then modified and drafted into a piece of British legislation, can the resultant Constitution and its 8 conditional clauses possibly be transformed into something other than UK legislation.?

International law and the doctrine of informed consent cannot be ignored.

3. Claims that they can, ignore the reality of international law and also the fact that before valid assessment by the Australian people can be claimed the basic principle of informed consent must apply. The Australian people had to be informed of the legal truth of the Constitution and the illegality under international law of the imposition of imperial law in an ex-colony before informed consent could be made.
No such information has ever been made available to the Australian people and no such acceptance of the Constitution Act was ever given by the Australian people before, let alone since, Australia became an independent sovereign nation.
The 1898 referendum was a referendum on federation and not sovereignty and it is also patently ludicrous to claim that the people accepted the Constitution when well over 90% of Australians did not vote. In fact the franchise system used meant that by far the majority of Australians had no right to vote.

No proof exists of how, when and where the Australian people were informed of the legal truth of the Constitution Act, and of International law, and further, no proof exists that the Australian people have accepted such.
Mere assertion is insufficient to overturn international law.

Further confirmation that the Constitution remains British law

4. That the **British colony of the Commonwealth of Australia Constitution Act UK 1900** is current legislation of the Parliament of the United Kingdom of Great Britain and Northern Ireland is further confirmed by the chief law officer of the United Kingdom, the Lord Chancellor who has stated,

" In hindsight, there is no doubt that the International Court of Justice would declare the Commonwealth Constitution Act (UK) 1900 to be a colonial law of the UK and as such, usage of this law in Australia would be invalidated under both the League of Nations Covenant and the United Nations Charter. This

international legal position was recognised by the UK Government when it presented the Act to Australia as a piece of memorabilia in 1988 to celebrate the 200th anniversary of the landing of Captain Cook. This Act always remains an Act of the UK Parliament. The right of repeal is the sole prerogative of the UK Parliament. There is no means by which this Act can be transferred from one country to another. The UK Parliament, International Law and the United Nations Charter precludes any such action."

On this quotation an interesting but pertinent response was offered on behalf of the Lord Chancellor in a letter to the defendant from the Foreign and Commonwealth Office of the UK Government (11th Dec. 1997-Annexure 2.2)

"We have been unable to locate the source of the Quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of <u>one</u> of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1900 not in 1988, although the Act was on loan to Australia at this latter date.

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation. ....The statement does not, however, address the special status of the Constitution of the Commonwealth of Australia. ....

The Commonwealth of Australia Constitution Act was enacted in the United Kingdom at a time when Westminster was required to legislate on Australian issues; the measure was based on Australian Drafts and was endorsed at the time by a majority of Australians. The continuing role of the Australia (n) Constitution Act as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made."

This statement presents, through its implications, many concerns.
However from the aspect of this presentation, it simply makes it absolutely clear that the Constitution is and remains the property of the UK.. And that the Australian people do not have superior control over the Constitution because they cannot alter or repeal the Act in which it is contained.

<u>The Constitution and International law.</u>

5. Article 2 paragraph 1 of the United Nations Charter states, (Annexure 2.3)

"The Organisation is based on the principle of the sovereign equality of all its Members."
and paragraph 4 states,
"All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations."

Clearly the present situation cannot exist if Australia is an independent sovereign nation and the UK is not its colonial master. The Schedule of British Sovereignty does not include Australia. (Annexure 2.4) Australia is clearly a sovereign nation. Therefore it is must be concluded that the Australian Government is claiming power under a document which, under International law, is an invalid, illegal, source of authority. The result of this has to be the conclusion that under International law the Government of Australia is not a legal government.
The implications associated with this are profound.
For under such circumstances International law rules that the sovereignty of the State reverts to the People who then under Article 51 of the United Nations Charter have the right to defend themselves against such an illegal government and in doing so can expect support from the UN Security Council.

The illegal use of British law by an Australian Government to claim and retain power over the People is strengthened further when it is recognised that the British Government states and has provided documentation with regard to the legislative powers of the Parliament of the United Kingdom.
"No act of Parliament of the United Kingdom or Act that looks to the Parliament of the United Kingdom for its authority is valid in Australia or its territories in accordance with the laws of the United Kingdom and the Charter of the United Nations (Article 2 Paragraphs 1 and 4)"
When asked specifically about the validity of the following acts, the British Government referred to their previous reply as stated above,
"(1) The Commonwealth of Australia Constitution Act (UK) 1900
(2) The Westminster Act of 1931 (UK)
(3) All Australian "State" Constitutions
(4) The Australia Bill 1986 (UK)."

There can be no doubt that the British Colony of the Commonwealth of Australia Constitution Act UK 1900 is a current act of the UK Parliament. The UK Government has emphasised that it remains a current act of the UK Parliament and has confirmed that its usage is invalid under both British and International law.
Australia does not have superior control over the Constitution.

The people of Australia have never been given the opportunity to adopt it. And even if they had been, UK and International law would not permit its transfer. The continued use of a Constitution which was extinguished by independence, means that under International law Australia does not have legal government.

2. AUSTRALIA'S DECLARATION OF INDEPENDENCE

A politically convenient way of expressing the fact of Australia's independence is, *"during the course of this century Australia has become an independent nation"*--- Office of Attorney-General
or,
" Australia has long since achieved full independence, including international legal status. The process has been gradual. There is no single moment when it can be said that Australia became independent." --- the Constitutional Centenary Foundation.

Federation had nothing to do with independence.

1) Australia certainly did not become an independent sovereign nation in 1901.
No one knew more about the British Colony of the Commonwealth of Australia Constitution Act UK 1900 than those British citizens who happened to be living in Australia and prepared the draft,

Alfred Deakin: *"There is no pretence claiming the power of peace or war, or exercising power outside our territories."*
Samuel Griffith: *"We do not take anything away from the Parliament of Great Britain."*
John Forrest: *"If we were founding an independent nation it might be a very appropriate term. That, however, is not the case."* Forrest was objecting to using the name ' The Commonwealth of Australia'.
Henry Parks: *"Federation is not independence. It is a chance for the colonies more effectively to unite with the Mother-country in forming an Empire such as has never yet been formed."*
Charles Kingston: *"Federation must be consistent with allegiance to the Crown and the power of the Imperial Parliament to legislate for the whole Empire if it choose."*

J. Quick and R. Garren: Authors of: 'The Annotated Constitution of Australian Commonwealth' written in 1901. Both men played major roles in the actual drafting of the Commonwealth of Australia Constitution Act. The

work was reprinted by Legal Books in 1995. This Quote is taken from page 367.

"Imperial Relationship:- By the preamble the Government is declared to be "Under the Crown;" it is constitutionally a subordinate, and not an independent Sovereign community, or state. But its population is so great, its territory so vast, the obvious scope and intention of the scheme of union are so comprehensive, whilst its political organization is such a superior type, that it is entitled to a designation which, whilst not conveying the idea of complete sovereignty and independence, will serve to distinguish it from an ordinary provincial society."

The source of these Quotations is a series of documents recording proceedings of committees in 1900 prior to dispatch of the draft constitution to the United Kingdom plus 'The annotated Constitution of the Commonwealth of Australia' written immediately following the passing of the Act by the Westminster Parliament and was published in 1901. This volume also contains a number of comments about the changes made during the passage of the bill through parliament. The documents are held by the Archives Section of the Department of Foreign Affairs and Trade.

When DID Australia attain independence?

2) The International Law Commission of the UN General Assembly has informed researchers that under International law any country signing a treaty is internationally recognised as independent from at least the date of signature onwards.
Hence Australia is regarded as having been recognised as an independent power from the 18th June 1919 when it signed the Treaty of Versailles. The Articles of the League of Nations are contained in this treaty. The Covenant of the League of Nations became International law on 10th January 1920. Only sovereign independent nations could be entered into membership.
The signing of the Washington Naval Treaty on 6th February 1922 provided additional confirmation of independent status. While the Office of Legal Affairs of the Secretary General of the UN documents the time as at the establishment of the League of Nations -- 10th January 1920, in a letter to the defendant that same office stated;
"In relation to your question we note that the Charter of the United Nations entered into force on 24 October 1945 and that Australia was an original Member of the United Nations, having signed the Charter on the 26th June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce. (Annexure 2.5)

On making enquires relating to this last statement it was revealed that because the League of Nations is now a redundant organisation matters of law and definition relating to it can only be ruled on by the International Court of Justice and that, in fact, on this very issue the General Assembly is currently awaiting a definative statement from that Court.

The 1929 report of the Royal Commission on the Constitution examined the Commonwealth of Australia Constitution Act and included at appendix C from 'The Report of the International Relations Committee, 1926' :-(Annexure 2.6)

"II Status of Great Britain and the Dominions

..........There is, however, one important element in which from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development - we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. ***They are autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."*** (emphasis by author of affidavit)

Thus at least by 1926 it was fully recognised that Australia had become an independent sovereign nation. So from at least that date the Constitution, being the law of a foreign sovereignty, had been extinguished as a legal entity.

There is no question that Australia was independent in June 1945

3) In any case it has been formally confirmed that the signing of the UN Charter in June 1945 could only have occurred if Australia was an independent sovereign nation.
Even if independence didn't occur before, the signing of this charter unquestionably extinguished the British Colony of the Commonwealth of Australia Constitution Act the Statute of Westminster and any other law dependent on any act of the United Kingdom Parliament. It also extinguished any residual power which may have been claimed by or looked to by Australia for Westminster to legislate for Australia. Or Australia for The United Kingdom. The Australia Bill and the Australia Act of 1986 are, under International law, meaningless.

Independence extinguishes all colonial law.
The superiority of International law.

4) The International Law Commission of the UN General Assembly has stated;
"No laws of a Member State of the United Nations are valid within the sovereign territory of another Member State unless via a reciprocal treaty agreed between the two Member States. The Treaty may not infringe the sovereignty of either Member State."

No such reciprocal treaty between Australia an the United Kingdom exists.

Britain has protected herself.

The United Kingdom has adopted a Policy called 'The Doctrine of Transformation' which since 1991 has seen International law automatically accepted as a superior law to domestic British law in the event of conflict between the two.

Therefore when domestic UK Acts, are in conflict with International law, the domestic laws are rendered null and void in so far as they conflict with the International law.
Under this doctrine the **Statute of Westminster** no longer has any legitimacy in British law since it conflicts with Article 2 of the United Nations Charter. Since it is legislation for another Member State of the United Nations it may not legally be used by Australia unless a reciprocal treaty exists between Australia and the UK. Again no such treaty exists. The same argument can be applied to the **British Colony of the Commonwealth of Australia Constitution Act UK 1900.** It will be noted that the British Government have confirmed there is no conflict between British Law and International law. (Annexure 2.7)

3. LEGAL AUTHORITY OF THE SOUTH AUSTRALIAN MAGISTRATES COURT TO HEAR THIS CASE

South Australia remains a British colony!
Letters Patent to the Governor of South Australia remain colonial

1) The authority and independence of the court is ultimately dependent on the Letters Patent held by the Governor of South Australia.
These instructions remains entirely colonial.
They were issued by the Monarchy of the United Kingdom of Great Britain and Northern Ireland (a power foreign to Australia).

They are dependent on legislation that was before the Parliament of the United Kingdom at the time of signing. This action by the UK Parliament was clearly in contravention of Article 2 paras 1 & 4 of the UN Charter. (If that legislation was not illegal and/or meaningless in 1986, Britain's action in 1991 certainly has now rendered it null and void.
And on that count alone the Letters Patent are now null and void.
They repeal a part section of the S.A. Constitution Act 1934, which has not been effected so that Act still only recognises Queen Victoria's Letters Patent of 1900 which under British law were interred with her in 1901!. So there exists an argument that no legislation since the death of Queen Victoria is valid !.
If all of this can be overcome and if it can be argued that the 1986 Australia Act means anything, the 14th February 1986 instructions are still invalid because they clearly contravene clause 10 of that Act----. "*After the commencement of this Act Her Majesty's Government in the United Kingdom shall have no responsibility for Government of any State.*"
The current letters Patent were signed in contravention of International law (UN Charter Article 2 Paragraphs 1 and 4 which were reinforced by Resolutions 2131 of 1965 and 2625 of 1970) by a British Citizen in the employ of the Government of the United Kingdom, viz. one Sir Anthony Derek Maxwell Oulton, Permanent Secretary Lord Chancellors Office 1982 - 89.
But there is more, under British and International law, authority via such Letters Patent can only be issued to a British Subject for applications in relation to matters involving British Subjects and then only in the United Kingdom and/or her dependencies. Its a long time since South Australian Governors have been British Subjects. Australia is not a British dependency and most of us are not British Subjects. The letters Patent 14th February 1986 are being used against both UK and International law, by non British subjects to exert power over Australian citizens within the territory of the sovereign independent nation of Australia. A Member State of the United Nations.
Clearly they are not valid.

COMMENT ON LETTERS PATENT SITUATION

Is it any wonder that their existence was concealed from the learned Judge and other researchers seeking the true nature and basis of Australia's Political and Judicial systems?
Clearly the answer is, no it is not, for, both political and judicial power is dependent on the authority of the State Governor. In 1973 an attempt was made to create a 'Queen of Australia'. In 1984 the 'Queen of Australia' issued Letters Patent to the Governor-General. These were signed by the Australian Prime Minister. A least he was an Australian.! Yet here two years later, State

Governors' Letters Patent are issued by the Queen of the UK and signed by a British Civil servant. One may very well ask, "What goes on, how come?".

However, despite Bob Hawke's valiant attempt, the 1984 Governor-General's Letters Patent have proven to be equally false. They were issued under the meaningless (in terms of the Australian Constitution) Great Seal of Australia on the authority of the purely titular 'Queen of Australia'. Unless the court so requests, matters relating to these instruction will not be enlarged on.

The debarcle in relation to the Letters Patent is so totally unbelievable that no summation could do justice to the situation. It is known that Queen Elizabeth II has been prevailed on to withdraw them.

<u>The individual's right to trial by a competent court established by law.</u>

2) A judgement of the International Court of Justice in the Namibia case of 1971 (legal reference ICJ 1971. 16) found that Sections 55 and 56 of the United Nations Charter impose a legal obligation on signatory Member States to implement civil and political rights contained in the UN Charter, the International Declaration of Human Rights and other UN documents.

3). Section 14 of the 1966 International Covenant on Civil and Political Rights gives individuals the right to be tried before a competent Court established under law. Under Section 47 of the Commonwealth Human rights and Equal Opportunities Act 1986 the 1966 Covenant is recognised as an international instrument adopted by Australia. It became Schedule 2 of the Act and as such has force of law in Australia.

4) The High Court of Australia has ruled in the Robert Woods Case (1988) that the United Kingdom is a foreign power, ***"Despite the historic link with the British Crown, the United Kingdom is still a foreign power."*** and in the Teoh case 1994 that government and courts must observe any restrictions on their actions created by treaties to which Australia is a signatory.
"Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes"

<u>The matters raised in defence are beyond the jurisdiction of the court</u>

5) Because of these superior court cases the South Australian Magistrates Court has no right to decide that the United Kingdom is not a foreign power and that any of its laws - and specifically the **British Colony of the Commonwealth of Australia Constitution Act** and **the Statute of Westminster** -- are null and void and that under International law they can not be legally applied in Australia.

6) The court also has no right to decide that treaties are not binding on the Australian Government. Further, section 75 of the Constitution reserves jurisdiction of matters concerning treaties to the High Court of Australia. As a matter of constitutional law no other court can proceed. This is confirmed and reinforced under 78B of the Judiciary Act 1903 (Federal).

7) It is clear that matters relating to the interpretation and application of the Covenant of the League of Nations and the Charter of the United Nations. Article 36 and 37 of the Statute of the International Court of Justice provide the means whereby such matters are to be decided by it.

<u>STATEMENT IN CONCLUSION</u>

Under International law, the invalidity of the Letters Patent renders the court incompetent and the extinguishment of the Constitution, renders all law invalid. Therefore if the court proceeds under challenge it will do so in breach of Article 2 paragraphs 1 and 4 and Articles 55 and 56 of the United Nations Charter. This will necessitate the advancement of a complaint to the Human Rights Committee of the United Nations: While The General Assembly, The Secuity Council and the International Crimes Commission, all of the UN, will each and separately be advised that the Breach has occured.

Should the court decide that all is in order and proceed, it is maintained that-

Under section 75 of the Constitution and section 78 B of the Judiciary Act 1903 (Federal) the South Australian Magistrates Court does not possess the jurisdiction to hear and decide on matters raised by the defence.

The court has no right to proceed in this case.

DECLARED AT .... **this**.................**day of**....................... **19**.........

BEFORE ME.. ....

MB Afidvt.doc

EXPLANATORY STATEMENT.

I am a former member of the High Court and I wish to take this unusual method of informing you about a matter that is going to deeply affect us all. Unfortunately, a document such as this is too easily "lost" in the bureaucratic jungle in which we operate.

A group of Australian Citizens have taken it upon themselves to test the validity of our current political and judicial system. Like you, I have lived my entire legal career with the assumption that the basis for our legal and political system, state and federal, was written in stone. This group has undertaken to present this paper when they test the legal system.

The group is articulate, well educated and counts some of our best legal minds amongst its members. One of Australia's best known barristers is one of the group's leading lights. It is far better informed with regard to international law than most members of the judiciary or for that matter, the legal academe. It has better international contacts than I would have thought possible.

After spending some time with the group leader, I was able to elicit its primary intentions. It is the introduction of a totally democratic system of government devoid of party politics operated by the will of the people incorporating a system of debit taxation which should go a long way to eliminating the current unemployment problem and also addressing other pressing social issues. An A.B.S. financial model supports the proposal.

The group has so far concentrated on matters relating to taxation, state and federal, minor industrial and motor traffic while undertaking not to present a criminal defence using their current presentation. I challenged the leader of this group to present any evidence he had with regard to the above defence so I could use my legal expertise to play the part of the devil's advocate. It should be brought to your attention that the group has access to documentation that we members of the judiciary have little knowledge. I refer to the British Parliamentary Papers for the Colony of Australia for the years 1860 through to 1922.

These are photocopies of all documents, correspondence etc., between the states and later the Commonwealth of Australia, the British Crown and the British Government. They are very revealing documents and indicate the degree of chicanery in which the politicians of all shades were involved and as I can now see, at the expense of the legal academe and the judiciary. I present for your perusal the details of the group's presentation along with my comment on each major item. The group relies solely upon historical fact and rejects political rhetoric and legal opinion unless based upon historical fact.

1. "The Commonwealth of Australia Constitution Act 1900 (UK) is an act of the parliament of the United Kingdom. It did not contain any substance of sovereignty and was a colonial act centralising self-government of the six Australian Colonies. Australia remained a colony of the United Kingdom."

1A. Although the late Lionel Murphy attempted to show that there was an element of sovereignty in this act he failed. The international definition of sovereignty has been espoused at length and the above act although important in the development of Australia, did not have the authority of sovereignty. The historical evidence that Australia remained a British Colony post 1901 is overwhelming.

Peter Salter   Y.M. Gun J.P. (Y.M Gun J.P.

A Justice of the Peace in and for the State of South Australia.

2. "Australia made an international declaration of its intention to become a sovereign nation when Prime Minister Hughes and his deputy Sir Joseph Cook signed the Treaty of Versailles on June 28, 1919. On its cognisance of signing this treaty, Australia was granted a "C" class League of Nations mandate over former German territories in the Pacific. In effect, Papua New Guinea became a colony of Australia achieving its own independence on 16 September 1975. The League of Nations became part of International Law on 10 January 1920 with Article X of the Covenant of League of Nations guaranteeing the sovereignty of each member."

2A. The significance of Australia joining the League of Nations as a foundation member has never been addressed in Australia before. Strangely, only one book has ever examined the question of Australian independence. Written by W.J.Hudson and M.P.Sharp in 1988 "Australian Independence" printed by Melbourne University Press. As both were members of the Department of Foreign Affairs and Trade at the time of authorship and had access to the British Parliamentary Papers, I find it most interesting they have avoided any mention of these papers in their book. Their conclusion that Australia became an independent nation via the Statute of Westminster in 1931 flies in the face of contradictory evidence within the above mentioned papers and readily available historical fact.

Prime Minister Hughes' address to the Commonwealth Parliament on 10 September 1919, "Australia has now entered into a family of nations on a footing of equality. Australia has been born in a blood sacrifice." demonstrates the politicians of the day were only too well aware of the change of status from a colony to that of a sovereign nation while attempting to remain within the Empire.

Prime Minister Bruce made this reply to the British Government in 1922 after a request for troops against Kemal Ataturk in the Chanak crisis.

Bruce's reply is contained in the British Parliamentary Papers: "We have to try to ensure there shall be an Empire foreign policy which, if we are to be in any way responsible for it, must be one to which we agree and have assented. If we are to take any responsibility for the Empire's foreign policy, there must be a better system, so that we may be consulted and have a better opportunity to express the views of the people of this country. We cannot blindly submit to any policy which may involve us in war." This is a far cry from the declaration of war against Germany made on behalf of the British Colony of Australia by George V of the United Kingdom in 1914.

I have re-produced Bruce's reply in full as I believe this reply contains clear historical evidence of a Prime Minister who was well aware of the change of status from a colony to a sovereign nation. The later Statute of Westminster 1931 was an acknowledgment of that status.

