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OFFICIAL YEAR BOOK

OF THE

COMMONWEALTH OF AUSTRALIA, 1938.

CHAPTER I.

DISCOVERY, COLONIZATION AND FEDERATION OF AUSTRALIA.

§ 1. General.

Previous issues of the Official Year Book, up to and including No. 22, contained in this Chapter some account of the traditional ideas regarding the existence of a "Terra Australis," together with brief details relating to the discovery and annexation of the Australian continent. (It may be noted here that Captain Cook's arrival and landing at Botany Bay took place on the same day, i.e., 29th April, 1770.)

§ 2. The Exploration of Australia.

A fairly complete, though brief, account of the exploration of Australia was given in Year Book No. 2 (pp. 20 to 39), and a summary of the more important facts relating to the subject was embodied in this Chapter in succeeding issues up to and including No. 22.

§ 3. Establishment of the Commonwealth of Australia.

1. **General.**—On the 1st January, 1901, the six colonies (now known as States) and the Northern Territory were federated under the name of the "Commonwealth of Australia." The dates of creation and the areas of its component parts, as determined on the final adjustment of their boundaries, are shown in the following table:—

THE COMMONWEALTH OF AUSTRALIA.—AREA, ETC., OF COMPONENT PARTS.

State.	Year of Formation into Separate Colony.	Present Area in Square Miles.	State.	Year of Formation into Separate Colony.	Present Area in Square Miles.
New South Wales(a)	1786	310,372	Tasmania ..	1825	26,215
Victoria ..	1851	87,884	Northern Territory	1863	523,620
Queensland ..	1859	670,500			
South Australia ..	1834	380,070	Area of the Commonwealth	2,974,581
Western Australia	1829	975,920			

(a) Including the Australian Capital Territory embracing an area of 912 square miles, and 28 square miles at Jervis Bay. See par. 3, page 2.

2. **Transfer of the Northern Territory to the Commonwealth.**—On the 7th December, 1907, the Commonwealth and the State of South Australia entered into an agreement for the surrender to and acceptance by the Commonwealth of the Northern Territory, subject to approval by the Parliaments of the Commonwealth and the State. This approval was given by the South Australian Parliament under the Northern Territory

Surrender Act 1907 (assented to on the 14th May, 1908), and by the Commonwealth Parliament under the Northern Territory Acceptance Act 1910 (assented to on the 16th November, 1910). The Territory accordingly was transferred to the Commonwealth by proclamation on the 1st January, 1911.

3. **Transfer of the Australian Capital Territory to the Commonwealth.**—On the 18th October, 1909, the Commonwealth and the State of New South Wales entered into an agreement for the surrender to and acceptance by the Commonwealth of an area of 912 square miles as the seat of Government of the Commonwealth. In December, 1909, Acts were passed by the Commonwealth and New South Wales Parliaments approving the agreement, and on the 5th December, 1910, a proclamation was issued vesting the Territory in the Commonwealth on and from the 1st January, 1911. By the Jervis Bay Territory Acceptance Act 1915, an area of 28 square miles at Jervis Bay, surrendered by New South Wales according to an agreement made in 1913, was accepted by the Commonwealth, and was transferred as from 4th September, 1915.

4. **Transfer of British New Guinea or Papua.**—Under the administration of the Commonwealth, but not included in it, is British New Guinea or Papua, finally annexed by the British Government in 1884. This Territory was for a number of years administered by the Queensland Government, but was transferred to the Commonwealth by proclamation on the 1st September, 1906, under the authority of the Papua Act (Commonwealth) of 16th November, 1905. The area of Papua is about 90,540 square miles.

5. **Transfer of Norfolk Island.**—Although administered for many years by the Government of New South Wales, this Island was a separate Crown Colony until 1st July, 1914, when it was transferred to the Commonwealth under the authority of the Norfolk Island Act 1913. The Island is situated in latitude $29^{\circ} 3' 45''$ S. longitude $167^{\circ} 58' 6''$ E., and comprises an area of 8,528 acres.

6. **Territory of New Guinea.**—It was agreed by the Allied and Associated Powers that a mandate should be conferred on Australia for the government of the former German territories and islands situated in latitude between the Equator and 8° S., and in longitude between 141° E. and 159.25° E. The mandate was issued by the League of Nations on 17th December, 1920. The Governor-General of the Commonwealth was authorized to accept the mandate by the New Guinea Act 1920, which also declared the area to be a Territory under the authority of the Commonwealth by the name of the Territory of New Guinea. The Territory comprises about 93,000 square miles, and the administration under the mandate dates from 9th May, 1921.

7. **Nauru.**—In 1919 the Governments of the United Kingdom, Australia and New Zealand entered into an agreement to make provision for the exercise of the mandate conferred on the British Empire for the administration of the island of Nauru, and for the mining of the phosphate deposits thereon. The island is situated in longitude 166° E., 26 miles south of the Equator, and comprises about 5,400 acres. The agreement provided that the administration of the island should be vested in an administrator, the first appointment to be made by the Commonwealth Government, and thereafter in such manner as the three Governments decided. The agreement was approved by the Commonwealth Parliament in the Nauru Island Agreement Act 1919, and a supplementary agreement of 30th May, 1923, giving the Government immediately responsible for the administration greater powers of control over the Administrator, was approved in 1932. The administration under the mandate has operated from 17th December, 1920, and so far the administrators have been appointed by the Commonwealth Government.

8. **Territory of Ashmore and Cartier Islands.**—By Imperial Order in Council dated 23rd July, 1931, Ashmore Islands, known as Middle, East and West Islands, and Cartier Island, situated in the Indian Ocean off the North-west Coast of Australia, were placed under the authority of the Commonwealth. The Islands were accepted by the Commonwealth in the Ashmore and Cartier Islands Acceptance Act 1933 under the name of the Territory of Ashmore and Cartier Islands and were transferred on 10th May, 1934.

9. **Australian Antarctic Territory.**—An Imperial Order in Council, 7th February, 1933, placed under the authority of the Commonwealth the Antarctic Territories, comprising all the islands and territory, other than Adélie Land, situated south of 60° S. latitude, and lying between 160° E. longitude and 45° E. longitude. The Territory was accepted by the Commonwealth under the name of the Australian Antarctic Territory in the Australian Antarctic Territory Acceptance Act 1933.

§ 4. The Constitutions of the States and of the Commonwealth.

1. **General.**—Information regarding the development of the Constitutions of the various Colonies (now States), together with a brief history of the Federal movement in Australia, was embodied in this Chapter in issues of the Official Year Book up to No. 22. In this issue the Constitution of the Commonwealth as at present amended is printed in full, together with the Financial Agreement of 1928 between the Commonwealth and States as affected by later agreements made under the provisions of Section 105A of the Constitution.

2. **Commonwealth Constitution Act.**—The Commonwealth of Australia Constitution Act, 63 and 64 Vict., Chapter 12, namely: "An Act to constitute the Commonwealth of Australia," as amended by the Constitution Alteration (Senate Elections) 1906, the Constitution Alteration (State Debts) 1909, and the Constitution Alteration (State Debts) 1928 is given *in extenso* hereunder.

THE COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT, 63 & 64 VICT., 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:—

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

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.

3. 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.

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.

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.

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.

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

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.

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

THE CONSTITUTION.

This Constitution is divided as follows:—

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

CHAPTER I.—THE PARLIAMENT.

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 hereinafter called "The Parliament," or "The Parliament of the Commonwealth."

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.

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.

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.

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.

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.

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

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.

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, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

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

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

9. 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 prescribing the method of choosing the senators for that State.

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

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.

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

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.

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.

* As amended by section 2 of the Constitution Alteration (Senate Elections) 1906. The words in square brackets have been repealed; amendments are shown in italics.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.—THE 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.

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 :—

New South Wales ..	23	South Australia ..	6
Victoria ..	20	Tasmania ..	5
Queensland ..	8		

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

New South Wales ..	26	South Australia ..	7
Victoria ..	23	Western Australia ..	5
Queensland ..	9	Tasmania ..	5

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

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.

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

In the absence of other provisions, 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.*

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.

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.

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.

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, of a colony which has become or becomes a State, or of the Commonwealth, or of a State.

* The franchise qualification was determined by the Commonwealth Franchise Act 1902.

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.

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

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.

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.

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.

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.

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 authorized by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

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.

44. Any person who—

- (i) Is under any acknowledgement 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.

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.

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.

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.

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.*

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.

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.†

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

* The Parliamentary allowance was raised to £600 per annum in 1907 and to £1,000 per annum in 1920, when provision was also made for special allowances to the President of the Senate, the Speaker of the House of Representatives, and both the Chairman of Committees and the Opposition Leader in each House. Several reductions under financial emergency legislation reduced the allowance to £750 per annum in 1932, but it was gradually restored to £1,000, the last reduction being removed in May, 1938.

† Particulars of proposed laws which were submitted to referenda are referred to in Chapter III., General Government.

- (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 :
- (xxiv) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States :
- (xxv) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States :
- (xxvi) The people of any race, 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, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law :
- (xxxviii) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia :
- (xxxix) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

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

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

53. 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 laws so as to increase any proposed charge or burden on the people.

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

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

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

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

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

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

57. 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 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.

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

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

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

CHAPTER II.—THE EXECUTIVE GOVERNMENT.

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.

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.

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.

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.

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

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

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

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

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

69. 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 :	Lighthouses, lightships, beacons, and buoys :
Naval and military defence :	Quarantine.

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

* The Ministers of State were increased in 1915 to eight, in 1917 to nine, and in 1935 to ten. A sum of £1,650 was added to the annual appropriation for Minister's salaries for each additional Minister and £800 per annum was allowed each Minister by the Parliamentary Allowances Act 1920. Reductions under financial emergency legislation reached their maximum in 1932, when Ministers' salaries were reduced by 30 per cent. and their allowance as members by 25 per cent.; the reductions were gradually removed, the final one in May, 1938, by the Parliamentary Salaries Adjustment Act 1938. The latter Act also made provision for an additional allowance of £1,500 per annum to the Prime Minister, and increased the parliamentary allowance to Ministers and holders of parliamentary office from £800 to £1,000 per annum.