3. "Paragraph 4 of the Statute of Westminster Act 1931 contravenes Article X of the Covenant of the League of Nations. Paragraph 1 of the Australia Act 1986 contravenes Article 2 paragraphs 1 and 4 of the Charter of the United Nations."

3A. Paragraph 4 of the Statute of Westminster reads. "No act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to the enactment thereof." Paragraph 1 of the Australia Act is very similar: "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 Territory as part of the law of the Commonwealth, of the State or of the Territory."

I passed this one to the Federal Attorney General and asked him what was the source of this quite incredible authority that sought to overturn the authority legislated within the Covenant of the League of Nations in Article X and the Charter of the United Nations in Article 2 paragraphs 1 and 4. He is unable to provide any documentation to support these clauses. Article X of the Covenant of the League of Nations states: "The members of the League undertake to respect and preserve against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression, the Council shall advise upon the means by which this obligation shall be fulfilled."

It is appropriate that I now introduce a statement by Sir Geoffrey Butler KBE, MA and Fellow, Librarian and Lecturer in International Law and Diplomacy of Corpus Christi College, Cambridge author of "A Handbook to the League of Nations" used as a reference to the League by virtually all nations at that time. He refers to Article 1 of the Covenant of the League of Nations.

"It is arguable that this article is the Covenant's most significant single measure. By it the British Dominions, namely, New Zealand, Australia, South Africa, and Canada, have their independent nationhood established for the first time. There may be friction over small matters in giving effect to this internationally acknowledged fact, but the Dominions will always look to the League of Nations Covenant as their Declaration of Independence".

Article 2 paragraph 1 of the United Nations Charter states "The Organisation is based on the principle of the sovereign equality of all its Members."
Article 2 paragraph 4 of the Charter states "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

In view of the above, the historical evidence for Australian Independence by 10 January 1920 when the League of Nations became part of International Law is overwhelming. When this evidence is reinforced with the contents of the Charter of the United Nations, the continued usage of any legislation that owes its very legitimacy to the parliament of an acknowledged foreign power cannot be supported by either legal opinion or indeed historical evidence.

I therefore have come to the conclusion that the current legal and political system in use in Australia and its States and Territories has no basis in law.

Following discussions with members of the British Government relating to the Letters Patent for the Governor General and State Governors I find that these documents no longer have any authority. Indeed, the Queen of the United Kingdom is excluded from any position of power in Australia by the United Nations Charter and is excluded under UK law from the issue of a Letters Patent to other than a British Subject. A Letters Patent must refer to an action to be taken with regard to British Citizens. The Immigration Act 1972 UK defines Australian Citizens as aliens.

The Governor General's Letters Patent is a comedy of errors. We are greeted in the name of the Queen of Australia who suddenly becomes the Queen of the United Kingdom in the next paragraph of the Letters Patent. This Queen then gives instructions to the Governor General

with reference to the Commonwealth of Australia Constitution Act 1900 UK. Here we have a clear breach of Article 2 paragraph 1 of the United Nation Charter. Under both UK and International law, the Queen is a British Citizen.

State Governors are in a worse position as their authority comes from the late Queen Victoria of the United Kingdom. Regardless of the validity of the Commonwealth of Australia Constitution Act 1900 UK, if the authority of Governor General and the State Governors is invalid, then so is the entire political and legal system of government.

When advised that the War Crimes Commission was taking an interest, I called them in Geneva. Under the 1947 Geneva Convention, they are empowered to look into cases here in Australia where it is alleged the law of a foreign country was enforced against a citizen of a member state of the United Nations. As they perceive that only the judiciary can actually enforce the law, the judiciary becomes their target. The group has already placed cases before them which they are currently investigating. If found guilty, the penalties are horrific and include the death penalty!

I could go on with more relevant information however I think now is the time for a summary. The group leader, a QC, states the obvious when he asked me how could a colony now acknowledged by all world nations to be a sovereign nation retain exactly the same legal and political system it enjoyed as a colony without any change whatsoever to the basis for law. This point alone requires an answer.

The High Court has already answered with regard to the position held by treaties signed by the Commonwealth Government in the Teoh case of 1994. "Ordinary people have the right to expect government officials to consider Australia's international obligations even if those obligations are not reflected in specific Acts of Parliament: the rights recognised in international treaties are an implied limit on executive processes."

My advice is to adjourn any case "sine die" that challenges the authority of the Letters Patent. Under no circumstances hear a case that challenges the validity of a State or the Federal Constitution. It is the politicians who are using us as pawns without them having to face the music. These matters are of concern to politicians, let them sort out these problems and accept any inherent risks themselves!

Article 36 of the Statute of the International Court of Justice is the correct reference for you to refuse to hear a matter when an international treaty is cited as a defence.

Office of Attorney-General

2 1 OCT 1997

20/97071622

Mr Peter Batten
PO Box 1333
Renmark
South Australia 5341

Dear Mr Batten

I refer to your letter dated 17 July 1997 to Sir Robert Fellowes and to your letter to the British High Commission in which you requested information about the status of certain constitutional instruments and the Queen's role as Queen of Australia. Your letter have been forwarded to the office of the Attorney-General. I have been asked to reply on behalf of the Attorney-General.

The status of the Commonwealth Constitution

You would be aware that the Commonwealth Constitution was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.

However, 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 deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed.

Letters Patent

I am advised that Letters Patent constituting the office of Governor General of Australia were issued on 29 October 1900 under the Great Seal of the United Kingdom by Queen Victoria as Queen of the United Kingdom. Amendments to the Letters Patent issued in 1900, made on 4 December 1958, were approved by Queen Elizabeth II on the advice of the Australian Government. On 24 August 1984 the Letters Patent issued in 1900 were revoked and new Letters Patent were issued by Queen Elizabeth II as Queen of Australia under the Great Seal of Australia. The Letters Patent issued in 1984 have not been superseded.

The Queen's Role

The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of

Peter Batten   Y.M. Gorr J.P. (Y.M. GORR.
A Justice of the Peace in and for

Parliament House, Canberra ACT 2600 • Telephone (02) 6277 7300 • Fax (02) 6273 4102

New Zealand). The Queen of Australia, when acting in relation to Australia, acts on the advice of the Australian Government. I have not seen and therefore cannot comment on any advice from the 'Keeper of the Royal Seals' to the effect that the Queen of Australia cannot issue Letters Patent in relation to the office of the Governor-General on the advice of the Australian Government.

I am afraid I cannot say whether the Queen, when acting in her capacity as Queen of the United Kingdom under the laws of the United Kingdom, can issue Letters Patent to non-British subjects.

I hope you find these comments helpful.

Yours sincerely

Adele Byrne
Adviser

2.2

Foreign & Commonwealth Office

Far Eastern and Pacific Department
London SW1A 2AP
Telephone: 0171-270 3266

11 December 1997

P Batten Esq
P.O. Box 1333
RENMARK
S.A. 5341
Australia

Dear Mr Batten

AUSTRALIAN CONSTITUTION

Thank you for your letter to the Lord Chancellor of 13 July. I have been asked to reply. I apologise for the delay in replying.

We have been unable to locate the source of the quotation in your letter attributed to the Lord Chancellor. However, on a point of detail, the British gift of one of the original copies of the 1900 United Kingdom Act to Australia took place by special Act of Parliament in 1990 not in 1988, although the 1900 Act was on loan to Australia at this latter date.

The statement you mention in your letter is an accurate description of the power of the British Parliament in relation to its own legislation. The statement does not, however, address the special status of the Constitution of the Commonwealth of Australia. Nor does it refer to the Australia Acts, which declared that no future Act of the British Parliament would extend to Australia.

The Commonwealth of Australia Constitution Act was enacted in the United Kingdom at a time when Westminster was required to legislate on Australian issues; the measure was based on Australian drafts and was endorsed at the time by a majority of Australians. The continuing role of the Australia Constitution Acts as Australia's fundamental law is, of course, entirely a matter for Australia. There are at present no plans to repeal the Constitution Act.

The Government of the United Kingdom would, however, give consideration to the repeal of the Commonwealth of Australia Constitution Act if a request to that effect were made by the Government of Australia. To date no such request has been made.

I hope this information is of help to you.

Yours sincerely

Mark Armstrong

Mark Armstrong
Far Eastern and Pacific Department

I, BRIAN ALEXANDER SLEE, Executive Officer, Department of Foreign Affairs and Trade, Canberra, hereby certify that the attached text is a true copy of the Charter of the United Nations, with the Statute of the International Court of Justice annexed thereto, done at San Francisco on the twenty-sixth day of June, one thousand nine hundred and forty-five, the original of which is deposited in the archives of the Government of the United States of America.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Department of Foreign Affairs and Trade of Australia.

SIGNED at Canberra on this sixteenth day of October, one thousand nine hundred and ninety-seven.

Brian Slee

Executive Officer
Treaties Secretariat

CHAPTER I

PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

3

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE:

16 January 1998

Dear Mr. Batten,

Please be advised that we did not receive your letter of 7 November 1997. However, we received a similar request from Mr. W. Joose dated 5 December 1997. Due to the fact that his query is similar to yours and thus probably related, please find attached, copy of our reply to Mr. Joose.

Yours sincerely,

Anthony Miller
Principal Legal Officer
Office of the Legal Counsel
Office of Legal Affairs

Mr. Peter Batten
P.O. Box 1333
Renmark
South Australia
Australia 5341

cc: Mr. W. Joosse

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE:

19 December 1997

Dear Mr. Joosse,

This is in response to your memorandum of 5 December 1997 which asks us the date that the Untied Nations recognizes as "the legal date on which Australia ceased to be a colony of the United Kingdom and assumed sovereign nation status." You also allude to recent enquiries conducted by the Secretary-General and my office on this issue.

We are unaware of any enquiries being made on this issue in this Office.

In relation to your question we note that the Charter of the United Nations entered into force on 24 October 1945 and that Australia was an original Member of the United Nations, having signed the Charter on 26 June 1945. Australia's status as of that date was obviously that of a sovereign State. The exact date that it assumed such status is not a matter on which this Office can pronounce.

Yours sincerely,

Paul C. Szasz
Acting Director and Deputy to the
Under-Secretary-General
Office of the Legal Counsel

Mr. W. Joosse
Managing Director
David Keys Australia PTY.LTD.
6 Apsley Place
Seaford Victoria 3198
Australia

1929.

COMMONWEALTH OF AUSTRALIA.

REPORT

OF THE

ROYAL COMMISSION

ON THE

CONSTITUTION

TOGETHER WITH

APPENDIXES AND INDEX.

BY AUTHORITY:
L. F. JOHNSTON, COMMONWEALTH GOVT. PRINTER

APPENDIXES.

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COMMONWEALTH OF AUSTRALIA.

GEORGE THE FIFTH, *by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India:*

TO *our trusty and well-beloved* THE HONORABLE JOHN BEVERLEY PEDEN, *K.C., M.L.C.*; SENATOR PERCY PHIPPS ABBOTT, *C.M.G., V.D.*; THOMAS RAMSDEN ASHWORTH, *Esquire*; THE HONORABLE ERIC KENDALL BOWDEN, *M.P.*; THE HONORABLE SIR HAL PATESHALL COLEBATCH, *K.B., C.M.G.*; MAURICE BOYCE DUFFY, *Esquire, J.P.*; THE HONORABLE DANIEL LAURENCE McNAMARA, *M.L.C.*

GREETING:

KNOW *ye that We do by these Our Letters Patent, issued in Our name by Our Deputy of Our Governor-General of Our Commonwealth of Australia, acting with the advice of Our Federal Executive Council, and in pursuance of the Constitution of Our said Commonwealth, the "Royal Commissions Act 1902-1912," and all other powers him thereunto enabling, appoint you to be Commissioners to inquire into and report upon the powers of the Commonwealth under the Constitution and the working of the Constitution since Federation; to recommend constitutional changes considered to be desirable; and, in particular, to examine and report upon the following subjects from a constitutional point of view:—*

(i) *Aviation,*
(ii) *Company law,*
(iii) *Health,*
(iv) *Industrial powers,*
(v) *Interstate Commission,*
(vi) *Judicial power,*
(vii) *Navigation law,*
(viii) *New States,*
(ix) *Taxation, and*
(x) *Trade and commerce:*

AND WE APPOINT you the said JOHN BEVERLEY PEDEN *to be the Chairman of the said Commissioners:*

AND WE DIRECT *that, for the purpose of taking evidence, four Commissioners shall be sufficient to constitute a quorum, and may proceed with the inquiry under these Our Letters Patent:*

AND WE REQUIRE *you with as little delay as possible to report to Our Governor-General of Our said Commonwealth the result of your inquiries into the matters entrusted to you by these Our Letters Patent:*

IN TESTIMONY WHEREOF *We have caused these Our Letters to be made Patent, and the Seal of Our said Commonwealth to be thereunto fixed.*

WITNESS *our trusty and well-beloved the Honorable Sir* WILLIAM HILL IRVINE, *Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Our Deputy of Our Governor-General and Commander-in-Chief in and over Our Commonwealth of Australia, this eighteenth day of August, in the year of our Lord One thousand nine hundred and twenty-seven, and in the eighteenth year of Our Reign.*

W. H. IRVINE,
Deputy of the Governor-General.

By H [illegible]*xcellency's Command,*
S. M. BRUCE,
Prime Minister.

APPENDIX C.

THE REPORT OF THE INTER-IMPERIAL RELATIONS COMMITTEE, 1926.—EXTRACTS.

II. Status of Great Britain and the Dominions.

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Domi[illegible]s are concerned, is thus the root principle governing our inter-Imp[illegible] relations. But the principles of equality and similarity, appropriate to status, d[illegible]

not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory but to apply it to our common needs. . . .

V. Relations with Foreign Countries.

From questions specially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature, and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a) Procedure in Relation to Treaties.

We appointed a special Sub-Committee under the Chairmanship of the Minister of Justice of Canada (the Honorable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined, however, in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

Negotiation.

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention. This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Go[illegible]ment receives no adverse comments, and so long as its policy inv[illegible]es no active obligations on the part of the other Governments, [illegible] may proceed on the assumption that its policy is generally acc[illegible] [illegible]

ANNEXURE 27

Foreign &
Commonwealth
Office

Far Eastern and Pacific Department
London SW1A 2AP

Telephone: 0171-270 3263

29 October 1997

Mr W Joosse Esq
Chairman and Managing Director
Joosse Apparel Pty Ltd
6 Apsley Place
Seaford
Victoria 3198
Australia

Dear Mr. Joosse,

THE UK/AUSTRALIA CONSTITUTIONAL RELATIONSHIP

Thank you for your letter of 18 August to the Lord Chancellor. I have been asked to reply.

We do not believe that there is anything in the constitutional relationship between the United Kingdom and Australia which is inconsistent with the international obligations of either State.

I hope this letter is of assistance in addressing your concerns.

Yours sincerely,

Damian Testa

Damian Testa
Far Eastern and Pacific Department

IN THE MAGISTRATES COURT

CRIMINAL JURISDICTION

MURRAY BRIDGE

BEFORE MR FIELD, S.M.

17 APRIL 1998

NO. MCMUB-97-1666

POLICE

V

PETER BATTEN

JUDGMENT ON PRELIMINARY HEARING

The defendant, Mr Batten, has raised by way of preliminary point an argument challenging the jurisdiction of the Court to hear the offence of exceeding the speed limit, under Section 49 of the Road Traffic Act.

The defendant argues that the Court is not validly constituted. The defendant argues that the State of South Australia is not a valid constitutional entity. The defendant argues further that the Constitution of Australia is not a valid constitution and furthermore is not a valid law of the British Parliament. The defendant argues that any status of nationhood which Australia possesses derives from it being a party to the treaty of Versailles 1919 and to its acceptance as a member (Nation State) of the League of Nations in 1920 and subsequently its membership as a Nation State of the United Nations in 1945. The defendant argues that as a result the only tribunal which can vadily determine the charge is the World Court.

The defendant has not raised a matter of alleged conflict between a Law of the State and a Law of the Commonwealth. The defendant has not, on my interpretation of his argument which is in written form as well as in the form of oral submissions today, raised any argument which would involve the interpretation of provisions of the Australian Constitution.

I conclude therefore that this is not a case where it is necessary for me to give notice to the Attorney-General of the Commonwealth and the Attorney-Generals of the States under Section 78 (b) of the Commonwealth Judiciary Act.

I rule that the authority of this Court derives from the

Magistrates Court Act, 1991, an Act validly passed by the Parliament of the State of South Australia. My authority to sit as a Magistrate derives from my appointment under the Magistrates Act 1983 and the direction of the Chief Magistrate for me to sit as a Magistrates Court at Murray Bridge pursuant to Section 16 of the Magistrates Court Act, 1991. The authority of the State Parliament to pass both the Magistrates Court Act, 1991 and Magistrates Act, 1983 and subsequent amendments to those Acts derive from the powers given to the State legislature pursuant to the State Constitution and enabling legislation and letters patent from the Parliament and Soverign of the United Kingdom. The powers to pass the Magistrates Court Act and Magistrates Act all form part of the residual power of the State legislature which exists after the commencement of the Australian Constitution. For those reasons, I rule that this trial should proceed.

SOUTH AUSTRALIA Form No 44

IN THE SUPREME COURT

No. of

BETWEEN:

Peter BATTEN
(Appellant)

-and-

Darryl Keith CROSSMAN
(Respondent)

NOTICE OF APPEAL
Magistrates Court Act - Section 42

PURSUANT to s. 42 of the *Magistrates Court Act*, the above named appellant hereby appeals to the Supreme Court of South Australia, at the sittings of the said Supreme Court for hearing appeals under the *Magistrates Court Act 1991 commencing* on the day of 19 against the judgement hereunder described.

1. **Court Appealed From**

Magistrates Court sitting at: **Murray Bridge.**

Magistrates Court File No.: **REF: MCMUB-97-1666**

Magistrates Court Telephone No.: **(08) 8535 6060**

Name of Presiding Officer(s): **Justice Field.**

Date of Conviction and/or Sentence appealed from: **17th April 1998.**

Particulars of Conviction and Sentence:

(a) Give particulars of the charge/s upon which the appellant has been convicted (if more than one, give details of each):

Charge: that on April 30th 1997 at Mannum drove a vehicle on Adelaide Road within the town of Mannum at a speed greater than 60 kilometres an hour namely at about 81 kilometres an hour.
Conviction recorded, Fine $174 Costs $ 201.

2. **Particulars of Appellant**

Full Name: **Peter BATTEN**

Address: **P.O. Box 1333, RENMARK, South Australia 5341.**

Telephone No.: **018/813-437**
Name of Solicitor Acting:

N/A

Address for Service:

Telephone No: Fax No.: DX No.:

3. **Particulars of Respondent:**

Name: **Darryl Keith Crossman.**

Address: **c/o Police Headquarters, Adelaide. South Australia, 5000**

Telephone No.: Fax No.:

Name and Address of Solicitor Acting (if known):

4. **Nature of Appeal** (Answer ''Yes'' or ''No'' to each question)

Is the appeal against the conviction only: **No.**

Is the appeal against sentence only: **No**

Is the appeal against both conviction and sentence: **Yes.**

Is an extension of time sought: **No**

5. **Grounds of Appeal** (If insufficient space, please attach separate page(s). Also, if an order for extension of time is sought, state the grounds relied upon.)

By citing as his authority, legislation which is dependant on Letters Patent, and the Letters Patent themselves issued by the Government and a Monarch of a power (i.e. the United Kingdom of Great Britain and Northern Ireland) which is foreign to the sovereign independent Member State of the United Nations, Australia :
It is alleged that, in the terms of Article 14 of the International Covenant on Civil and Political Rights the Magistrate presided over an 'incompetent Court' thereby illegally victimising an Australian citizen.
It is further alleged that, since the stated Covenant is Schedule 2 of the Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth) it is also Australian law and that the Appellant can rightly expect protection under it.

Despite the presentation of indisputable evidence to the contrary, the presiding Magistrate ruled that, contrary to both and British and International law there exists residual powers derived from the 1856 British colony of South Australia Constitution which gives powers to the South Australian legislature which enables the giving of Letters Patent from the Parliament and the Sovereign of the United Kingdom of Great Britain and Northern Ireland. A power foreign to the sovereign independent nation of Australia.
It is alleged that in making this ruling the Magistrate contravened Article X of the Covenant of the League of Nations as well as Article 2, paragraphs 1 and 4 of the United Nations Charter. These treaties are binding on Australia.

In making this ruling the Magistrate needed to consider and make decisions in relation to the interpretation and application of International Treaties to which Australia is a signatory. Namely the Covenant of the League of Nations and the Charter of the United Nations.
In so doing it is alleged that the Magistrate exceeded the jurisdiction of his Court and that in so doing he contravened Article 36 of the Statute of the International Court of Justice. Also by so doing he ignored High Court rulings in relation to expectations of protection afforded to Australian citizens by treaties to which Australia is a signatory. Additionally he contravened paragraph 75 of the Constitution.
This paragraph specifically states that ''the High Court shall have original jurisdiction ''... ''In all matters '' ... (I) arising under any treaty.''

Extensive evidence was presented which established that the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) of which the 9th clause is the Australian Constitution remains an Act of the Parliament of the United Kingdom of Great Britain and that as such became invalid at the time Australia ceased to be a colony of the United Kingdom.
It is alleged that in considering and making decisions in relation to questions relating to the Constitution and its validity in terms of International law the Magistrate not only exceeded his jurisdiction in relation to International law , he also exceeded his jurisdiction under the same domestic law that the Appellant maintains is invalid. In proceeding he in fact breached Section 78B of the Judiciary Act 1903 (Commonwealth) **which indicates that in relation to such matters it is the duty of the court not to proceed until notice has been given to the Federal and all of the States Attorneys-General in relation to the question of their intervention or the removal of the cause to the High Court.**

6. Election Pursuant to S.42(3)

If this appeal relates to a minor indictable offence, the appellant elects, pursuant to s.42(3) of the *Magistrates Court Act,* to have the appeal heard by a single Judge of the supreme Court (answer ''Yes or No):

Yes

Dated the day of 19

Appellant (or Solicitor)

N.B. This form is to be used by a party to a criminal action who wishes to appeal to the Supreme Court pursuant to s.42 of the Magistrates Court Act against a conviction or penalty imposed by a Magistrates Court. The procedures governing such appeals are set out in Rule 96C of the Supreme Court Rules.

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 630 of 1998

ON APPEAL from the Magistrates Court at Murray Bridge in the State of South Australia.

IN THE MATTER of a judgement on a preliminary hearing and a conviction made on the 17th day of April 1998 by the said Magistrates Court on the hearing of a certain complaint wherein **DARRYL KEITH CROSSMAN** of Police Headquarters Adelaide in the said State was complainant and **PETER BATTEN** of 31 George Main Road Victor Harbor in the said State was the defendant.

PETER BATTEN
Appellant

and

DARRYL KEITH CROSSMAN
Respondent

AFFIDAVIT

I, **PETER BATTEN** of Victor Harbor in the said State of South Australia, Citizen of the sovereign independent and federated nation of Australia, a Member State of the UNITED NATIONS, do hereby under INTERNATIONAL LAW MAKE OATH AND SAY as follows:

The Appellant advises this Court of Appeal that:

i. Proceedings in this appeal involves matters arising under the Constitution and/or involve its interpretation. These matters parallel matters cited in Notice of Motion Nos M34 and M35 of 1998 currently before the High Court of Australia.

ii. In accord with the rules of the High Court the Federal, the States, the Australian Capital Territory and the Northern Territory Attorneys-General have been duly advised of these Notices of Motion.

iii. Proceedings in this appeal involve matters arising under, and the interpretation of, international treaties. Under Section 75 of the Australian Constitution, in matters arising under any treaty the High Court has original jurisdiction and that this is supported by-

iv. Clause 38(a) of the Judiciary Act 1903 (Commonwealth) which states that '*the jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States*' in matters arising under any treaty.

v. Copies of this affidavit together with notice under 78B of the Judiciary Act 1903, has been forwarded to the Attorneys-General of the Commonwealth, States and Territories specifying the nature of the matters arising under the Constitution or involving its interpretation.
A request has been made to those Attorneys-General for them to intervene in proceedings and for the removal of the cause to the High Court for its possible consideration in conjunction with Notice of Motion M34 and M35 of 1998.

vi. That, on advice received by the Appellant, he now states and declares that he will not willingly be involved in any procedure which may be in contempt of the High Court or any other Court of jurisdiction superior to this Appeals Court.

1. The following issues arising in this appeal involve conflicts arising between legislation enacted under the Constitution and the terms of the same. Such legislation forming part of this appeal being:-

a. Road Traffic Act 1961
b. Expiation of Offences Act, 1996
c. Constitution Act, 1934 and all current Constitutional Amendment Acts listed in Reprint No. 7 of 17th December 1997

d. Magistrates Court Act, 1991
e. Magistrates Act, 1983
f. Police Act 1952

2. The Nature of the Matter.

That the laws made in the State of South Australia have no basis in law. The Constitution of the State of South Australia consisting of the Constitution Act 1934 and some 62 Amendment Acts were all legislated under the Sovereignty of the United Kingdom of Great Britain and Northern Ireland. That is, under the sovereignty of a power which ceased to have legal effect within Australia upon the attainment of separate Australian legal sovereignty guaranteed by the international community under the terms of the Covenant of the League of Nations 1919. The attempt to overcome the effect of the treaty by the use of the Statute of Westminster 1931(UK) fails by reason that the Statute was not registered as a treaty or international arrangement as required. Further valid Royal Assent has not been given to any of the Acts listed.

3. **The Constitutional Issues and Interpretations to be Resolved**

a: The appellant submits that to effect a judgement on this appeal the Court needs determine on the following Constitutional issues relating to the Acts referred to above.

i: that S106 of the Constitution was invalidated by a Treaty being the Covenant of The League of Nations Articles X, XVIII and XX, that by reason of the cessation of the sovereign authority of the Westminster Parliament and the Monarchy of the United Kingdom over the colony and state on the 10th January, 1920 in accordance with Article X and XX of this treaty it necessarily follows that the invalidation of S106 of the Constitution necessarily rendered invalid the 1855-6 Constitution of the Colony of South Australia which was later repealed and replaced by the Constitution Act 1934. However, since this Act and all subsequent Amendment Acts have been assented to in the name of and on behalf of the Monarch of the United Kingdom of Great Britain and Northern Ireland the Constitution of the State of South Australia has in remained colonial.

ii: not withstanding the aforementioned principal, on the 26th June, 1945, in fact S106 of the Constitution was invalidated by a Treaty being the Charter of The United Nations. Specifically, Articles 2, 102 and 103, that by reason of the cessation of the sovereign authority of the Westminster Parliament as well as the Executive power of the Monarchy of the United Kingdom over

the colony and state under Articles 2 and 103 of the Charter it necessarily follows that it rendered invalid the Constitution of the Colony of South Australia which has in effect continued as the Constitution of the State of South Australia.

b: A Ruling that the Statute of Westminster 1931 UK or the parts thereof as apply to allow the continued use within the sovereign territory of Australia Acts of the Imperial Parliament and the authority of that Parliament and its Head of State to continue to be the assenting authority to legislation of the Parliament of South Australia and specifically all legislation composing the Constitution of South Australia as authorised under the provisions of Section 106 of the Constitution of the Commonwealth of Australia contravenes the following:-

i: Article XX of the Covenant of the League of Nations which under its terms reads:-

'The members of the League severally agree that this Covenant is accepted as abrogating all obligations or understanding inter se which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.
In case any Members of the League shall, before becoming Members of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of a Member to take immediate steps to procure its release from such obligations.'

ii: Article XVIII of the Covenant of the League of Nations by reason of the fact that that the Statute of Westminster 1931 UK being a treaty or international engagement require ratification by the Parliament of the Commonwealth of Australia was/is not entered upon the Register of Treaties established under Article XVIII of the Covenant and is therefore not a binding treaty or international engagement capable of recognition.

iii: Article 103 of the Charter of the United Nations which in company with Article 2 of the said Charter prevents interference by another sovereign power with the internal affairs of the sovereign nation of Australia by reason of its term reads:-

'In the event of a conflict between the obligations of the Members of the United Nations under the Present Charter and their obligations under

any other international agreement their obligations under the present charter shall prevail'.

iv: Article 102 of the Charter of the United Nations by reason of the fact that the Statute of Westminster 1931 UK being a treaty or international agreement requiring ratification by the Parliament of the Commonwealth of Australia was/is not entered upon the register of treaties established under Article 102 of the Charter and is therefore not a binding treaty or international engagement capable of recognition.

c: **In so far** as the Statute of Westminster Adoption Act 1942 is an International Agreement in the Terms of Article XVIII of the League of Nations Covenant and is/was not registered in the required terms of Article XVIII of the said Covenant, then such parts as are applicable to the continuation of the use of British Colonial Law in the form of the Constitution of the State of South Australia are invalid therefore, directly affecting the legislation being the subject of the appeal before this court.

d: **A ruling** that the Royal Styles and titles Act 1973 (Cth) did not alter and had no power to alter the provisions of Covering Clause 2 of the Commonwealth Constitution Act 1900 (UK) which defines the Queen in relation to all sections of the Constitution as follows:-
'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'.
That further S61 of the Constitution relating to The Executive power being vested in the Queen of the United Kingdom and the Governor General is appointed under S61 is by definition solely the representative of the Queen of the United Kingdom and under the provisions of Covering clause 2 therein.

e: **That** no head of power exists under the Constitution for the appointment of a sovereign and no referendum has been held pursuant to S128 of the Constitution to confer such power upon the Commonwealth or upon any Parliament.

f: **A ruling** that no Instrument exists which transfers the Executive power of the Queen of the United Kingdom embodied in the Commonwealth of Australia Constitution Act of the Imperial Parliament to any other Sovereign, therefore the Governors General and Governors appointed as representatives of the Queen of Australia, possess an honorary position only

as the representatives of a sovereign without Executive power under the Constitution.
It naturally follows, that Governors General and Governors appointed as Representatives of the Queen of Australia are not in fact empowered to assent to Bills enacted by Parliaments under the Constitution which place all executive power in the Hands of the Queen of the United Kingdom and not the Queen of Australia.

g: **That** this Court rule that the Charter of the United Nations including the Statute of the International Court of Justice being a Treaty and the lodgement of accessions under that Treaty accepting the compulsory jurisdiction of the International Court of Justice, in fact binds Australian Courts and officials under the decision of the said International Court of Justice in the Namibia Case ICJ 1971, 16, thereby requiring that all sections of the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights 1966 have the Force of law within Australian Courts.

DECLARED BY THE APPELLANT...

AT..this ....day of.......................1998

BEFORE ME...

MBAffdtdoc

SOUTH AUSTRALIA

IN THE SUPREME COURT

No: 630 of 1998

ON APPEAL from a Magistrates Court at Murray Bridge in the State of South Australia

IN THE MATTER of conviction made on the 17th day of April 1998 by the said Magistrates Court on the hearing of a certain complaint wherein **DARRYL KEITH CROSSMAN** of Murray Bridge in the said State, was complainant and **PETER BATTEN** of PO Box 1333, Renmark in the said State was defendant

BETWEEN:

PETER BATTEN

Appellant

and

DARRYL KEITH CROSSMAN

Respondent

RESPONDENT'S LIST OF AUTHORITIES

For hearing on 6th day of July 1998
Before the Honourable Justice Debelle

PART I - AUTHORITIES TO BE READ
1. *Batten -v- Police* Unreported judgment of Bleby J, 11 March 1998, JN S6588
2. *Bluett -v- Fadden* (1956) 56 SR(NSW) 254 at 261
3. *Dietrich -v- R* (1992) 177 CLR 292 at 305
4. *Minister for Immigration & Ethnic Affairs -v- Teoh* (1995) 183 CLR 273 at 286-287
5. *Narain -v- Parnell* (1986) 9 FCR 479 at 489
6. *Rogers -v- The Queen* (1994) 181 CLR 251

PART II - AUTHORITIES TO BE REFERRED TO
1. *Green -v- Jones* [1970] 2 NSWLR 812

PART III - STATUTES REFERRED TO
1. *Road Traffic Act 1961*
2. *Magistrates Court Act 1991*

THIS LIST OF AUTHORITIES is filed by Crown Solicitor for the State of South Australia of Level 8, 45 Pirie Street, Adelaide SA 5000 (DX 336). Solicitor for the Respondent. Telephone: (08) 8207 1510. Facsimile: (08) 8207 1794 L448

ADMJBB0149:JBB

SOUTH AUSTRALIA

IN THE SUPREME COURT

No. 630 1998

ON APPEAL from a Magistrates Court at Murray Bridge in the State of South Australia

IN THE MATTER of a conviction made on the 17th day of April 1998 by the said Magistrates Court on the hearing of a certain complaint wherein **DARRYL KEITH CROSSMAN** of Murray Bridge in the said State, was complainant and **PETER BATTEN** of P.O. Box 1333, Renmark in the said State was defendant

BETWEEN:

PETER BATTEN

Appellant

and

POLICE

Respondent

RESPONDENT'S OUTLINE OF ARGUMENT

1. The appellant was charged with driving a vehicle at a speed greater than 60 kilometres per hour in a municipality, contrary to section 49(1)(a) of the *Road Traffic Act, 1961* (RTA), namely at about 81 kilometres per hour.

2. This offence was detected by a traffic speed analyser within the meaning of section 5 of the RTA, namely a hand operated laser speed device.

3. The appellant failed to raise any of the statutory defences to the offence, pursuant to section 79B (2) of the RTA.

4. The presiding Magistrate did not err in law in finding the elements of the charge proved beyond reasonable doubt.

5. As to the appellant's argument in paragraph 3 of his stated grounds that the Learned Magistrate erred by proceeding to hear the speeding charge, thus breaching section 78B of the Judiciary Act, it is submitted that his Honour correctly concluded that the case was not one which raised any argument involving the interpretation of the Australian Constitution. Accordingly, his Honour was not required pursuant to section 78B to refrain from proceeding directly to hearing the prosecution of the speeding charge pending sufficient notice of the cause being provided by the appellant to the Attorneys-General of the Commonwealth and of the States. Section 78B only operates when it is made clear to the court that the cause involves a matter arising under the Australian Constitution and not on the basis of a simple assertion by a party to the cause: *Narain -v- Parnell* at 489; *Green -v- Jones* at 818.

6. As for the appellant's argument in paragraph 1 of his stated grounds of appeal that the Learned Magistrate presided over an incompetent court, it is submitted that his Honour was correct in stating that the authority of the Court to determine the matter derives from the *Magistrates Court Act 1991*, an Act validly passed by the Parliament of the State of South Australia.

7. The appellant asserted in paragraph 2 (page 3) of his affidavit of 18 June 1998 that South Australian statutes are invalid because they "were all legislated under the sovereignty of the United Kingdom of Great Britain and Northern Ireland". In *Batten -v- Police* (JN S6588) the appellant presented the same argument before the Honourable Justice Bleby (see page 6 of the appellant's affidavit of 10 March 1998 filed in SC

action no 138 of 1998). His Honour found that the appellant's arguments displayed "a fundamental misunderstanding of Australian constitutional law and history, of the Constitution and the constitutional history of this State, and of the effect of laws validly passed both by the Commonwealth and State Parliaments which have effect in this State": *supra* page 3. It is submitted that the decision of the Honourable Bleby J should be followed so as to reject the appellant's arguments about invalidity in this appeal. The RTA and all the laws referred to in paragraph I of the appellant's affidavit of 18 June 1998 are valid laws of South Australia.

8. It should be noted that, as this appeal is a part of criminal proceedings, it is not a case for applying the doctrine of issue estoppel: *Rogers -v- The Queen.*

9. It is further submitted that *as a matter of fact* the appellant was accorded equal treatment before the court in the terms described in Article 14 of the International Covenant on Civil and Political Rights (the Covenant), that he was allowed "a fair and public hearing by a competent, independent and impartial tribunal established by law".

10. In any event, the Covenant cannot be said to apply at large to the appellant's cause. It only applies in so far as it has been introduced into Australian law:

    Minister for Immigration & Ethnic Affairs -v- Teoh at 286-287.

    The *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (HREOC Act) has the Covenant annexed to it as schedule 2 and the rights and freedoms recognised in the Covenant are defined as "human rights" for the purposes of the HREOC Act and other Commonwealth legislation. Legislation relating to human rights derived from the Covenant has potential application to the appellant. The appellant can "rightly expect protection under [the Covenant]" but only in so far as the HREOC Act or other human

rights legislation applies to the appellant's circumstances. In relation to the matter of the appellant's speeding offence the HREOC Act does not apply so as to invoke the jurisdiction of the Human Rights and Equal Opportunity Commission.

11. It cannot be said that "the Covenant is Australian law". The incorporation of the Covenant into schedule 2 to the HREOC Act does not apply the Covenant directly to the appellant's cause. The speeding charge is not a matter which arises directly under the Covenant. The appellant's statement in paragraph 2 of his grounds that the High Court shall have exclusive jurisdiction "in all matters ... arising under any treaty" is inaccurate. Section 38(a) of the Judiciary Act provides for such exclusive jurisdiction in matters arising *directly* under a treaty. Matters arise directly where an Act empowers the Executive to take action in accordance with a treaty, or where an Act simply ratifies a treaty without transforming its words into the terms of the legislation, so that a question of the interpretation of the treaty itself arises: *Bluett -v- Fadden.* It is submitted that section 49(1)(a) of the RTA is not a provision of this nature. Section 38(a) of the Judiciary Act has no application to the appellant's cause.

12. In short, the Covenant neither applies directly nor indirectly to the appellant's cause.

13. It is submitted that there was no error on the part of the Learned Magistrate and that the appeal should be dismissed.

THIS OUTLINE OF ARGUMENT is filed by the Crown Solicitor for the State of South Australia of Level 8, 45 Pirie Street, Adelaide SA 5000 (DX 336). Solicitor for the Respondent. Telephone: (08) 8207 1630, Facsimile: (08) 8207 1794 L448

ADMVJBB0144JBB

SUPREME COURT ACTION NO. 630 of 1998

Before Justice Debelle -- 10.30 am 13th July 1998

APPELLANT'S PRESENTATION

To be read to the Court

In her outline of argument the council for the respondent has ignored, shown a lack of understanding or has made a deliberate attempt to confuse the issues that are the subject of this appeal.

Either way she has not confronted the issues which are the subject of the affidavit filed by the appellant

In the argument she has presented she relies, amongst other confusions, on a judgement of Justice Bleby. A full examination of that judgement reveals that Justice Bleby appeared to have understood the arguments presented. But, without allowing counter argument or offering legal reason he simply stated, " I am not prepared to accede to any of Mr Batten's arguments." Justice Bleby's subsequent subjective statements are no substitute for legal reason.

Like Ms Bradson, Justice Bleby attempted to confuse the issue. He did not confront them. Clearly Justice Bleby's decision should not be followed.

As recorded on page 1 of the transcript of the appeal process to which Ms Bradson refers, Justice Bleby, as does Ms Bradson, displays confusion in relation to the International Covenant on Civil and Political Rights and the 'Competency of the Court" to hear on these matters.

The power exercised by Justice Bleby and Mr Field alike is drawn directly from the current set of Letters Patent, issued by the Monarchy of the United Kingdom of Great Britain and Northern Ireland, appointing the Governor of

South Australia. The UK is a power foreign to the sovereign independent nation of Australia. By claiming the right to, and exercising power deriving from such a source such individuals are definable, under international law, as international terrorists. No matter how ridiculous this may seem, this is so.
Even the Solicitor General of South Australia has stated in a publicly released paper entitled 'SOLICITOR GENERAL'S DISCUSSION PAPER NO 3 --A Minimal Republic and the Role of the Crown' that the Queen of the UK and the Queen of Australia possess separate legal identities -------Quote----- .
And of course the Royal Styles and Titles Act 1973 defines the Queen of Australia. The actions of both of these individuals as well as those of Mr Field are the subject of separate complaints before the Federal Attorney-General.
And in keeping with advice received from the UN Secretariat relating to individuals who continue to exercise British colonial law in Australia, Justice Bleby's actions have been made the subject of a complaint to each of the General Assembly, the Security Council, the International Crimes Commission and the Human Rights Commission of the UN.
In anticipation that Justice Bleby's, so called, Judgement would be used as Ms Bradson has here applied it, the submissions to those bodies were concluded by this statement -------quote------.
I repeat, clearly decisions made by Justice Bleby should not be followed.
What I place before the Court is a simple fact:-

At midnight on the 9th of January 1920 Australia's status as a dependent colonial possession of the United Kingdom ceased and its status as a sovereign independent nation commenced.

The Parliament of Australia recognises this and has stated so in a report by the Senate Legal and Constitutional References Committee of November 1995, entitled "Trick or Treaty? Commonwealth Power to Make and Implement Treaties" -------quote-----Page 48, 49 and 43.

For a modern comparison one only has too look to midnight on the 30th June 1997 when, as the UK's Hong Kong New Territories 99 year lease expired, the UK Government chose to surrender its sovereignty over Hong Kong Island. Thus the whole of Hong Kong ceased to be a British colony and Imperial law ceased to have application in Hong Kong. The Hong Kong Constitution did not have to be rescinded, it simply became redundant.

Resolution 9 of the Imperial Conference and the foundation of the League of Nations and the International Labour Organisation are the instruments of Australia's sovereignty.

In keeping with international law, at midnight on the 9th January 1920 British colonial law ceased to have valid application in Australia. For it to be otherwise makes a mockery of national sovereignty. And, I add, the High Court has held, on no less than 11 occasions that British sovereignty does not apply in Australia.

So it is clear that we cannot argue about how and when Australia became a sovereign independent nation.

However, what has never been confronted and now needs to be resolved is the legal effect of this occurrence. And this Court is faced with this fact.

Unfortunately Australian trained lawyers are the only lawyers in the world that have been, and are even now prepared to argue that their countries transition from colonial possession to sovereign nation alters nothing, and thus makes no difference in law.

And of course in terms of simple logic as well as within the enactment of international law this is an absurdity.

My argument is that the State of South Australia only exists as a separate entity under covering clause 6 and sections 106,107 and 108 of the Constitution and that on achievement of independence these became redundant. Without them the transition from colony to States ceases to exist.

While it may be argued that South Australia has reverted to colonial status it is clear that, at least in the international forum, the UK government would not be a party to such an arrangement. So South Australia as a separate legal entity doesn't exist.

It follows that South Australian law doesn't exist.

Because the existence of the States depends entirely on the Federal Constitution and because the issues that are raised as a result of the effect of

when, and the effect of, the attainment of sovereignty itself involves the Constitution the cause before Mr Field's Magistrates Court and before this Court most obviously involves the Constitution. ---------- And it cannot be argued otherwise!

What I am presenting is evidence of Australian sovereignty and that the instruments of that sovereignty are unquestionably international treaties --- a fact which Federal Parliament accepts.

Within the confines of the law, lawyers must now confront the legal effects of the attainment of sovereignty.

While the various Attorney's-General have declined to become involved in or to remove the cause to the High Court, their action is of little consequence since the High Court has been asked, by way of Notice of Motion Nos. M34 an M35 of 1998, to make a ruling on the matters contained in my cause, and clearly, they may be forced to become part of those proceedings. This now seem to be a certainty since just last evening I was advised that a further High Court challenge, specifically dealing with the continuation of State law in exactly the circumstances I am describing, is to be issued, this very morning, in the Brisbane Registry of the High Court.

However, in any event the decisions of the Attorney's-General not to become involved does not confer on this court the power to override Section 75(1) of

the Constitution or Section 38(a) of the Judiciary Act 1903 which is an Act of Federal law.

It is quite clear, from Resolution 9 of the Imperial conference of 1917, that the UK Government gave its consent to Australian independence and in fact reinforced that by signing the treaties which gave international recognition to Australia's independence. It is therefore clear that the treaties were the mechanism the UK Government chose to acknowledge Australian Sovereignty. And it is therefore clear that the Australian Governments and Courts must also recognise the treaties as the instruments of Australian sovereignty. From the outline of the D.P.P.'s solicitor's argument it is quite clear that she is ignorant of the international law mechanisms utilised. Consequently she has totally misconstrued the position in relation to section 38(a) of the Judiciary Act 1903.

In any case the decision of whether the issues are truly matters of treaty belong exclusively to the High Court and no other Court or individual can make that decision on its behalf. Through her assertion on this she has clearly attempted to usurp the rules of the High Court by submitting that this is not a treaty matter.

In stating this I in turn make no attempt to usurp the right of this Court to hear and rule on the stated matters, in fact I would be delighted to be able to argue on these, however, since the High Court makes it quite clear they have sole

jurisdiction on treaty matters to attempt to do so would be in contempt of the High Court - and I dare not do that.

Clearly the High Court will not produce a ruling on my cause but since they have been asked to make a ruling on the 'Matters' contained in my cause and, it is clear the direction this Court takes is limited by the High Court, I submit that this Court cannot proceed in this matter at this time.

I repeat I make no attempt to deny this Courts right to rule on these matters but I respectfully suggest that to do so the Court is obliged to wait on the High Court.

SCStmt

I PETER BATTEN certify and declare that this presentation was read to the appeals Court established to deal with Supreme Court action no.630 of 1998 conducted in Adelaide on 13th July 1998.

Signed ---------------------------------------

SUPREME COURT OF SOUTH AUSTRALIA

(Magistrates Appeals: Criminal)

BATTEN v POLICE

Judgment of the Honourable Justice Debelle (ex tempore)

13 July 1998

CONSTITUTIONAL LAW — THE NON-JUDICIAL ORGANS OF GOVERNMENT — THE LEGISLATURE — GENERALLY — EXAMINATION OF VALIDITY OF LEGISLATION BY COURTS

Appeal against conviction and penalty - appellant charged with exceeding designated speed contrary to Road Traffic Act, 1961 s49(1)(a) - challenge to constitutional validity of Road Traffic Act - international law - sovereignty of States and Commonwealth - whether South Australia a valid legal entity - whether issue arising under Commonwealth Constitution - Judiciary Act 1903, ss78A, 78B - appeal dismissed.

Road Traffic Act, 1961 s49(1)(a); *Judiciary Act, 1903* ss78A, 78B, referred to.

On Appeal from MR FIELD SM
Appellant PETER BATTEN: In Person
Respondent SA POLICE: Counsel: MS J BRADSEN - Solicitors: CROWN SOLICITOR (SA)

Hearing Date/s: 13/07/98.

File No/s: SCGRG-98-630

B

Judgment No. S6778

BATTEN v POLICE

Magistrates Appeal

Debelle J (ex tempore)

On 17 April 1998 the appellant appeared in the Magistrates Court at Murray Bridge, charged with driving a motor vehicle at a greater speed than 60 kilometres an hour. It was alleged that on 30 April 1997 at Mannum, he had driven on the Mannum/Adelaide Road at a speed of 81 kilometres an hour.

Before the hearing began, the appellant raised a preliminary point challenging the jurisdiction of the court to hear and determine the question whether he had been guilty of the offence with which he had been charged. The appellant argued that the court was not validly constituted. He argued that the State of South Australia is not a valid constitutional entity. These arguments and others were derived from the appellant's view of the consequences of the Commonwealth of Australia being party to the Treaty of Versailles in 1919, its acceptance as a member of the League of Nations in 1920, and its subsequent membership of the United Nations.

He further submitted that constitutional issues existed which required the court to give notice to the Attorney General of the Commonwealth and to the Attorney Generals of the States and Territories, pursuant to s78B of the *Judiciary Act*, 1903 (Cth).

The magistrate overruled the submissions and proceeded to hear and determine the complaint. The prosecution led evidence. The appellant offered no evidence. He, in effect, relied on the arguments as to the constitutional propriety of the matter proceeding. The magistrate was satisfied that the offence had occurred. He convicted the appellant and ordered that he pay a fine of $174 and other costs. The appellant appeals from that conviction.

In his notice of appeal, the appellant reiterates much of what he had put before the magistrate and on the face of it appears to have added some further grounds. The Notice of Appeal reads:

> "By citing as his authority, legislation which is dependant on Letters Patent, and the Letters Patent themselves issued by the Government and a Monarch of a power (i.e. the United Kingdom of Great Britain and Northern Ireland) which is foreign to the sovereign independent Member State of the United Nations, Australia:
>
> It is alleged that, in the terms of Article 14 of the International Covenant on Civil and Political Rights the Magistrate presided over an 'incompetent Court' thereby illegally victimising an Australian citizen.

It is further alleged that, since the stated Covenant is Schedule 2 of the Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth) it is also Australian law and that the Appellant can rightly expect protection under it.

Despite the presentation of indisputable evidence to the contrary, the presiding Magistrate ruled that, contrary to both and (sic) British and International law there exists residual powers derived from the 1856 British colony of South Australia Constitution which gives powers to the South Australian legislature which enables the giving of Letters Patent from the Parliament and the Sovereign of the United Kingdom of Great Britain and Northern Ireland. A power foreign to the sovereign independent nation of Australia.

It is alleged that in making this ruling the Magistrate contravened Article X of the Covenant of the League of Nations as well as Article 2, paragraph 1 and 4 of the United Nations Charter. These treaties are binding on Australia.

In making this ruling the Magistrate needed to consider and make decisions in relation to the interpretation and application of International treaties to which Australia is a signatory. Namely the Covenant of the League of Nations and the Charter of the United Nations.

In so doing it is alleged that the Magistrate exceeded the jurisdiction of his Court and that in so doing he contravened Article 36 of the Statute of the International Court of Justice.

Also by so doing he ignored High Court rulings in relation to expectations of protection afforded to Australian citizens by treaties to which Australia is a signatory. Additionally he contravened paragraph 75 of the Constitution.

This paragraph specifically states that "the High Court shall have original jurisdiction"... "In all matters"... (I) arising under any treaty."

Extensive evidence was presented which established that the British Colony of the Commonwealth of Australia Constitution Act 1900 (UK) of which the 9th clause is the Australian Constitution remains an Act of the Parliament of the United Kingdom of Great Britain and that as such became invalid at the time Australia ceased to be a colony of the United Kingdom.

It is alleged that in considering and making decisions in relation to questions relating to the Constitution and its validity in terms of International law the Magistrate not only exceeded his jurisdiction in

> relation to International law, he also exceeded his jurisdiction under the same domestic law that the Appellant maintains is invalid. In proceeding he in fact breached Section 78B of the Judiciary Act 1903 (Commonwealth) which indicates that in relation to such matters it is the duty of the court not to proceed until notice has been given to the Federal and all of the States Attorneys-General in relation to the question of their intervention or the removal of the cause to the High Court."

The appellant has also given notice of the proceedings pursuant to s78B of the *Judiciary Act* to the Federal Attorney General and to the Attorneys General of the States and Territories. The notice included a request that the Attorneys General intervene in the proceedings and remove the cause to the High Court for its consideration. In his affidavit proving those notices, the appellant reiterates the grounds upon which he relies and elaborates upon them.

The appellant has received a reply from the Australian Government Solicitor on behalf of the Federal Attorney General, advising that the Attorney General for the Commonwealth will not be intervening or applying to remove the cause to the High Court. The letter goes on to state that, if the matter is taken further on appeal the Attorney General might then intervene.

During the hearing of this appeal, the appellant also produced letters from the Attorneys General of all the States and Territories. All have replied that they do not wish to intervene. Those letters will remain on the court file. Even if the Attorneys General had not responded, I would have proceeded with this matter since the issues which arose in this appeal do not in any sense relate to a matter arising under the Constitution or involving its interpretation as those words are understood. There was no occasion for the service of s78B notices. The only issues in this appeal are whether the appellant has committed this offence; whether the Parliament of this State has the legislative competence to enact the Road Traffic Act as a valid law of this State; and whether the law is enforceable.

The appellant does not contest the alleged speed. No issue as to that is raised in this appeal. The only question in the appeal is as to the validity and the enforceability of the Road Traffic Act and the authority and competence of the Parliament of South Australia to enact such a provision.

The arguments which have been advanced by the appellant display, I regret to say, a fundamental misunderstanding of both constitutional and international law. He misunderstands the constitutional framework of the Federation, which is the Commonwealth of Australia. He misunderstands the constitutional arrangements as between the Commonwealth and the States. He misunderstands the constitutional arrangements whereby the Constitution was enacted. He misunderstands the constitutional arrangements which had prevailed, so far as the States were concerned, prior to the enactment of the Commonwealth Constitution. It is clear also, that he misunderstands the consequences of the Commonwealth of Australia being party to international treaties. While, of course, the fact that Australia signs international

treaties might, in certain circumstances, affect the municipal law of the country, that is not the situation in this case.

The effect of Mr Batten's argument is the mere fact that, by signing the Treaty of Versailles in 1919, Australia became party to an international treaty, with the consequence that it has somehow altered its nationhood, and has somehow altered the legislative competence, respectively, of the Commonwealth and the States.

In short, the arguments have the hallmarks of a latter day Mr Justice Boothby. Since the enactment of the *Colonial Laws Validity Act* in 1865, nothing has occurred which adversely affects the constitutional or legislative competence of the Parliament of South Australia to make laws relating to road traffic and their enforcement in the courts of this State.

The arguments which Mr Batten has so earnestly placed before the court, regrettably, display such a misunderstanding of the issues involved and are sufficiently confused that it is sufficient answer to say that he completely misunderstands the issues and his arguments must fail. It follows that the appeal must be dismissed.

Any application for costs?

MS BRADSEN: Yes. We seek the usual costs. However, could I say that, the usual costs are minimal in these matters to reflect the justice of the matter. The Crown has treated the appellant's argument seriously and given a considerable amount of time to it. This is the second time that the appellant has put such arguments to this court. It is the Crown's position, that if it were to happen again it would appear very much as an abuse of process, either by a back door attempt to appeal a previous judgment, or to find a forum for ideas which should be put elsewhere. So that, I would like to make those remarks but ask for no more than the usual costs.

HIS HONOUR: As I understand it Ms Bradsen, the effect of your submission is, you seek the usual order of $150, which is, as I always understood to be a nominal amount?

MS BRADSEN: Yes.

HIS HONOUR: Because these are appeals from magistrates.

MS BRADSEN: Yes.

HIS HONOUR: But, the leniency is being extended because there is a lot of work involved in this matter will not be repeated on a future occasion?

MS BRADSEN: Indeed.

HIS HONOUR: Mr Batten, Ms Bradsen correctly summarizes the position, namely, that a nominal order to costs is made of $150. She seeks no more than that on

this occasion. Have you any argument that you wish to advance in opposition to her applications?

MR BATTEN: None whatsoever.

HIS HONOUR: I make the usual order, that the appellant pay the respondent's cost, which I fix in the sum of $150.

Orders:

1. Appeal dismissed.

2. The appellant shall pay the respondent's costs which I fix at $150.

ANNEXURE 28

COPY OF THE HAYNE JUDGEMENT – HIGH COURT OF AUSTRALIA

HIGH COURT OF AUSTRALIA

HAYNE J

JOOSSE & ANOR	APPLICANTS
AND	
AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION	RESPONDENT

Joosse v Australian Securities and Investment Commission; Burke v The Queen; Bowers v Askin; Young v Deputy Commissioner of Taxation; David Keys Australia Pty Ltd v Textile Clothing and Footwear Union of Australia [1998] HCA 77
Date of Order: 15 December 1998
Date of Publication of Reasons: 21 December 1998
M35/1998

ORDER

1. *Application dismissed.*

2. *Certify for counsel.*

Representation:

W Joosse appeared in person for the applicants

D M J Bennett QC, Solicitor-General for the Commonwealth with P J Hiland for the respondent (instructed by Australian Securities and Investment Commission)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

HIGH COURT OF AUSTRALIA

HAYNE J

BURKE	APPLICANT
AND	
THE QUEEN	RESPONDENT

21 December 1998
M63/1998

ORDER

1. *Application dismissed.*
2. *Certify for counsel.*

Representation:

S Gillespie-Jones for the applicant

J D McArdle QC for the respondent (instructed by Solicitor for Public Prosecutions (Victoria))

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

HIGH COURT OF AUSTRALIA

HAYNE J

BOWERS | APPLICANT

AND

ASKIN & ANOR | RESPONDENTS

21 December 1998
M65/1998

ORDER

1. *Application dismissed with costs.*

2. *Certify for counsel.*

Representation:

The applicant appeared in person

W J Martin QC with T S Monti for the respondents (instructed by Berrigan & Doube)

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HIGH COURT OF AUSTRALIA

HAYNE J

YOUNG	APPLICANT
AND	
DEPUTY COMMISSIONER OF TAXATION	RESPONDENT

21 December 1998
M93/1998

ORDER

1. *Application dismissed with costs.*
2. *Certify for counsel.*

Representation:

The applicant appeared in person

D M J Bennett QC, Solicitor-General for the Commonwealth with G L Ebbeck for the respondent (instructed by Australian Government Solicitor)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

HIGH COURT OF AUSTRALIA

HAYNE J

DAVID KEYS AUSTRALIA PTY LTD & ANOR APPLICANTS

AND

TEXTILE CLOTHING AND FOOTWEAR UNION OF AUSTRALIA RESPONDENT

21 December 1995
M95/1998

ORDER

1. *Application dismissed with costs.*
2. *Certify for counsel.*

Representation:

I S Henke, a Director of each applicant, appeared in person for the applicants

D C Langmead for the respondent (instructed by Maurice Blackburn & Co)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Joosse & Anor v Australian Securities and Investment Commission

Burke v The Queen

Bowers v Askin & Anor

Young v Deputy Commissioner of Taxation

David Keys Australia Pty Ltd & Anor v Textile Clothing and Footwear Union of Australia

High Court - Practice and procedure - Removal of causes - Points raised in application not arguable.

Constitutional Law - Sovereignty - Whether certain legislation invalid due to a "break in sovereignty".

Constitutional Law - Whether certain legislation invalid because royal assent not validly given.

International Law - Sovereignty - Whether certain legislation made pursuant to treaties invalid because treaties not registered as international arrangements.

Words and phrases - "sovereignty".

Constitution, covering cl 5, s 58.
Judiciary Act 1903 (Cth), s 40.
Royal Style and Titles Act 1973 (Cth).
Statute of Westminster Adoption Act 1942 (Cth).

HAYNE J. Application is made in each of five separate proceedings for an order removing the cause into this Court pursuant to s 40 of the *Judiciary Act* 1903 (Cth). It is said that each of the causes arises under the Constitution or involves its interpretation.

I have heard the five applications together because they raise similar issues. It is as well to say something briefly about the proceedings that give rise to the present applications.

Joosse & Anor v Australian Securities and Investment Commission (M35 of 1998)

The applicants were directors of a company, Bellechic Pty Ltd, that is now in liquidation. On 2 April 1998, the Australian Securities and Investment Commission began proceedings in the Magistrates Court at Melbourne against both applicants alleging breaches of ss 475(1), 530A(1)(a) and (2)(a) of the Corporations Law. The applicants allege that certain Acts - described as "*The Magistrates Court Act*, *The County Court Act & The Supreme Court Act*, *The Police Act*, *The Corporations Law* (Cth), *The Workplace Relations Act* 1996 and *The Taxation Administration Act* 1953 (Cth)" are invalid or inoperative.

Burke v The Queen (M63 of 1998)

This application relates to a criminal proceeding pending in the County Court of Victoria. The applicant has been presented on a presentment alleging three counts of using a false document, three counts of attempting to obtain a financial advantage by deception and two counts of obtaining a financial advantage by deception. The applicant has been arraigned but no jury has been empanelled. The trial is presently fixed to begin in April 1999. It would seem that the legislation that is attacked is the *Statute of Westminster Adoption Act* 1942 (Cth), *Australia Act* 1986 (Cth), *Judiciary Act* 1903 (Cth), *County Court Act* 1958 (Vic), *Legal Profession Practice Act* 1958 (Vic), *Police Regulation Act* 1958 (Vic), *Magistrates' Court Act* 1989 (Vic) and the *Supreme Court Act* 1986 (Vic).

Bowers v Askin & Anor (M65 of 1998)

In 1990, the respondents commenced an action in the County Court of Victoria against the applicant claiming damages for negligence in relation to veterinary care allegedly given by the applicant to a racehorse. The action proceeded through interlocutory stages until 1996 when it was struck out. It has since been reinstated and fixed for trial. The applicant contends that the *Magistrates' Court Act* 1989 (Vic), *County Court Act* 1958 (Vic), *Supreme Court Act* 1986 (Vic) and what he describes as "the Rules of Tort, Contract, Negligence and damages as arising from the Common Law of the United Kingdom as affects Australia" are invalid or inoperative.

Young v Deputy Commissioner of Taxation (M93 of 1998)

6 The material that has been filed reveals little about the underlying proceeding. It seems, however, that it is a proceeding instituted by the Deputy Commissioner and is pending in the Federal Court in its bankruptcy jurisdiction. The legislation said to be in issue is the *Magistrates' Court Act* 1989 (Vic), *County Court Act* 1958 (Vic), *Supreme Court Act* 1986 (Vic), "*Income Tax Assessment Act* 1936/42 (Cth)", *Income Tax Assessment Act* 1997 (Cth), *Taxation Administration Act* 1953 (Cth), *Crimes (Taxation Offences) Act* 1980 (Cth), *Fringe Benefits Tax Assessment Act* 1986 (Cth), *Fringe Benefits Tax (Application to the Commonwealth) Act* 1986 (Cth), *Commonwealth Electoral Act* 1918 (Cth) and the *Bankruptcy Act* 1966 (Cth).

David Keys Australia Pty Ltd & Anor v Textile Clothing and Footwear Union of Australia (M95 of 1998)

7 Little about the underlying proceeding is revealed by the material filed in this application other than that it concerns companies in some way associated with the applicants in the first matter (M35 of 1998) and is pending in the Federal Court of Australia. The legislation said to be in issue is the *Federal Court of Australia Act* 1976 (Cth), the *Workplace Relations Act* 1996 (Cth), the *Commonwealth Electoral Act* 1918 (Cth), the *Occupational Superannuation Standards Act* 1987 (Cth) and the Occupational Superannuation Standards Regulations 1987 (Cth).

8 In those cases where I have said little is known about the underlying proceeding, the fact that so little is known would, itself, be reason enough to refuse the application. It is not demonstrated in those cases that the cause, or any part of the cause, arises under the Constitution or involves its interpretation.

9 In the case of *Burke v The Queen* there is a different but no less important difficulty in the way of granting the application to remove the cause. To grant that application would lead to the fragmentation of the criminal process and that is reason enough to refuse it. This Court has said repeatedly that the criminal process should not be interrupted by testing interlocutory rulings that may be given in the course of proceedings[1].

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1 See, for example, *R v Iorlano* (1983) 151 CLR 678 at 680 per Gibbs CJ, Murphy, Wilson, Brennan and Dawson JJ; *Re Rozenes; Ex parte Burd* (1994) 68 ALJR 372 at 373 per Dawson J; 120 ALR 193 at 195; *R v Elliott* (1996) 185 CLR 250 at 257 per Brennan CJ, Gummow and Kirby JJ.

10 It is as well, however, to say something about the substance of the points raised in each of the applications.

11 In all five proceedings the applicants contend that there has been an unremedied, perhaps even irremediable, "break in sovereignty" in Australia that leads to the conclusion that some (perhaps much) legislation apparently passed by the Parliament of the Commonwealth, or one or more State Parliaments, is invalid. The written arguments that have been submitted (and supplemented orally) are not always articulated clearly and logically. Nevertheless, the following elements can be identified in the various submissions.

12 First, the Constitution is an Act of the United Kingdom Parliament. Yet it has been held in this Court that sovereignty rests with the people of Australia[2]. This is said to lead to the invalidating of certain of the provisions of the Constitution or, perhaps, to those provisions no longer operating. It is also said to lead to the invalidating of some State or Commonwealth legislation. Why this should be so was not spelled out clearly. Secondly, the references in the Constitution to the Queen were intended as references to the Queen in the sovereignty of the United Kingdom[3], yet since the *Royal Style and Titles Act* 1973 (Cth) the Queen has been the Queen of Australia and there has been no alteration to the Constitution. Accordingly, so the argument goes, the Royal Assent has not been validly given to a number of Acts of the Commonwealth Parliament. Thirdly, Australia attained international recognition of its independent and sovereign identity when it signed the Treaty of Versailles or when it became a founding member of the International Labor Organisation. Yet treaties made by Australia, including in particular the arrangements reflected in the *Statute of Westminster Adoption Act* 1942 (Cth), were not registered as international arrangements as was required by those parts of the Treaty of Versailles establishing the League of Nations. Again this is said to lead in some unspecified way to the invalidating of some legislation.

13 These three principal themes were developed to varying degrees and in various ways in each of the applications now under consideration. Some, but not all, also sought to develop two other points: first that the *Commonwealth Electoral Act* being affected by the earlier mentioned difficulties, no legislation passed after a particular date was valid for the want of valid election of members

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2 *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1 at 70 per Deane and Toohey JJ; *Australian Capital Television Pty Ltd v The Commonwealth* (1992) 177 CLR 106 at 138 per Mason CJ; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at 172-173 per Deane J.

3 Constitution, covering cl 2.

of parliament and second that some international treaties concerning human rights have direct operation in Australian domestic law.

14 Whether or not it is strictly open to me to do so, I am content to deal with the applications on the basis that each advances all of the various points that have been urged in support of any of the particular applications to remove.

15 Nevertheless, each application should be dismissed. None of the applicants identifies a point having sufficient merit to warrant removal of the cause concerned into this Court. The points that it is sought to agitate are not arguable.

16 "Sovereignty" is a concept that legal scholars have spent much time examining. It is a word that is sometimes used to refer to very different legal concepts and for that reason alone, care must be taken to identify how it is being used. H L A Hart said of the idea of sovereignty that[4]:

> "It is worth observing that an uncritical use of the idea of sovereignty has spread similar confusion in the theory both of municipal and international law, and demands in both a similar corrective. Under its influence, we are led to believe that there *must* in every municipal legal system be a sovereign legislator subject to no legal limitations; just as we are led to believe that international law *must* be of a certain character because states are sovereign and incapable of legal limitation save by themselves. In both cases, belief in the necessary existence of the legally unlimited sovereign prejudges a question which we can only answer when we examine the actual rules. The question for municipal law is: what is the extent of the supreme legislative authority recognised in this system? For international law it is: what is the maximum area of autonomy which the rules allow to states?"

For present purposes, what is critical is: what is the extent of the supreme legislative authority recognised in this system and what are the rules for recognising what are its valid laws[5]?

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4 H L A Hart, *The Concept of Law*, (1961) at 218. See also Wade, "The Basis of Legal Sovereignty", (1955) 13 *Cambridge Law Journal* 172; Heuston, "Sovereignty", in Guest (ed), *Oxford Essays in Jurisprudence*, (1961) at 198-222; Winterton, "The British Grundnorm: Parliamentary Supremacy Re-examined", (1976) 92 *Law Quarterly Review* 591.

5 Hart, *The Concept of Law*, (1961) at 97-120.

17 When one examines the history of Australia since 1788 it is possible to identify the emergence of what is now a sovereign and independent nation. Opinions will differ about when sovereignty or independence was attained[6]. Some steps along that way are of particular importance - not least the people of the colonies agreeing "to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution"[7]. But when it is said that Australia is now a "sovereign and independent nation" the statement is in part a statement about politics and in part about what Stephen J in *China Ocean Shipping Co v South Australia*[8] called "the realities of the relationship this century between the United Kingdom and Australia". What those realities were in 1900 can be gauged from the fact that the delegates negotiating with the Imperial authorities in 1900 about the terms in which the Imperial Parliament was to enact the Constitution were well content to seek to persuade the Colonial Office that the "Commonwealth appears to the Delegates to be clearly a 'Colony'"[9]. As the century moved on, further attention was given to the place of Imperial legislation in the self-governing dominions. The Imperial Parliament enacted the *Statute of Westminster* in 1931 but it was not until 1942 that the Commonwealth Parliament enacted legislation adopting the *Statute of Westminster*[10]. And then in 1986 the *Australia Acts* were passed. All these Acts deal with the place of Imperial legislation in Australia. Each can be seen as reflecting the then current view of the relationship between Australia and the United Kingdom. In large part, then, each deals with an aspect of political sovereignty.

18 Similarly, the way in which Australia has engaged in international dealings can be seen to have changed since federation. And it may be that the Treaty of Versailles or some other international instrument can be seen as according Australia a place in international dealings which it may not have had before the instrument was signed. But what is significant for the disposition of the present applications is not whether the Westminster Parliament could now, or at some

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6 *China Ocean Shipping Co v South Australia* (1979) 145 CLR 172 at 181 per Barwick CJ, 194 per Gibbs J, 208-214 per Stephen J, 240 per Aickin J; *Nolan v Minister for Immigration and Ethnic Affairs* (1988) 165 CLR 178 at 184 per Mason CJ, Wilson, Brennan, Deane, Dawson and Toohey JJ, 191-192 per Gaudron J.

7 Constitution - Preamble.

8 (1979) 145 CLR 172 at 209.

9 Quick and Garran, *Annotated Constitution of the Australian Commonwealth,* (1901) at 352.

10 *Statute of Westminster Adoption Act* 1942 (Cth).

earlier time might have been expected to, pass legislation having effect in Australia. Neither is it whether Australia is treated by the international community as having a particular status. The immediate question is what law is to be applied in the courts of Australia. The former questions about the likelihood of Imperial legislation and of international status can be seen as reflecting on whether Australia is an independent and sovereign nation. But they do so in two ways: whether some other polity can or would seek to legislate for this country and whether Australia is treated internationally as having the attributes of sovereignty. Those are not questions that intrude upon the immediate issue of the administration of justice according to law in the courts of Australia. In particular, they do not intrude upon the question of what law is to be applied by the courts.

19 That question is resolved by covering cl 5 of the Constitution. It provides:

> "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".

It is, then, to the Constitution and to laws made by the Parliament of the Commonwealth under the Constitution that the courts must look. And necessarily, of course, that will include laws made by the States whose Constitutions are continued, the powers of whose parliaments are continued, and the existing laws of which were continued (subject, in each case, of course, to the Constitution) by ss 106, 107 and 108 of the Constitution. It is not relevant to the inquiry required by covering cl 5 to inquire how Australia has been treated by other nations in its dealings with them or to inquire whether the Westminster Parliament could or could not pass legislation that has effect in Australia. Covering cl 5 provides that the Constitution and the laws made by the Parliament of the Commonwealth under the Constitution are binding on the courts, judges, and people of every State and of every part of the Commonwealth. None of the points that the applicants seek to make touches the validity of any of the laws that are in question or would make those laws any the less binding on the courts, judges, and people.

20 As I have noted earlier, the second of the three themes identified by the applicants relies on the *Royal Style and Titles Act*. As I understand it, the principal burden of the argument is that an Act of Parliament, changing the style or title by which the Queen is to be known in Australia, worked a fundamental constitutional change. The fact is, it did not. So far as Commonwealth legislation is concerned, it is ss 58, 59 and 60 of the Constitution that deal with the ways in which the Royal Assent may be given to bills passed by the other elements of the Federal Parliament. So far as now relevant, s 58 governs. It provides that the Governor-General "shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name". And there

is no material that would suggest that has not been done in the case of each Commonwealth Act that now is challenged.

21 The third element in the submissions made by the applicants, and the one to which greatest significance was given in oral argument, asserts that significance is to be attached to certain of Australia's international dealings. These contentions fail to take account of certain basic principles. First, provisions of an international treaty to which Australia is a party do not form part of domestic law unless incorporated by statute[11]. It follows that what one of the applicants referred to as various human rights instruments do not of themselves give rights to or impose obligations on persons in Australia. Similarly, the Charter of the United Nations does not have the force of law in Australia[12]. Next, in so far as this limb of the argument sought to make some point about "sovereignty" it is again necessary to note the distinction between sovereignty in international law and sovereignty in the sense described by Hart as "the supreme legislative authority recognised in this system"[13]. The points which the applicants seek to make are points touching the first of these matters, not the second. It is the second that is the critical question in the courts and it is the second that is resolved by having regard to covering cl 5.

22 Lastly, it is necessary to deal with the contentions about the *Commonwealth Electoral Act*. These contentions depend entirely upon acceptance of one or other of what I have earlier called the three main themes of argument. Because I consider that they are not arguable, no separate question arises about the *Commonwealth Electoral Act*. Nevertheless, it may be noted that it was established very early in the life of the federation that if there are any defects in the election of a member of a house of the Parliament the proceedings of that house are not invalidated by the presence of a member without title[14]. Moreover, there are at least some circumstances in which invalidating defects in

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11 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; *Victoria v The Commonwealth* (*Industrial Relations Act Case*) (1996) 187 CLR 416 at 480-481 per Brennan CJ, Toohey, Gaudron, McHugh and Gummow JJ.

12 *Bradley v The Commonwealth* (1973) 128 CLR 557 at 582 per Barwick CJ and Gibbs J.

13 Hart, *The Concept of Law*, (1961) at 218.

14 *Vardon v O'Loghlin* (1907) 5 CLR 201 at 208 per Griffith CJ, Barton and Higgins JJ.

the *Commonwealth Electoral Act* will not invalidate the elections held under it[15].

23 For these reasons, the points which it is sought to agitate in this Court have insufficient merit to warrant the orders that are sought. Each application is dismissed. In each of matters M65 of 1998, M93 of 1998 and M95 of 1998 the applicants will pay the respondents' costs. I make no order for costs in either M35 of 1998 or M63 of 1998 as each arises out of a criminal or quasi-criminal matter. I certify for counsel.

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15 *Attorney-General (Cth); Ex rel McKinlay v The Commonwealth* (1975) 135 CLR 1 at 53 per Gibbs J. (See also the statement as to the effect of the order in these matters recorded at (1975) 7 ALR 593 at 651.)

ANNEXURE 29

COPY OF WRITS OF CERTIORARI PRESENTED AND REJECTED

IN THE HIGH COURT OF AUSTRALIA
AT CANBERRA

AFFIDAVIT IN SUPPORT OF APPLICATION FOR CERTIORARI

I, IAN HENKE of 7 Apsley Place, Seaford in the State of Victoria, Company director, make oath and say as follows;

1. I am a director of the fourth named applicant herein and duly have the authority of the the first named, second named and third named applicants to make this affidavit on their behalf for their benefit and am duly authorised to make this application on behalf of the fourth named applicant.

2. I was personally present on the 15th. Day of December 1998 at the High Court of Australia at Melbourne when I made oral submission on behalf of the fourth named applicant with the express permission of his Honour Mr. Justice Hayne.

3. I respectfully submit that His Honour, Mr Justice Hayne did take to himself the powers and authority to override a Superior Court being the Parliament of the Commonwealth of Australia, did take to himself the powers and authority to override the Parliament of the United Kingdom and did take to himself the power and authority to override international law in relation to six matters.

   a) The issue of sovereignty itself and the existence of domestic sovereignty;
   b) The unanimous vote of both Houses of the Parliament on a motion to be bound by, ratify and accept the Treaty of Versailles and the Act of Parliament No 20 of 1919; being the Treaty of Peace Act which enacted the said Treaty into Australian domestic law.
   c) By the removal of domestic sovereignty His Honour overrode the National Citizenship Act 1948 conferring upon the executive Government the right to create Australian citizens and to issue documents of identity for use overseas. Such Act required as a basic premise domestic and international sovereignty from the 26 January 1949.
   d) The overriding of Imperial Law, being the Immigration Act 1972 (UK) which specifically removes Australian citizens from any position under British Law.
   e) The overriding of the findings of the 1929 report of the Royal Commission of the Constitution
   f) In contravention of international law he reinstated the continuing sovereignty of the previous Imperial Power.

4. Listed hereunder are my respectful submissions with regard to this application for certiorari for consideration by this Honourable Court prior to considering a final order for certiorari.

SUBMISSIONS MADE IN ANSWER TO THE JUDGEMENT OF HIS HONOUR MR. JUSTICE HAYNE AS CONTAINED IN THE OFFICIAL HIGH COURT TRANSCRIPT DATED 15TH.DECEMBER 1998 AT MELBOURNE

PART ONE

Pursuant to Section 4 of the Constitution Act, the Commonwealth was created as a legal entity (Refer Messrs Quick and Garran, - Annotated Constitution of the Australian Commonwealth 1901) under the Crown of Great Britain and Ireland, a legal authority which disappeared upon the ratification on 15th. January, 1922 of the Anglo-Irish treaty of December 1921 when Ireland ceased to exist as a legal entity. The Government of the Republic of Eirre can attest to this.

Since the Crown of the United Kingdom is held under an Act of the Imperial Parliament, being the Act of Settlement of 1701 it is therefore clear that continuing Imperial Authority over Australia carries with it the continuing political authority of the Parliament of the United Kingdom.

At the time of independence, whenever this may be held to have occurred, sovereign Authority over the Commonwealth passed to the people of Australia such power still residing with the people and not modified.

His Honour Justice Hayne has exceeded his authority by ruling that this defunct Imperial Power is still applicable in Australia in all of its assets thereby in effect ruling that Australia is still in thrall to the political power of the Parliament of the United Kingdom..

PART TWO

Section 9 of the Constitution Act is a subordinate Section dependant upon the eight antecedent Clauses and defines only the manner in which the Government of the legal entity established under Section 4 will be carried out. (Ref Quick and Garran)

Under Section 71 of the Constitution jurisdiction of the High Court extends only to the powers of the Commonwealth as expressed under the Constitution, it explicitly does not extend beyond those limitations.

No further Act has been passed nor can be passed extending the jurisdiction of the High Court beyond the above limitations. The Constitution confers no right upon the High Court to exercise superior jurisdiction over the Parliament of the Commonwealth of Australia.

The High Court does not have an unlimited capacity. This capacity is limited by Law within the aforesaid terms of Section 71 of the Constitution and "The judicial powers of the Commonwealth shall be vested in the High Court". The legislative power is with Parliament under Article 1 of Section 9 of the Constitution such legislative power is not limited to the passing of Acts but may encompass Declarations or any decision made by the Parliament in the proper exercise of the members powers as representatives of the sovereign people of Australia.

The original jurisdictions conferred on the High Court by Sections 71, 73, 74, 75, 76, and 77 specifically do not include any power whatever to overrule the Parliament on a matter which it has duly passed or voted on within the jurisdiction given to Parliament under the Constitution Act.

Under Section 52, the Parliament has exclusive power to make laws for peace, order and good Government. Any decision of the High Court in relation to the actions of Parliament can only override the parliament if the original actions of Parliament were outside of the Parliament's Constitutional Powers.

The activities of the Parliament do not consist of legislation alone. The Parliament as "The Court of the People" may vote to accept, reject, debate and be bound by any issue, treaty, agreement or other document which is placed before it in accordance with the rules of the Parliament. The aforesaid rules of Parliament are purely the prerogative of the Parliament and are not subject to review by the High Court.

There is no provision for the High Court to have any jurisdiction over such activities of the Parliament. Therefore, in accordance with this principal Mr Justice Hayne did err at Law in that he exceeded his authority by overruling a unanimous decision on 1 October 1919 of the House of Representatives and the Senate of the Parliament of the Commonwealth of Australia being in fact a Superior Court to the High Court. Parliament being a manifestation of the sovereign power of the people. (Refer to Barwick J in Bonser-v-LaMachia 1969.43.ALJR 275).

The unanimous decision of the High Court in the Bonser Case decided that a sovereign state of Australia existed in control of its territory and territorial waters irrespective of when it occurred. It had in fact been transferred from Imperial sovereignty.

It is submitted that Parliament made decisions as recorded in Hansard during September of 1919 and that it was beyond the jurisdiction of His Honour, Mr Justice Hayne to override or interpret that decision.

The decision by Barwick CJ, does not exclude this decision by the Parliament as being part of the transfer of sovereignty. It remains within the possibilities envisaged by the Court.

By separate deliberation, the Parliament in 1995 affirmed that the decision taken by the House of Representatives and the Senate in September 1919 was binding and was in fact

the date of Australia's Independence. These two decisions by the Parliament in 1919 and 1995 constitute rulings of a Superior Court which are not within the jurisdiction of any other Australian Court to overturn.

Therefore it is submitted, His Honour, Mr Justice Hayne has overridden without judicial power or confidence, the Commonwealth Parliament and the rulings by the said Parliament thereby entitling the granting of a Writ of Certiorari per se.

PART THREE

The position of the Monarch within the Australian Legal and Political System is defined by the territory over which sovereignty exists.

On attainment of the throne in 1952, Queen Elizabeth II did not automatically assume the titles of her father and previous monarchs. The Westminster Parliament passed the Royal Style &Titles Act 1953 UK conferring on Her Majesty a different title to that of previous Monarchs. The Style & Title granted is "Elizabeth II by the Grace of God of the United Kingdom, Great Britain and Northern Ireland and her other Realms and Territories, Queen."

Since the Imperial Parliament no longer has sovereign authority over the Dominions it could not grant Titles over the Dominions within the exercise of its legal authority. It therefore requested that Dominions make their own laws in relations to Her Majesty. The Act explicitly eliminates the question of Title over the self-governing dominions from the Realms and Territories mentioned in the Title confirmed. It required that the self-governing dominions who wished to retain the link with the Crown should pass their own legislation accepting the Queen. Therefore, under British Legislation, any interpretation of Queen of the United Kingdom does not allow for a Title which is excluded under the original Imperial Act 1953 (UK).

The Parliament of the Commonwealth of Australia passed the Royal Style & Titles Act 1953. This Act conferred upon Her Majesty a Title which included both the United Kingdom and Australia. However, the later Royal Styles & Titles Act 1973 by design of the Parliament repealed the Schedule of the 1953 Act and thereby removed any reference to the United Kingdom in relation to Australia and conferred upon Her Majesty the new Style & Title of "Elizabeth II, by the Grace of God Queen of Australia and her other Realms and Territories, Head of the Commonwealth".

However since the Queen of the United Kingdom holds Her throne solely under the authority of an Act of Parliament, the Act of Settlement 1701, and not under the untrammeled Royal Right of Succession, then it necessarily follows that the ultimate authority for the current sovereign is the authority of a foreign parliament and therefore imposes the sovereign authority of the United Kingdom Parliament on and over the sovereign people of Australia.

It is respectfully submitted that His Honour, Mr Justice Hayne erred at Law and exceeded his jurisdiction by overruling an Act of the Parliament which had been personally assented to by Her Majesty. His Honour, in fact reinterpreted the Act to reinclude a Title which the Commonwealth Parliament had by its deliberations specifically excluded by repealing the Schedule to the Royal Style & Titles Act 1953.

Since Parliament repealed the Schedule to the 1953 Act it shows Parliament's intention in relation to using the wording 'Queen of the United Kingdom'. Parliament clearly decided the Queen was the Queen of Australia, which was not open to be interpreted in a way which negates the meaning of the Act. The only reason for the 1973 passing of the later Royal Styles & Titles Act 1973 was for the purposes of repealing the Schedule and Title granted to Her Majesty by the 1953 Act. The action taken by the Parliament was in response to legislative action taken by the Imperial Parliament declaring Australians to be aliens to the United Kingdom.

PART FOUR

The jurisdiction of the High Court extends only to matters arising within the terms Section 9 of the Constitution Act under S71 and embodies no authority whatever over acts, actions or documents which depend upon the sovereign authority of the Imperial Parliament, except, within that narrow range permitted by Section 9

.By Declaration of the Joint Committee the House of Lords and the House of Commons of 27 March 1935, the Imperial Parliament rejected attempts by the State of Western Australia to secede and in the process ruled that the Westminster Parliament alone had jurisdiction over and legal competence to alter and amend Sections 1-8 of the Constitution Act. The foreign office of the United Kingdom Government in 1997 in writing to an associate of the applicants reaffirmed the capacity of the Westminster Parliament to repeal the said Act.

It further pointed out that no provision was embedded in the Act to vary the Preamble or these first eight sections.

It is submitted that jurisdiction of the High Court relates only to Section 9 of the Act. In other words, the High Court can not exercise jurisdiction over matters over which the Commonwealth does not hold sovereignty, ie Acts of the Imperial Power.

In assuming this jurisdiction for himself His Honour, Mr Justice Hayne ruled Section 2 of the Constitution which referred to the Queen of the United Kingdom etc, could be interpreted in a way which had been explicitly excluded by legislation of the Australian Parliament

None of the precedents quoted by His Honour examined the question of either the repeal of titles by the Commonwealth Parliament thereby removing the basis of significant sections of his Honour's judgement or the decision of the Imperial Parliament which

excluded Australians from the jurisdiction of Imperial Law thereby invalidating the operation of the Imperial Laws Application Act..

PART FIVE

That in effect His Honour, Mr Justice Hayne wrongly and improperly overruled the 1929 Commonwealth of Australia Report of the Royal Commission on the Constitution. Such ruling being contained in Appendix C of the Report of the Inter-Imperial Relations Committee, 1926 – Extracts Paragraph 2, quote "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations".

Mr. Justice Hayne also presumed to not only override decisions and Acts of the Commonwealth Parliament but also overrode a joint decision of the Government of the United Kingdom and the Government of the Commonwealth as expressed in the Balfour Declaration of 1926 listed above as Schedule C of the Royal Commission Report.

5. In view of the material presented herein to this Honourable Court I submit that he major conflicts created by the judgement of His Honour Justice Hayne have the capacity to disrupt every aspect of national life, to prevent overseas travel and commerce by Australian citizens, to cause every election result to be challenged and to even cast doubt upon the existence of the High Court itself thereby causing severe disruption to the proper rule of law, order, peace and good government of the Commonwealth.

SWORN BY the said IAN HENKE at

This day 1999

Before Me

Prepared by Waters O'Brien
Solicitors
164 High St.
Cranbourne 3977

Solicitors Code 1622

ANNEXURE 30

Copy of extracts Full Bench of High Court of Australia Judgement in Sue v Hill 1999, HCA 30

AustLII High Court of Australia

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Sue v Hill [1999] HCA 30 (23 June 1999)

Last Updated: 23 June 1999

HIGH COURT OF AUSTRALIA

GLEESON CJ,

GAUDRON, McHUGH, GUMMOW, KIRBY, HAYNE AND CALLINAN JJ

Matter No S179/1998

HENRY (NAI LEUNG) SUE PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Matter No B49/1998

TERRY PATRICK SHARPLES PETITIONER

AND

HEATHER HILL & ANOR RESPONDENTS

Sue v Hill [1999] HCA 30

23 June 1999

S179/1998 and B49/1998

ORDER

1. Answer the questions reserved in each stated case as follows:

(a) Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?

Answer: Yes

citizen or entitled to the rights and privileges of a subject or citizen. That is, the inquiry is not about whether Australia's relationships with that power are friendly or not, close or distant, or meet any other qualitative description. Rather, the words invite attention to questions of international and domestic sovereignty[50].

49. Further, because the question is whether, at the material time, the United Kingdom answered the description of "a foreign power" in s 44(i), it is not useful to ask whether that question could have been easily answered at some earlier time, any more than it is useful to ask whether it is easily answered now. No doubt individuals will be directly affected by the answer that is given and, to that extent, their rights, duties and privileges may be affected. But any difficulty in deciding whether the United Kingdom did answer the description at the material time, or in deciding when it first answered that description, does not relieve this Court of the task of answering the question that now is presented.

Constitutional interpretation

50. In *Bonser v La Macchia*, Windeyer J referred to Australia having become "by international recognition ... competent to exercise rights that by the law of nations are appurtenant to, or attributes of, sovereignty"[51]. His Honour regarded this state of affairs as an instance where "[t]he law has followed the facts"[52]. It will be apparent that these facts, forming part of the "march of history"[53], received judicial notice[54]. They include matters and circumstances external to Australia but in the light of which the Constitution continues to have its effect and, to repeat Windeyer J's words[55], "[t]he words of the Constitution must be read with that in mind".

51. There is nothing radical in doing as Windeyer J said; it is intrinsic to the Constitution. What has come about is an example of what Story J foresaw (and Griffith CJ repeated[56]) with respect to the United States Constitution[57]:

> "The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."

52. The changes to which Windeyer J referred did not require amendment to the text of the Constitution. Rather, they involved[58]:

> "in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the *Colonial Laws Validity Act 1865* (Imp) and restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope."

Changes in the United Kingdom

53. So also with respect to changes in the constitutional arrangements in the United Kingdom itself. The condition of those arrangements at any one time may be difficult to perceive by reason of the lack of any single instrument answering the description of a written constitution. Nevertheless, it is readily apparent from judicial decisions in the United Kingdom that the

constitutional arrangements of that country have changed since 1900 in at least two respects which are relevant to the issues debated in argument in the present litigation.

54. The first concerns the identity of "the Crown of the United Kingdom of Great Britain and Ireland" which is identified in the preamble to *The Commonwealth of Australia Constitution Act 1922* ("the Constitution Act")[59] and "the United Kingdom", the sovereignty of which determines, under covering cl 2 thereof, the identity of the person identified throughout the Constitution itself as "the Queen".

55. The United Kingdom of Great Britain and Ireland had come into existence in 1801. In *Earl of Antrim's Petition*, Lord Reid explained the position as follows[60]:

> "Prior to 1707 the Kingdoms of England, Scotland and Ireland were separate kingdoms. In 1707 the Kingdoms of England and Scotland were united to form the Kingdom of Great Britain but Ireland remained a separate Kingdom. In 1801 the Kingdoms of Great Britain and of Ireland were united to form the United Kingdom of Great Britain and Ireland."

His Lordship went on to refer to the *Irish Free State (Agreement) Act* (UK) which established the Irish Free State with "Dominion Status" and to the *Ireland Act 1949* (UK) which declared the Irish Free State to have ceased to be part of "[h]is Majesty's dominions'[61]. The result was twofold, that "Ireland as a whole no longer exist[ed] politically"[62] and the right of Irish peers to elect representatives from among their number no longer existed.

56. The result cannot be that, because the present sovereign has never been Queen of Great Britain and Ireland, the Australian Constitution miscarries for the reason, in Lord Reid's language, that "the state of things on which its existence depended has ceased to exist"[63]. Rather, and consistently with the reasoning of Windeyer J in *Bonser v La Macchia*, at least since 1949 the text of the Constitution, in referring to "the Queen", has to be read so as to follow these changed constitutional circumstances in the United Kingdom. Those circumstances may change again[64], and with similar consequences.

57. The second matter is that in 1982 it was settled in the United Kingdom by the decision of the English Court of Appeal in *R v Foreign Secretary; Ex parte Indian Association*[65] as a "truism" that, whilst "there is only one person who is the Sovereign within the British Commonwealth ... in matters of law and government the Queen of the United Kingdom, for example, is entirely independent and distinct from the Queen of Canada"[66]. In addition to those remarks by May LJ, Kerr LJ observed[67]:

> "It is settled law that, although Her Majesty is the personal sovereign of the peoples inhabiting many of the territories within the Commonwealth, all rights and obligations of the Crown - other than those concerning the Queen in her personal capacity - can only arise in relation to a particular government within those territories. The reason is that such rights and obligations can only be exercised and enforced, if at all, through some governmental emanation or representation of the Crown."

It is to be noted that these conclusions were expressed in the United Kingdom even before the enactment by its Parliament of the *Canada Act 1982* (UK) and the *Australia Act 1986* (UK)

("the 1986 UK Act").

58. The construction of provisions of the Constitution is a matter for Australian courts, in particular this Court. However, the position of the United Kingdom as seen by its courts is a relevant matter to which regard has been had by this Court in construing legislative power with respect to "aliens" in s 51(xix)[68]. So also with respect to the provisions of s 44(i). In effect, the submissions for Mrs Hill seek to have this Court ascribe to the United Kingdom, for the purposes of Australian constitutional law, a character which the United Kingdom courts themselves deny to the United Kingdom for the purposes of its constitutional law.

United Kingdom institutions and the Constitution

59. It may be accepted that the United Kingdom may not answer the description of "a foreign power" in s 44(i) of the Constitution if Australian courts are, as a matter of the fundamental law of this country, immediately bound to recognise and give effect to the exercise of legislative, executive and judicial power by the institutions of government of the United Kingdom. However, whatever once may have been the situation with respect to the Commonwealth and to the States, since at least the commencement of the *Australia Act 1986* (Cth) ("the Australia Act") this has not been the case. The provisions of that statute make it largely unnecessary to rehearse what are now the matters of history recounted in the judgments in *New South Wales v The Commonwealth*[69], *Kirmani v Captain Cook Cruises Pty Ltd [No 1]* [70] and *Nolan v Minister for Immigration and Ethnic Affairs*[71].

Legislative power

60. As to the further exercise of legislative power by the Parliament of the United Kingdom, s 1 of the Australia Act states:

> "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."

61. The recital to the Australia Act indicates that it was enacted in pursuance of s 51(xxxviii) of the Constitution, the Parliaments of all the States having requested the Parliament of the Commonwealth to enact the statute. Section 51(xxxviii) empowers the Parliament, subject to the Constitution, to make laws for the peace, order and good government of the Commonwealth with respect to:

> "[t]he 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".

The Australia Act was enacted before s 51(xxxviii) had been construed in *Port MacDonnell Professional Fishermen's Assn Inc v South Australia*[72]. Apparently out of a perceived need for abundant caution, legislation of the Westminster Parliament was sought and passed as the 1986 UK Act 1973 [73].

96. The point of immediate significance is that the circumstance that the same monarch exercises regal functions under the constitutional arrangements in the United Kingdom and Australia does not deny the proposition that the United Kingdom is a foreign power within the meaning of s 44(i) of the Constitution. Australia and the United Kingdom have their own laws as to nationality[132] so that their citizens owe different allegiances. The United Kingdom has a distinct legal personality and its exercises of sovereignty, for example in entering military alliances, participating in armed conflicts and acceding to treaties such as the Treaty of Rome [133], themselves have no legal consequences for this country. Nor, as we have sought to demonstrate in Section III, does the United Kingdom exercise any function with respect to the governmental structures of the Commonwealth or the States.

97. As indicated earlier in these reasons, we would give an affirmative answer to the question in each stated case which asks whether Mrs Hill, at the date of her nomination, was a subject or citizen of a foreign power within the meaning of s 44(i) of the Constitution.

98. GAUDRON J. In each of these matters a case has been stated for the consideration of the Full Court pursuant to s 18 of the *Judiciary Act 1903* (Cth)[134]. Each matter arises out of the 1998 election for the return of six Senators for the State of Queensland to serve in the Parliament of the Commonwealth. The writ for the election was issued on 31 August 1998. Pursuant to the writ, nominations were made on or before 10 September and the election was held on 3 October 1998. Following the counting of votes, the Governor of Queensland certified, on 26 October 1998, that Mrs Heather Hill, the first respondent in each matter, was duly elected as the third Senator. Messrs Ludwig, Mason and Woodley were certified as duly elected as the fourth, fifth and sixth Senators respectively.

99. The cases have been stated in separate proceedings commenced by the petitioners, Mr Sue and Mr Sharples. They invoke the jurisdiction purportedly conferred on this Court by s 354 of the *Commonwealth Electoral Act 1918* (Cth) ("the Act"). I say "purportedly conferred" because question (a) in each of the cases stated asks:

> "Does s 354 of the Act validly confer upon the Court of Disputed Returns jurisdiction to determine the issues raised in the Petition?"

Necessarily, that question must be answered first. Before turning to that question, however, it is convenient to refer to the nature of the challenge made by the petitioners and the facts by reference to which each challenge is made.

Nature of the challenge

100. Each petitioner challenges Mrs Hill's election on the basis that, at the time of her nomination, she did not satisfy the requirements of s 44(i) of the Constitution. Section 44 relevantly provides:

> " 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; ...

to give its response. This Court may not do so on a petition addressed to it under s 353 in Div 1 for it has no jurisdiction to try that petition under s 354 in the same Division. The scheme of the Act should be followed at this stage. Not least is this necessary because the scheme of the Act reflects that of the Constitution itself[384].

Costs

284. A question arises as to the costs of the proceedings in this Court. Those proceedings are before the Court pursuant to the two references made to the Court under the *Judiciary Act*. By s 26 of that Act, the Court has jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction. It is pursuant to that provision and not s 360 of the Act that costs must be provided[385]. The special provisions of s 360(4) by which the Court of Disputed Returns may "order costs to be paid by the Commonwealth where the Court considers it appropriate to do so" are unavailing in the view which I take of the nature of this Court's jurisdiction and the lack of jurisdiction of the Court of Disputed Returns. Ordinarily, because the petitioners have invoked a jurisdiction which does not belong to the Court of Disputed Returns, they would be ordered to pay the costs occasioned by their error.

285. However, before this Court the Attorney-General for the Commonwealth intervened in support of the interests of the petitioners. The ambiguities and uncertainties of the Act have been drawn to attention in the past. The issues litigated involve constitutional and statutory questions of general application and of fundamental importance to the operation of federal electoral law. In such circumstances, I consider that it is just that the costs of the petitioners in each case stated in this Court and of the first respondent should be borne by the Commonwealth. The second respondent should bear its own costs.

Orders

286. The questions in the case stated should be answered, and the orders for costs made, as McHugh J has provided.

287. CALLINAN J. I agree with McHugh J that, given the structure of the *Commonwealth Electoral Act* (Cth), the specific reference to bribery, corrupt practices, undue influence and illegal practices, the omission of any reference in Div 1 to the constitutional qualification of a member (except the special case of a s 15 appointment) and the enactment of Div 2 which deals exclusively with the qualification of members, the best interpretation of the *Commonwealth Electoral Act 1942* is that a petition on the bare ground of an allegation of a breach of s 44 of the Constitution is not within the jurisdiction of the Court of Disputed Returns.

288. There is only one other matter to which I wish to refer.

289. The petitioners (and the Commonwealth which supports them) acknowledge that at the time of Federation the United Kingdom was unquestionably not a foreign power. One of their primary arguments on the central question whether the United Kingdom is a foreign power is that, as time has passed, circumstances have changed, and the United Kingdom, by a process of evolution has now become a power foreign to Australia (the "evolutionary theory"). It is upon that argument that I wish to comment.

290. The evolutionary theory is, with respect, a theory to be regarded with great caution. In

propounding it, neither the petitioners nor the Commonwealth identify a date upon which the evolution became complete, in the sense that, as and from it, the United Kingdom was a foreign power. Nor could they point to any statute, historical occurrence or event which necessarily concluded the process. There were, they asserted, a series of milestones, for example, Federation itself, the *Statute of Westminster Adoption Act* (Cth), the *Royal Style and Titles Act 1973* (Cth) and the Australia Acts[386] but neither the last of these nor any other enactment was said to be the destination marker of the evolution.

291. The great concern about an evolutionary theory of this kind is the doubt to which it gives rise with respect to peoples' rights, status and obligations as this case shows. The truth is that the defining event in practice will, and can only be a decision of this Court ruling that the evolutionary process is complete, and here, as the petitioners and the Commonwealth accept, has been complete for some unascertained and unascertainable time in the past. In reality, a decision of this Court upon that basis would change the law by holding that, notwithstanding that the Constitution did not treat the United Kingdom as a foreign power at Federation and for some time thereafter, it may and should do so now.

292. There was no evidence before the Court as to the consequences of the renunciation of British citizenship; whether, for example, entitlements to United Kingdom pensions or social services might be adversely affected; or whether any rights of children of a person renouncing citizenship to seek employment in the United Kingdom or Europe might be affected. However, plainly a person who renounces United Kingdom citizenship will be forgoing a right to hold a United Kingdom passport which confers at least some advantages in travel to the United Kingdom and in Europe. Any person should be entitled to know at what point in time the United Kingdom has come to be, if it is to be so regarded, a foreign power, so that that person may make an informed choice or election, to enjoy whatever benefits (including to stand for election to an Australian Parliament) renunciation of United Kingdom citizenship may confer, in exchange for the forgoing of such benefits as United Kingdom citizenship may bestow. The operation of an evolutionary theory in this context would deny a person such as the first respondent the opportunity of making an informed choice or election until such time as this Court or, if appropriate, Parliament, determine that the evolution is complete.

293. The Court was not taken to any statutes in which the term "foreign power" is used. However there are statutes which do use that term and whose application might perhaps be different if this Court were to hold that the United Kingdom is a foreign power. One such statute is the *Australian Security Intelligence Organization Act 1979* (Cth). Section 4 of that Act defines "foreign power" to mean a foreign government, an entity directed or controlled by a foreign government or a foreign political organization. Section 4 also defines "acts of foreign interference" to mean activities carried on by a "foreign power" that are "clandestine or deceptive", "carried on for intelligence purposes", "carried on for the purpose of affecting political or governmental processes", "otherwise detrimental to the interests of Australia" or "involve a threat to any person". Section 4 also defines "security" to include the protection of the people of Australia from, inter alia, "acts of foreign interference".

294. A number of sections of the *Australian Security Intelligence Organization Act 1914* define the powers and obligations of ASIO officers in terms of "security". One of the primary functions of ASIO is to provide "security assessments" to government agencies. Such assessments are statements by ASIO to the relevant organization whether it is consistent with "security" to take prescribed administrative action against a particular person (see Pt IV of the *Australian*

ANNEXURE 31

COPY OF LETTER FROM THE AUSTRALIAN PARLIAMENT CONFIRMING OBLIGATORY NATURE OF THE OATH AND AFFIRMATION REQUIRED OF ALL MEMBERS AND SENATORS IN THE AUSTRALIAN PARLIAMENT

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 7111

10 JUN

Mr Peter Batten
PO Box 23A
SOMERS
Vic 3927

Dear Mr Batten

Your letter dated 31 May 1999 to the Australian Electoral Commission on the subject of Members' oaths or affirmations of allegiance was referred to the Department of the House of Representatives for answer in respect of Members of the House.

An oath or affirmation of allegiance by Members and Senators is a requirement of the Australian Constitution. No provisions of the *Commonwealth Electoral Act 1918* are involved. Section 42 of the Constitution states:

> **42.** 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.

The wording of the oath or affirmation is set out in the schedule to the Constitution, as follows:

> 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.*)

There is no provision for any deviation from this constitutional requirement. No Member may take part in proceedings of the House until sworn in.

The standing orders of the House state in relation to a new Parliament that Members shall 'be sworn, or make affirmation, as prescribed by the Constitution'. Although no more detailed procedures are specified, either in the standing orders or elsewhere, the traditional practice is as follows.

The oath or affirmation of allegiance taken by newly elected Members at the beginning of a Parliament is administered by a person authorised to do so by the Governor-General. This is traditionally a Justice of the High Court. The judge is escorted into the Chamber and to the Speaker's Chair by the Serjeant-at-Arms. The Clerk reads to the House the commission from the Governor-General authorising the judge to administer the oath or affirmation and then tables the returns to the writs for the general election, showing the Member elected for each electoral Division. Members are called by the Clerk in turn and approach the Table in groups of approximately ten to twelve, make their oath or affirmation, sign (subscribe) the oath or affirmation form and then return to their seats. The Ministry is usually sworn in first, followed by the opposition executive and then other Members.

Members not sworn in initially may be sworn in later in the day's proceedings or on a subsequent sitting day by the Speaker. The Speaker receives, after his or her appointment, a commission from the Governor-General to administer the oath or affirmation. Those Members elected at by-elections during the course of a Parliament are also sworn in by the Speaker.

Yours sincerely

Robyn Webber
Director
Chamber Research Office

ANNEXURE 32

COPY OF JUDGEMENT BY JUSTICE HAYNE OF THE HIGH COURT OF AUSTRALIA FINDING COUNTER TO THE DECISION OF THE FULL BENCH HANDED DOWN JUST ONE DAY EARLIER

AustLII High Court of Australia

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McClure v Australian Electoral Commission [1999] HCA 31 (24 June 1999)

Last Updated: 24 June 1999

HIGH COURT OF AUSTRALIA

HAYNE J

MALCOLM McCLURE PETITIONER

AND

THE AUSTRALIAN ELECTORAL COMMISSION RESPONDENT

AND

PHILIP JONES & ORS PARTIES JOINED

McClure v Australian Electoral Commission [1999] HCA 31

24 June 1999

M119/1998

ORDER

Petition dismissed with costs.

Representation:

Petitioner appeared in person

S J Gageler for the respondent (instructed by Australian Government Solicitor)

J T Shiels (instructed by GSM Lawyers) for Kelly Buzza (a party joined)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Parliament because (in effect) there was no proper signification of the Royal Assent to the bills by which those sections were inserted in the Act. Either in amplification of or in addition to this contention the petitioner sought to allege that Australia became a sovereign and independent nation at or after the time of its execution of the Treaty of Versailles. Accordingly (so the argument went) the signification of Royal Assent to legislation by, or on behalf of, a person who is the sovereign of the United Kingdom was of no effect.

7. I heard argument in support of the application for leave to amend but indicated that I would give my decision on that application at the same time as giving my reasons in relation to the respondent's application. The application for leave to amend is refused.

8. Leave to amend in the terms proposed would be futile. For the reasons I gave in *Joosse v Australian Securities and Investment Commission*[4], I consider the arguments that the proposed amendment seeks to found are arguments that must fail. The immediate question presented by arguments of this kind is what law is to be applied by the courts. That question is resolved by covering cl 5 of the Constitution:

> "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".

In so far as the petitioner relies on some alleged deficiency in the signification of Royal Assent, it is ss 58, 59 and 60 of the Constitution that deal with the ways in which the Royal Assent may be given to bills passed by the other elements of the Parliament. So far as now relevant, s 58 governs. It provides that the Governor-General "shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name". There is nothing to suggest that this was not done in the case of the Acts that introduced s 211 and s 211A into the Act. The history of international dealings to which the petitioner referred is not to the point.

9. It is, in these circumstances, not necessary to consider whether ss 355(e) and 358 of the Act preclude the amendment[5] because it is sought more than 40 days after the return of the writ. The respondent's reliance on those provisions assumes that they are valid. The petitioner's proposed amendment might appear to attempt to cast doubt on that validity. But, as I have indicated earlier, the arguments against validity must fail and the amendments proposed would be futile.

The petition

10. In his petition, the petitioner makes two kinds of complaint. The first is a complaint about the lack of media coverage of his candidacy in the election and of his platform of policies. The second is a complaint that he was disadvantaged by the application of those provisions of the Act that govern group and individual voting tickets in a Senate election[6], and what has become known as voting above or below the line[7]. He seeks declarations that the half Senate election for Victoria was void and that none of the six candidates returned was duly elected.

11. In addition, he seeks four other kinds of relief: first, the return of the lodgment fee of $700 that he paid on his nomination as a Senate candidate (a claim that I will call the "deposit claim"); second, that the Court "instruct" the respondent to make provision for ticket voting for

ANNEXURE 33

CORRESPONDENCE DEMONSTRATING THAT THE AUSTRALIAN GOVERNMENT IS PREPARED TO CONDONE MALPRACTICE BY THE COURTS

The Federal Attorney General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600

February 7th 1998

Dear Mr Williams,

I lodge a complaint relating to the conduct of Magistrate, Mr Clinton A. Johanson in proceeding, in the face of legal argument and defence,(presented verbally and in full written form), to hear and find in Case MCCHB-97-6993 on the 15th January 1998 in the Christies Beach Magistrates Court of South Australia.

It is held that by so doing Mr Johanson offended the same law that he has undertaken to interpret and administer. It is contended that he:-

1) breached ***the Human Rights and Equal Opportunities Act 1986 (Commonwealth)***
2) breached ***Section 78B of the Judiciary Act 1903 (Commonwealth)***
3) ignored ***High Court Rulings.***
4) breached ***Article 36 of the Statute of the International Court of Justice.***
5) breached ***Article X of the Covenant of the League of Nations.***
6) breached ***Article 2.1 and 2.4 of the United Nations Charter.***

It is contended that while acting as presiding magistrate Mr Clinton A. Johanson erred in law by failing to respond to a verbal as well as a formal written request that he present documentation which identified the basis for the authority that he was exercising. As a consequence he failed to establish that he was presiding over a competent court which was in possession of valid legal authority.
By refusing to respond to a rightful request it is contended that Mr Johanson offended Schedule 2 (International Covenant on Civil And Political Rights) of the Human Rights and Equal Opportunities Commission Act 1986 (Commonwealth).

Mr Johanson was presented with a full argument that established that the laws of South Australia and the Commonwealth remain British Colonial laws under the authority of the Parliament of the United Kingdom and as such they ceased to have lawful authority in Australia after Australia's legal attainment of sovereign nation status on the 10th January 1920. The argument presented centred on the confirmed fact that the British Colony of the Commonwealth of Australia Constitution Act 1900(UK) remains an Act of the Parliament of the United Kingdom. That is, the Australian Constitution remains but part of an Act of UK law. And that any argument to the contrary may prove politically convenient but not legally valid.
As a graphic illustration that Australian governments continue to permit the United Kingdom to interfere in Australia's internal affairs, in contravention of Article 2.1 and 2.4 of the Charter of the United Nations, Mr Johanson was presented with of a number of documents.
These included a copy of the 1986 Letters Patent issued to the Governor of South Australia by ELIZABETH the SECOND, of the United Kingdom of Great Britain and Northern

Ireland. These Letters Patent were signed by a senior British civil servant in the employ of the Lord Chancellor.
By choosing to proceed in the face of substantive arguments involving questions relating to the authority of Letters Patent and the validity of the Constitutional Mr Johanson clearly acted outside of the jurisdiction of his court. Despite being so advised he chose to ignore his obligation under section 78B of the Judiciary Act 1903.

Mr Johanson was presented with arguments which called on High Court rulings and the status of international law in relation to Australia's obligations under international treaties. He was presented with argument that Section 4 of the Statute of Westminster 1931 is in contravention of Article X of the Covenant of the League of Nations and paragraph 1 of the Australia Act of 1986 contravene Articles 2.1 and 2.4 of the Charter of the United Nations. Again, to proceed to hear and deliver a finding on this matter Mr Johanson necessarily had to either ignore the arguments or in deliberation, reach a decision contrary to High Court findings. In addition, to proceed and to reach a finding he had to either ignore or make interpretations in relation to international treaties.
This occurred despite Mr Johanson's attention being drawn to the Franklin Dam case and to Teoh as well as Article 36 of the Statute of the International Court of Justice. By choosing to proceed Mr Johanson offended the Statute of the International Court of Justice. Again he moved into an area which was outside the jurisdiction of his court.

You are asked to act, without delay, on this complaint.
You are advised that:-
-an appeal against Mr Johanson's finding has been lodged with the South Australian Supreme Court.
-the Chief Magistrate of South Australia has been directly advised of the actions being taken in this matter.
-the South Australian Attorney General has been likewise advised.
-a complaint under the optional Protocol to the International Covenant on Civil and Political rights to be lodged with the Human Rights Committee of the United Nations is in the process of preparation.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341

enclosure:-
1) Statement read and presented to the court asking the Magistrate to provide evidence that he was presiding over a competent court.
2) Statement partly read and presented to the court establishing that in the light of the facts to be presented the Magistrates only viable option was to adjourn the trial hearing. (Note: the 12 documents submitted in support of this statement have not been included)
3) Evidence, including 'International Law Statutory Declaration For Australian Citizens' and Declaration of objection to any action to be taken by the court, as presented to the court.
docat CbCT5

Office of Attorney-General

24 MAR 1998

96074576 / 177984:RC

Mr Peter Batten
P O Box 1333
RENMARK
S A 5341

Dear Mr Batten

I refer to your letter dated 7 February 1998 to the Attorney-General complaining of the conduct of the Magistrate in the Christies Beach Magistrates Court of South Australia. The Attorney-General has asked me to reply on his behalf.

I note from your letter that you are not happy with the decision of the Magistrate and have appealed against his findings to the South Australian Supreme Court. Since this matter is now the subject of further judicial proceedings, I am not in a position to comment further.

Yours sincerely

Nicholas Grono
Adviser

The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600

May 8th 1998

My last correspondence re this matter - February 7th 1998
Your response ref. no: 96074567 / 177984:RC March 24th 1998

Dear Mr Williams,

As the protector of the laws of the Commonwealth it is believed that you are charged with the responsibility of ensuring that Commonwealth laws are upheld.

Accordingly the complaint that Mr Clinton A. Johanson while serving as a Magistrate of the Magistrates Court of South Australia contravened Commonwealth law, is restated. There now exists an expectation that you will, without further delay, take appropriate action in the matters that are the subject of the unsatisfied complaint of February 7th 1998.

****

It is now further expected that you will deal expeditiously with a similar complaint which is here lodged against the conduct of one Justice David Bleby of the Supreme Court of South Australia.

On the 11th March 1998 Justice Bleby by proceeding to hear and dismiss an appeal against Magistrate Clinton A. Johansen's conduct and finding of 15th January 1998 has also offended Commonwealth law as well as International law.
Justice Bleby has offended the same laws that he has undertaken to interpret and administer.

He has,

1) breached ***Article 14, Schedule 2 of the Human Rights and Equal Opportunity Act 1986 (Commonwealth)***
2) breached ***Section 75 of Clause 9 of the Commonwealth of Australia Constitution Act***
3) breached ***Section 78B of the Judiciary Act 1903 (Commonwealth).***
4) breached ***Article 36 of the Statute of the International Court of Justice.***
5) breached ***Article X of the Covenant of the League of Nations.***
6) breached ***Article 2.1 and 2.4 of the United Nations Charter.***

These offences occurred in the face of substantial argument and documentation offered by way of affidavit as well as in direct presentation to the Court.
They occurred despite the Appellant stressing that all of the arguments presented to Mr Johansen had equal application to Justice Bleby's Supreme Court.
Copies of all written argument and supporting documents presented to the Magistrates Court were presented by way of affidavit to Justice Bleby's Appeal Court.

1) In stating that he drew his authority from Letters Patent issued by the Government of the United Kingdom and from legislation dependent on these same Letters Patent, Justice Bleby failed to satisfy the Article 14 of the International Covenant on Civil and Political Rights definition of a "Competent Court". This Covenant is Schedule 2 of the Human Rights and Equal Opportunities Act 1986 (Commonwealth). The appeal was not heard by a "competent court". Commonwealth law was not upheld. The Appellant's rights were abused.

Justice Bleby failed to present counter argument and offered no explanation as to why the Appellant's presentation was rejected.
However what is clear is that in rejecting, out of hand, the arguments advanced and proceeding as he did, he, on a number of counts, exceeded his jurisdiction and in so doing broke Commonwealth law as well as International law.

2) He chose to ignore the Appellant's reference to Section 75 of the Constitution. He proceeded to consider and made decisions relating to international treaties and he thus usurped the jurisdiction of the High court.
In so doing he abused the fundamental law of the nation, the Constitution.

3) From an examination of his finding it will be observed he has chosen to ignore the Appellants citation of section 78B of the Judiciary Act 1903. Instead he has made reference to sections 38(a) and 40 neither of which were referred to, at any time, by the Appellant. He failed in his obligation to the Federal and State Attorneys-General to not proceed in the matter.

4) The basis of the appellant's objection to being required to explain his behaviour in Australian Courts lies in the fact that all Australian law remains British colonial law and that as such its application in an independent sovereign Australia is contradictory to both the Covenant of the League of Nations and the United Nations Charter. Both treaties are binding on Australia. Under Article 36 of the Statute of the International Court of Justice (which is part of the UN Charter) matters involving the interpretation of these treaties is reserved for the International Court of Justice. Clearly Justice Bleby has usurped the authority of that Court.

5&6) By Justice Bleby's own definition he has represented the Monarch and Government of the United Kingdom of Great Britain and Northern Ireland, a power foreign to Australia. There being no reciprocal treaty between Australia and the UK which permits the use of the laws of one, within the territory of the other, he has applied laws which have indisputably been established as colonial, within the territory of the sovereign nation of Australia, a Member State of the United Nations.
Such actions are contradictory of both British and International law as set out in Britain's 1991 "Doctrine of Transformation", in Article X of the Covenant of the League of Nations and in Article 2, paragraphs 2 and 4 of the United Nations Charter.

Full documentation is available.
For the purposes of justifying this complaint the included "Appellants Presentation" (offered to Justice Bleby by way of an annexure to an affidavit), the Court transcript (as inaccurate as it is), together with Justice Bleby's finding is considered to be ample.

It is also considered these documents constitute ample evidence to justify my request for, and your undelayed actions to ensure that Justice Bleby will not again offend in the face of such argument.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341

Enclosure:-
1) "Appellants Presentation"
2) Court transcript
3) Justice Bleby's finding

The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A. C. T. 2600

June 7th 1998

COMPLAINTS RELATING TO THE CONDUCT OF PERSONS PRESIDING OVER COURTS IN SOUTH AUSTRALIA.

My last correspondence re this matter 8th May 1998
Your last correspondence March 24th 1998 Ref. No: 96074567/ 177984:RC

Dear Mr Williams,
I repeat my statement of May 8th;
"As the protector of the laws of the Commonwealth it is believed that you are charged with the responsibility of ensuring that Commonwealth laws are upheld."

Accordingly the unsatisfied complaints relating to Mr Clinton A. Johansen and Mr David Bleby tended on February 7th and May 8th respectively are, yet again, restated.

Through direct experience it now seems abundantly clear that court officials hold an attitude that, if it suits, they can safely ignore their obligation under the fundamental law of the nation the Constitution.
From the point of view of the complainant who maintains that the Constitution is invalid, this is ironic indeed!

****

And so, to these complaints is now added a further complaint.
This concerns one **Mr Field, Magistrates Court, 7 Bridge Street, Murray Bridge, SA 5253** who, while serving as a magistrate in the South Australian Magistrates Court at Murray Bridge, clearly behaved in contempt of the fundamental law of the nation, the Constitution.

To establish for himself the power to proceed, convict and penalise the complainant Mr Field delivered a judgement on argument involving Australia's standing in the world community of nations which involved the examination of international treaties to which Australia is a signatory.
In so doing he maintained, contrary to the very conditions necessary to the ratification of those treaties, (and contrary, as well, to the law of the United Kingdom), that it is valid for the Parliament and Sovereign of the United Kingdom of Great Britain and Northern Ireland to legislate and issue Letters Patent to provide the power necessary to the passing of legislation by the Parliament of South Australia.

After an examination of the copy of the affidavit presented and Mr Field's judgements (See included documents) it will be seen that **Mr Field has knowingly acted in contempt of Section 75 (i) of the fundamental law of the nation, the Constitution.**

It will also be observed that in arriving at, and in the presentation of, his judgement on the Preliminary Hearing Mr Field clearly was not in possession of a full understanding of the argument advanced.

****

This complaint is now extended to include,
Police Complainant, **Darryl Keith Crossman, Police Headquarters, Adelaide, SA 5000**
Assist. P.P. **Phil Capper, Police Station, Bridge Street, Murray Bridge, SA 5253**
and **Lawrence Barbalet, Police Station, Mannum, SA 5238** each of whom, while in full possession of facts and in full knowledge of the potential consequences chose to require the matter to proceed to the court.
Thus they collectively and individually assisted in the contempt of Section 75 (i) of the fundamental law of the nation, the Constitution.

By way of explanation:
Some two weeks before the trial each of these named individuals were presented, in person, with a copy of the argument by way of the affidavit. In addition they were presented with a notification that they would be required to identify the ultimate source of the power that they were exercising. (See the included documents) And, in addition, considerable discussion and explanation took place between the defendant/complainant and each of these individuals.

This matter is listed for appeal to be heard before Justice Debelle of the Supreme Court of South Australia on Tuesday 30th June 1998.

Despite this, it is emphasised that the and outcome of this appeal has no bearing whatsoever on this complaint concerning the conduct of each of these named individuals.

Therefore you are requested to act, without delay, in this matt er.

Yours faithfully,

Peter Batten,
P.O. Box 1333
RENMARK
South Australia 5341

Documents included:
1) **Affidavit. Ref: MCMUB-97-1666 Magistrates Court Murray Bridge (exclusive of supporting documents) - 14 pages.**
2) **Request to court officials for identification of the ultimate source of the power that they exercise. - 6 pages.**

Office of Attorney-General

26 JUN 1998

96074576/181007:RC

Mr Peter Batten
P O Box 1333
RENMARK
S A 5341

Dear Mr Batten

I refer to your letter of 8 May 1998 to the Attorney-General in which you complained of the conduct of Magistrate Mr Clinton A. Johanson of the Magistrates Court of South Australia and the conduct of Justice David Bleby of the Supreme Court of South Australia. The Attorney-General has asked me to reply on his behalf.

I note from your letter that you are not happy with the decisions of the Magistrate and the Judge of the Supreme Court.

The materials provided indicate, that you were charged under sections 49(1)(a) and 79B of the South Australian *Road Traffic Act 1961*. Since you were charged under South Australian law, this is a matter for the South Australian Government and it would not, therefore, be appropriate for the Attorney-General to intervene in this matter.

Yours sincerely

Nicholas Grono
Adviser

The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
A.C.T. 2600

6th July 1998

*** IMPORTANT: This correspondence for the eyes of Mr Williams-**
COMPLAINTS RELATING TO THE CONDUCT OF PERSONS PRESIDING OVER COURTS IN SOUTH AUSTRALIA.
Response to letter written on behalf of the Attorney-General

Dear Mr Williams,

I have complained, on three separate occasions, that three separate, named, individuals, two Magistrates and a Judge, while presiding over Courts of law in South Australia, have knowingly chosen to act in contempt of Commonwealth law.

You have been provided with extensive documentation which conclusively establishes the substance of these complaints.

The difficulties associated with satisfying these complaints are fully recognised.

However, as the ultimate protector of Commonwealth Law you, without question, carry the responsibly, the authority and an obligation to see that that law is upheld.

The matter of these complaints relating to contempt of Commonwealth law is not, and never was one to be presented, by me, to the Government of South Australia.
For your adviser to attempt to reduce and confine the matter to one of State law which I should take up with the State Government is seen as an evasion of responsibility made on your behalf.

As I expect the appropriate organs within the United Nations to deal with the complaints presented to them relating to wilful breaches of International law by these same named individuals, so I expect you to deal with those of their actions which are in contempt of the Australian Constitution and in breach of Commonwealth law.

This is a matter which is seen as demanding of your personal, direct and prompt attention.

Yours faithfully,

Peter Batten
P.O. Box 1333
RENMARK

South Australia 5341 ATCBCt10

6th July 1998

FAX TO **(02) 6273 4102**

THE FEDERAL ATTORNEY-GENERAL
MR DARRYL WILLIAMS
PARLIAMENT HOUSE
CANBERRA 2600

FROM **FAX NO (08) 8595 8066**
TELEPHONE 018/813-437

PETER BATTEN
P.O. BOX 1333
RENMARK
SOUTH AUSTRALIA 5341

NUMBER OF PAGES- including this one - 2

LETTER FOLLOWS

The Federal Attorney-General
Mr Darryl Williams
Parliament House
CANBERRA
ACT 2600

18th August 1998

COMPLAINTS RELATING TO THE CONDUCT OF PERSONS PRESIDING OVER COURTS IN SOUTH AUSTRALIA.

Your last correspondence re this matter 26 June 1998 ref.no. 96074576/181007:RC
My last correspondence 6th July 1998

Dear Mr Williams,

I have not received a response to my letter of 6th July 1998.
Nor have you responded to my letter of complaint relating to the conduct of Mr Field of the Magistrates Court Murray Bridge dated June 7th 1998.
You are reminded that this letter also registered complaints against three named policemen.

You are further reminded that the complainant has previously stated that it is held that, as the protector of Commonwealth Law, you are charged with the responsibility of ensuring that that Law is upheld.
It would appear that due to lack of action, in relation to the separate complaints lodged against the actions of Mr Clinton Johansen, Justice Bleby, Mr Field and the three named policemen, court officials, including Supreme Court Judges, continue to believe they can safely abuse the Australian Constitution and Commonwealth law at will.

****

You are now asked to act, without delay, in relation to the actions of yet another South Australian Court official. This time one Mr Justice Debelle also of the Supreme Court of South Australia.

On the 13th July 1998, he too offended against the Australian Constitution and Commonwealth Law. In addition he acted in contempt of the High Court.

Even the casual reader of the enclosed documents will conclude that Justice Debelle contravened section 75(1) of the Australian Constitution and 38(a) of the Judiciary Act 1903. In proceeding, and ultimately dismissing an appeal in the face of knowledge that matters before him were the subject of Notices of Motion M34 and M35 of 1998 which were (and are) currently before the High Court, he clearly usurped the Authority of the High Court.

It will be observed that Justice Debelle was, by way of affidavit, presented with certain information and with a number of verifiable statements and issues which involve conflict arising between legislation enacted under the Constitution and the terms of the Constitution itself.

In short he had to deal with the issue of a serious challenge to the continuation of State law.

During the hearing it was clearly indicated to Justice Debelle that the appellant was not attempting to deny his Courts right to rule on the matters presented, but that to do so it was also clearly necessary for him to wait for the High Court to make its ruling.

To proceed, Justice Debelle necessarily had to either effectively make rulings which were clearly beyond his jurisdiction or dismiss, without consideration, that which the appellant presented to him.
Either way, in proceeding as he did, he was remiss in his role as a Judge and so, if the law has any meaning at all, he must be dealt with accordingly.
I point out, quite bluntly, Justice Debelle has broken Commonwealth law, he has contravened High Court rules and so has acted in contempt of the High Court. As indeed have those other individuals whose actions have been brought to your attention.

As this appeal to the Justice Debelle's Supreme Court, irrespective of its outcome, does not absolve Magistrate Field of his offence, so, any outcome of any subsequent appeal against Justice Debelle's dismissal cannot validate or excuse the actions of Justice Debelle.
Such is the seriousness of this complaint, as indeed is that of the others, it is made directly to you, the Federal Attorney-General, that is to you Mr Darryl Williams, in person, and accordingly it is expected that you will deal with it personally.

The potential ramifications associated with a continuation of the application of any policy designed to avoid facing and resolving the fundamental issues which have precipitated this series of complaints are thoroughly understood by the complainant.

Yours sincerely,

Peter Batten
P. O. Box 1333
RENMARK
South Australia 5341

Enclosed 1) Appellant's affidavit
2) Respondent's outline of argument
3) Appellant's presentation to the court
4) Justice Debelle's Judgement

The South Australian Attorney-General
Mr Trevor Griffin
Parliament House
North Terrace
ADELAIDE 5000

February 9th 1998

Dear Mr Griffin,

I advise that the conduct of Presiding Magistrate Mr Clinton A. Johanson and his actions in proceeding to hear and find in case MCCHB-97-6993 in the Christies Beach Magistrates Court on January 15th 1998 is the subject of complaint to the Federal Attorney-General.

The matter of Mr Johanson's alleged breach of domestic law has been made the subject of a complaint lodged with the Federal Attorney-General.
The matter of Mr Johanson's alledged breach of international treaties and international law is the subject of a complaint being prepared for lodgement with the United Nations Human Rights Committee.

Find attached a copy of the letter containing the complaint made to the Federal Attorney-General.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341

THE HON K TREVOR GRIFFIN LL.M, MLC

ATTORNEY-GENERAL
MINISTER FOR JUSTICE
MINISTER FOR CONSUMER AFFAIRS

Reference: AGD297-93
Correspondence ID No.: 23894
AGO\K0298064:slc

18 FEB 1998

Mr Peter Batten
PO Box 1333
RENMARK SA 5341

Dear Mr Batten

I refer to your letter dated 9 February, 1998 in relation to a decision made by a Magistrate, Mr A Johanson, SM.

I have had inquiries made into the matter of MCCHB-97-6993. This is a matter wherein you were detected exceeding the speed limit. It would seem that you failed to expiate the offence and were duly summonsed by the Police.

It seems that the matter was listed for trial in the Christies Beach Magistrates Court and on 15 January, 1998 you failed to enter a plea in relation to the offence and the Magistrate recorded a conviction and proceeded to impose a penalty.

The authorities upon which you rely (as stated in your letter to the Federal Attorney-General) failed to persuade the Magistrate that the charge against you was not properly brought. It was a matter for the Magistrate alone to rule on and given the independence of the Magistracy in such matters, I have no legal power or authority to vary the decision.

I am advised that you have lodged an appeal to the Supreme Court from that decision. It will be for that Court to rule on the relevance of your authorities in the proceedings. The Supreme Court can, if it finds that the Magistrate erred in his decision, quash the conviction, set aside the penalty and remit the matter back to the Magistrate's Court for a fresh hearing.

I understand that at the time of writing to you a date has not been set for the hearing of the appeal.

Yours sincerely

K Trevor Griffin
ATTORNEY-GENERAL

ANNEXURE 33

HIGH COURT OF AUSTRALIA

TEL: (02) 6270 6885
FAX: (02) 6270 6868
DX5755 CANBERRA
http://www.hcourt.gov.au
PARKES PLACE
CANBERRA ACT 2600

CHIEF EXECUTIVE
& PRINCIPAL REGISTRAR

21 August 1998

Mr Peter Batten
PO Box 1333
Renmark SA 5341

Dear Mr Batten

I refer to your letter of 18 August 1998.

The High Court of Australia does not have the power to do what you have asked.

If you wish to appeal against decisions made by Justices Bleby and Debelle, it will be necessary for you to formally follow the relevant appeal procedures. Mr Joe Serafini in the Registry of the Supreme Court of South Australia can advise you of those procedures. He can be contacted by telephone on 08-8204 0495.

The materials which accompanied your letter are returned herewith.

Yours sincerely

(CHRISTOPHER M DOOGAN)

Registrar
High Court of Australia
CANBERRA ACT 2600

18th August 1998

Dear Registrar,

In mounting two separate appeals from convictions by Magistrates, I have recently chosen to challenge the validity of the politico/legal system and the continuation of State law in South Australia.

I believe that an examination of the documents included will confirm that Justice Bleby and Justice Debelle, both of the Supreme Court of South Australia, in proceeding to hear and dismiss appeals in the face of the information and questions presented to their respective courts acted, in one instance, in contempt of the High Court while in both instances Commonwealth law was abused.

As a layman it may well be that I could be mistaken. However, the included judgements clearly indicate that both Justice Bleby and Justice Debelle relying as they do, on subjective denigration of the appellant while ignoring the arguments presented erred in a most serious way.

I appeal to you to make a thorough examination of the conduct of both of these Judges. If their conduct is found to be wanting then please take some action which will ensure that they, and their fellow Judges, abide by, and uphold the very laws which they are entrusted to adjudicate.

Yours sincerely,

Peter Batten
P.O. Box 1333
RENMARK
South Australia 5341

Enc. 1) Justice Bleby's Judgement
2) Appellant's presentation . (Supporting documents not included)
3) Justice Debelle's Judgement
4) Appellant's Affidavit relevant to that judgement
5) Appellants presentation to Justice Debelle's Court
6) Notice of Appeal

ANNEXURE 34

COPY OF NOTICE OF MOTION FILED WITH HIGH COURT APPERTAINING TO THE HIGH COURT JUDGEMENT THAT THE UNITED KINGDOM IS A POWER FOREIGN TO AUSTRALIA AND THE FACT THAT ALL PARLIAMENTARIANS HAVE SWORN AN OATH TO THAT FOREIGN POWER AND THEREFORE ARE DISQUALIFIED FROM TAKING PART IN PROCEEDINGS

IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY **No B 48 of 1999**

In the matter of an Application under Section 40 of the Judiciary Act 1903.

BETWEEN:

LEQUANT COMPUTER SERVICES (QLD) PTY LTD
(ACN 010 641 844)

Applicant

-and-

SUNCORP METWAY LIMITED
(ACN 010 831 722)

Respondent

AFFIDAVIT

I, ROBERT JOHN HALLIDAY of Suite 216 421 Brunswick Street Fortitude Valley in the State of Queensland, Director, MAKE OATH AND SAY as follows:

1. I am a Director of the Appellant Company and am duly authorised to make this Affidavit on its behalf, I do so from my own knowledge.

2. The Applicant's High Court Application relates to proceedings numbered 5428 of 1999 brought by the Respondent against the Applicant as an Application to wind up a Company under Section 459P of the Corporations Law.

3. To the best of my knowledge information and belief the history of this matter may be summed up as follows:

   a) A demand was received on 5th of May 1999 for arrears of interest and term deposit break fee. The compliance time for this demand was 25th May 1999.
   b) The applicants borrowed the sum of $1,850,000 from the respondent and in or about July 1998 the applicants repaid the said amount, and sought a discharge from this obligations under various loan agreements.
   c) The Respondents refused to discharge the Applicants from their obligations under the various loan agreements earlier than the due date of discharge and has continued to claim interest.

4. That all the current members of the House of Representatives and of the Senate, having duly sworn the oath as prescribed in the Schedule to the Constitution are thereby under allegiance to a foreign power and are thereby rendered incapable of taking a seat in either House of the Parliament without being in breach of S44(i) of the Constitution.

R Halliday J. Keates

5. The Applicant makes this Application in the genuine belief that the Respondent is making demands illegally upon the Applicant and in fact the Applicant has genuine Constitutional grounds for challenging the validity of the laws on which the Respondent relies in the bringing of this Application. Further the applicant was a candidate in the last Federal Election and during the course of the election raised the issue of the validity of any laws purportedly passed by persons who are in fact disqualified from sitting in Government. Accordingly, I ask that the Applicant be given the proper opportunity to raise the issues in the Notice of Motion and Notice of Constitutional Matter before this Honourable Court.

6. That the issues raised in the Notice of Motion before this Honourable Court are in, the widest public interest and fit and proper matters to be considered by this Honourable Court.

SWORN by the said Robert John Halliday)
at Brisbane in the said State of
Queensland)
This 13th day of July 1999)

Before me: SHARON KRETERS

~~Solicitor~~ C. Dec.

ATTORNEY-GENERAL'S DEPARTMENT Reg. No. 117

Date of Document: day of July 1999
Filed on behalf of: The Applicant
Prepared by: Peter Brooke and Company
Solicitors
4 Seaview Street
Kingscliffe 2487
New South Wales
Solicitors Code: Not applicable

DATED the 13 TH day of July 1999

Applicant

TO: The Respondent

132aff

IN THE HIGH COURT OF AUSTRALIA
BRISBANE OFFICE OF THE REGISTRY **No B** 45 **of 1999**

In the matter of an Application under Section 40 of the Judiciary Act 1903.

BETWEEN:

LEQUANT COMPUTER SERVICES (QLD) PTY LTD
(ACN 010 641 844)

Applicant

-and-

SUNCORP METWAY LIMITED
(ACN 010 831 722)

Respondent

NOTICE OF CONSTITUTIONAL MATTER

I, ROBERT JOHN HALLIDAY hereby issue notice under the provisions of S78b of the Judiciary Act 1903 that the Full Court of the High Court of Australia will be moved by the Applicant or Counsel on behalf of the Applicant for an order that that part of the cause in proceedings No: 5428 of 1999 Suncorp Metway Limited V Lequant Computer Services (Qld) Pty Ltd pending in the Supreme Court of Queensland which involves the following submissions be removed into the Honourable Court pursuant to Section 40 of the Judiciary Act 1903 on the ground that they arise under the Constitution or involve its interpretation between conflicts arising between legislation enacted under the Constitution and the terms of same. Such legislation forming part of this Notice being but not limited to:-

a: The Corporations Law (Cth)

1: THE NATURE OF THE MATTER

The laws referred to being dependent on Imperial legislation from whose sovereign authority and jurisdiction all Australian citizens were removed by superseding Imperial legislation are null and void having no basis in Australian law and that irrespective of the domestic legislative procedures followed are not and can not be valid laws within the sovereign nation of Australia.

CONSTITUTIONAL CONFLICTS AND ISSUES FOR RULING

1. The Applicant submits that this Honourable Court pursuant to its powers of original jurisdiction contained in S75 of The Constitution of the Commonwealth of Australia determine the following Constitutional issues relating to the Acts referred to in this Notice of Motion herein arising out of rulings made by the Full Bench of this Honourable Court on 23rd. June 1999, *Sue v Hill HCA30 of 1999.*

2. That this Honourable Court having ruled in the aforementioned matter of Sue v Hill that for the purposes of S44(1) of the Constitution the United Kingdom is a foreign power then a ruling is requested from this Honourable Court that any member of the Parliament of the Commonwealth who is under oath of allegiance to the said foreign power is thereby disqualified and is incapable of being chosen as a member of the said parliament.

3. That all the current members of the House of Representatives and of the Senate, having duly sworn the oath as prescribed in the Schedule to the Constitution are thereby under allegiance to a foreign power and are thereby rendered incapable of taking a seat in either House of the Parliament without being in breach of S44(1) of the Constitution.

4. That all the current members being under oath of allegiance to a foreign power the Applicant requests this Honourable Court order that all the current members of the Parliament under the terms of S46 of the Constitution as amended by the Parliament pay to the Applicant the sum of $200 per day for every day they have so occupied seats in the Parliament whilst under oath of allegiance to the Queen of the United Kingdom as prescribed by the Schedule a foreign power as defined by this Honourable Court..

5. Any other orders and directions as that this Honourable Court shall deem fit.

Date of Document: day of July 1999

Filed on behalf of:	The Applicants
Prepared by:	Peter Brooke and Company Solicitors 4 Seaview Street, Kingscliffe 2487 New South Wales
Solicitors Code:	Not applicable

DATED the day of July 1999

On behalf of the Applicant

TO: The Respondent

AND TO: The Attorneys General of the Commonwealth, of the States, of the Australian Capital Territory, and of the Northern Territory.

The Attorney General of the Commonwealth
Attorney General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

The Attorney General for South Australia
C/- Crown Solicitors Office
GPO Box 464
ADELAIDE SA 5000

The Attorney General for New South Wales
8-12 Chifley Square
SYDNEY NSW 2001

The Attorney General for Western Australia
Crown Solicitors Office
GPO Box F317
PERTH WA 6001

The Attorney General for the State of Victoria
55 St. Andrews Place
EAST MELBOURNE VIC 3002

The Attorney General for Queensland
C/- Crown Solicitors Office
State Law Building
50 Ann Street
BRISBANE QLD 4000

The Attorney General for Tasmania
C/- Crown Solicitors Office
15 Murray Street
HOBART TAS 7000

The Attorney General for the A.C.T.
P.O. Box 260
CIVIC SQUARE ACT 2608

The Attorney General for the N.T.
P.O. Box 1722
DARWIN NT 0801

132.s78b

ANNEXURE 35

COPY OF NOTICE OF INTENTION TO APPLY FOR AN INTERNATIONAL CRIMINAL TRIBUNAL SERVED ON PRIME MINISTER, LEADER OF THE OPPOSITION AND THE ATTORNEY-GENERAL OF THE COMMONWEALTH

8th June 1999

Hon. John Howard, M.P.
Prime Minister
House of Representatives
Parliament House,
CANBERRA ACT 2601

Subject: Notice of Intention to apply for I.C.T

This notice is presented by a number of Australian Citizens on behalf of the sovereign people of Australia.

The continued use of United Kingdom law in Australia contravenes a number of significant treaties to which Australia and the United Kingdom are parties as well as contravening Resolutions of the United Nations General Assembly and fundamental sections of international law. A comprehensive report for the United Nations has been prepared documenting these contraventions as well as the change of sovereignty over Australia from the United Kingdom to the people of Australia, a change acknowledged by the High Court.

Many Australian citizens have sought legal relief from the imposition of foreign colonial law in Australia via the courts of the States and the courts of the Commonwealth but found a legal system which is unwilling to relinquish it's colonial basis in both law and procedure and continues to apply colonial law with no regard whatever to the change in status of the Commonwealth of Australia from self governing colony to independent nation. They have also unsuccessfully sought the elections of government under laws, terms, and conditions deriving from the application of legal Australian sovereignty.

The common demand of these citizens has been that judges should carry out their sworn duty to uphold and apply the law to causes brought before them, including law deriving from treaties and international law. Instead they have found a judiciary which, despite the enactment into Commonwealth law of international law via the Charter of the United Nations Act 1945 and the Treaty of Peace Act 1919, still denies that Australian courts are subject to international law.

Attempts were therefore made to bring issues of sovereignty and necessity of compliance with international law before the country's Supreme Court, the High Court of Australia.

However when the basic issue of the application within a sovereign Commonwealth of Australia of United Kingdom domestic law, created solely under the now foreign sovereign authority of the Westminster Parliament, were presented to Justice Kenneth Hayne of the High Court of Australia on 15th December 1998, he did contravene international law and breached the United Nations Charter by ruling that foreign domestic law was applicable to Australian citizens. In addition he ignored the fact that another section of the United Kingdom law, namely the Immigration Act 1972 UK, decrees that Australians are neither British citizens, nor British subjects and have no entitlements under British law.

By such a ruling, and contrary to both principles and letter of the Universal Declaration of Human Rights as well as the 1966 Covenant on Civil and Political Rights, Justice Hayne therefore applied force of British law to Australian citizens who are not recognized and who have no right of redress under British law.

During the course of delivering his judgement Justice Hayne declared that it was his duty to " protect the current system". He acknowledged no requirement to dispense justice according to law.

Attempts by the affected citizens to have this extraordinary decision and its motivations reviewed by the Full Bench of the High Court by means of a Writ of Certiorari were denied by the High Court which refused the citizens the right to even file documents on the grounds that High Court judges were not subject to this remedy. The implied ruling is that the jurisdiction of High Court judges is totally unlimited even though the framers of the Constitution applied distinct limits upon them.

Further Justice Mary Gaudron of the High Court on Thursday 22nd April 1999 did concur with Justice Hayne and committed the same offences under international law and treaties.

Additionally Mr. Michael Carmody, Commissioner of Taxation, on Monday 3rd May 1999 did knowingly cause to be issued a public statement designed to conceal from the Australian people the invalidity of the continued application of taxation laws and associated coercive powers contrary to the provisions of the U.N. Charter, the Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights with the purpose of the statement also being to prevent the Australian people from challenging illegal acts by the Commissioner and his staff.

We therefore give notice that 60 days from the date of this Notice citizens of a sovereign Australia will file a formal request with the Security Council of the United Nations for the establishment by the United Nations under Statute of an International Criminal Tribunal Australia, for the express purpose of securing the trial of the above named Justices of the High Court of Australia for their deliberate and sustained breaches of international law and to bring to trial before the Tribunal all other officials within Australia acting as defacto servants of a foreign nation, the United Kingdom of Great Britain and Northern Ireland.

At the same time we will also request that the United Nations declare Australia's seat at the United Nations to be vacant and the current Australian delegation to the United Nations to be *persona non grata* since their appointment stems from the sovereign authority of the United Kingdom and not from the sovereign authority of the Australian people.

The 60 days of this Notice is to allow ample time for the Attorney General of the Commonwealth to take action before the Full Bench of the High Court to set aside the rulings of Hayne and Gaudron JJ and to commence action to ensure that the only law applied within Australia is in no way dependent on the unlawful application of the sovereign authority of the United Kingdom government and parliament.

Presented and signed by Australian citizens on behalf of the Australian people.

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Contact Address

P O BOX 9112
Seaford Delivery Centre
SEAFORD. VIC. 3198

Fax 03 8796 3322

cc. Attorney General
dd. The Leader of The Opposition.

Hon. Kim Beasley, M.P.
Leader of the Opposition
House of Representatives
Parliament House,
CANBERRA ACT 2601

Subject: Notice of Intention to apply for I.C.T

This notice is presented by a number of Australian Citizens on behalf of the sovereign people of Australia.

The continued use of United Kingdom law in Australia contravenes a number of significant treaties to which Australia and the United Kingdom are parties as well as contravening Resolutions of the United Nations General Assembly and fundamental sections of international law. A comprehensive report for the United Nations has been prepared documenting these contraventions as well as the change of sovereignty over Australia from the United Kingdom to the people of Australia, a change acknowledged by the High Court.

Many Australian citizens have sought legal relief from the imposition of foreign colonial law in Australia via the courts of the States and the courts of the Commonwealth but found a legal system which is unwilling to relinquish it's colonial basis in both law and procedure and continues to apply colonial law with no regard whatever to the change in status of the Commonwealth of Australia from self governing colony to independent nation. They have also unsuccessfully sought the elections of government under laws, terms, and conditions deriving from the application of legal Australian sovereignty.

The common demand of these citizens has been that judges should carry out their sworn duty to uphold and apply the law to causes brought before them, including law deriving from treaties and international law. Instead they have found a judiciary which, despite the enactment into Commonwealth law of international law via the Charter of the United Nations Act 1945 and the Treaty of Peace Act 1919, still denies that Australian courts are subject to international law.

Attempts were therefore made to bring issues of sovereignty and necessity of compliance with international law before the country's Supreme Court, the High Court of Australia.

However when the basic issue of the application within a sovereign Commonwealth of Australia of United Kingdom domestic law, created solely under the now foreign sovereign authority of the Westminster Parliament, were presented to Justice Kenneth Hayne of the High Court of Australia on 15th December 1998, he did contravene international law and breached the United Nations Charter by ruling that foreign domestic law was applicable to Australian citizens. In addition he ignored the fact that another section of the United Kingdom law, namely the Immigration Act 1972 UK, decrees that Australians are neither British citizens, nor British subjects and have no entitlements under British law.

By such a ruling, and contrary to both principles and letter of the Universal Declaration of Human Rights as well as the 1966 Covenant on Civil and Political Rights, Justice Hayne therefore applied force of British law to Australian citizens who are not recognized and who have no right of redress under British law.

During the course of delivering his judgement Justice Hayne declared that it was his duty to " protect the current system". He acknowledged no requirement to dispense justice according to law.

Attempts by the affected citizens to have this extraordinary decision and its motivations reviewed by the Full Bench of the High Court by means of a Writ of Certiorari were denied by the High Court which refused the citizens the right to even file documents on the grounds that High Court judges were not subject to this remedy. The implied ruling is that the jurisdiction of High Court judges is totally unlimited even though the framers of the Constitution applied distinct limits upon them.

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Fax 03 8796 3322

cc. Attorney General
dd. The Prime Minister.

8th June 1999

Hon. Daryl Williams, Q.C. M.P.
Parliament House,
CANBERRA ACT 2601

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Seaford Delivery Centre
SEAFORD. VIC. 3198

Fax 03 8796 3322

cc. The Prime Minister
dd. The Leader of The Opposition.

Office of Attorney-General

97037870

27 JUL 1999

Institute of Taxation Research Pty Ltd
PO Box 9112
Seaford Delivery Centre
SEAFORD VIC 3198

Dear Sir/Madam

I refer to your letter of 8 June 1999 in which you notify your intention of filing a formal request with the United Nations to establish an International Criminal Tribunal to secure the trial of Justices of the High Court and other officials for alleged breaches of international law. The Attorney-General has asked me to respond on his behalf.

Your letter refers to issues relating to the sovereignty of Australia and the application of colonial law as the basis for alleged breaches of international law. Although Australia is now a fully independent nation, this has been achieved through an evolutionary process throughout this century. The nature of the relationship between the United Kingdom and Australia has changed, but this does not mean that Imperial laws ceased to have any force, but rather that these laws have been adopted as Australian law by the Australian people through the elected representatives of the Australian Parliament and have been amended or repealed where appropriate.

In relation to international law issues, Hayne J in *Joosse and Anor v Australian Securities and Investment Commission (1998) 159 ALR 260* (the case to which I presume you refer) applied Australian law not foreign law. Furthermore, the High Court has decided that international law which affects or creates rights or imposes obligations on individuals is not applicable to Australians unless domestic legislation is passed implementing those agreements which affect or create individual rights or obligations. The *Charter of the United Nations Act 1945* (Cth) to which you refer, merely approves the Charter without binding Australians as part of the law of the Commonwealth and therefore cannot be relied upon as a justification for otherwise unjustifiable executive acts (see *Bradley v The Commonwealth (1973) 128 CLR 557.*).

Accordingly there is no reason why the rulings of Hayne and Gaudron JJ should be set aside nor would it be appropriate for the Attorney-General to purport to do so.

Yours sincerely

Paul Bolster
Adviser