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.

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.

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.

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

- (i) Of any Justice or Justices exercising the original jurisdiction of the High Court :
- (ii) Of any other federal court, or court exercising federal jurisdiction ; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council :

(iii) Of the Inter-State Commission, but as to questions of law only :
and the judgment of the High Court in all such cases shall be final and conclusive.

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

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

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

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.

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.

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.

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.

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

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.

CHAPTER IV.—FINANCE AND TRADE.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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 sub-section, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

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

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

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

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

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

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

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

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

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

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

102. 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—

(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.

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 State shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

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

(a) *the taking over of such debts by the Commonwealth;*

(b) *the management of such debts;*

(c) *the payment of interest and the provision and management of sinking funds in respect of such debts;*

(d) *the consolidation, renewal, conversion, and redemption of such debts;*

(e) *the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and*

(f) *the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.*

(ii) *The Parliament may make laws for validating any such agreement made before the commencement of this section.*

* Under section 2 of the Constitution Alteration (State Debts) 1909, the words in square brackets are omitted.

† Under section 2 of the Constitution Alteration (State Debts) 1928, the Constitution was amended by the insertion of this section.

(iii) *The Parliament may make laws for the carrying out by the parties thereto of any such agreement.*

(iv) *Any such agreement may be varied or rescinded by the parties thereto.*

(v) *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.*

(vi) *The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.*

CHAPTER V.—THE STATES.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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

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.

CHAPTER VI.—NEW STATES.

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.

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.

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.

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.

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.

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

127. 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.

CHAPTER VIII.—ALTERATION OF THE CONSTITUTION.

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

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

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

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.*)

3. **The Royal Proclamation.**—The preceding Act received the Royal assent on the 9th July, 1900. This made it lawful to declare that the people of Australia should be united in a Federal Commonwealth. This proclamation, made on the 17th September, 1900, constituted the Commonwealth as from the 1st January, 1901; it reads as follows:—

BY THE QUEEN.

A PROCLAMATION.

(Signed) VICTORIA R.

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 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.

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 *Nct*

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.

§ 5. The Financial Agreement between the Commonwealth and the States.

The original Financial Agreement between the Commonwealth and the States was made on the 12th December, 1927. It was later affected by the following agreements made under the powers conferred by section 105A of the Constitution :—

Debt Conversion Agreement—Made 21st July, 1931.

Debt Conversion Agreement (No. 2)—Made 22nd October, 1931.

Agreement relating to Soldier Settlement Loans—Made 3rd July, 1934.

A further Agreement was made between the Commonwealth and Tasmania only on the 1st July, 1928. This was not an amendment, but was made under the authority of Part III., Clause 3 (l) of the original Agreement.

The original Agreement as affected by the subsequent agreements referred to above is set out below. The Debt Conversion Agreements did not affect the wording of the main Agreement and were in general terms. That part of these Agreements referring to the original Agreement will be found on page 33. The agreement relating to Soldier Settlement Loans affected the original Agreement as regards :—

(a) Part I., Clause 2—Definitions—"Net public debt of a State existing on 30th June, 1927." (See page 22.)

(b) Part I., Clause 3, par. (a)—Constitution of the Australian Loan Council. (See page 23.)

These two amendments have been introduced into the original Agreement. The Agreement between the Commonwealth and Tasmania is referred to in a footnote to Part I., Clause 2—Definitions—in respect of the amount of £3,948,613 which represents the debt of Tasmania to the Commonwealth. (See page 22.)

FINANCIAL AGREEMENT, 1928.

Whereas with a view to making provision for the adjustment of Commonwealth and State financial relations the general principle of a draft scheme was affirmed by a Conference of Commonwealth and State Ministers in Melbourne which commenced on the sixteenth day of June One thousand nine hundred and twenty-seven ;

And whereas permanent effect cannot be given to the proposals contained in the said scheme unless the Constitution of the Commonwealth is altered so as to confer on the Parliament of the Commonwealth power to make laws for carrying out or giving permanent effect to such proposals ;

And whereas pending the submission to the electors of a proposed Law for the alteration of the said Constitution as aforesaid and in order to obtain immediately some of the advantages which would result from united action by adoption of the said scheme the Commonwealth and the States have agreed that for the period commencing on the first day of July One thousand nine hundred and twenty-seven and ending on the thirtieth day of June One thousand nine hundred and twenty-nine certain of the proposed provisions of the said scheme shall be temporarily adopted :

Now this Agreement Witnesseth :

PART I.

1. This Agreement shall have no force or effect and shall not be binding on any party unless and until it is approved by the Parliaments of the Commonwealth and of the States.

2. DEFINITIONS.

In this Agreement—

“*Net Public debt of a State existing on 30th June, 1927,*” means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz. :—

	£
New South Wales	234,088,501
Victoria	136,949,942
Queensland	101,977,855
South Australia	84,834,364
Western Australia	61,060,675
Tasmania	22,434,060
	<u>641,345,397</u>

The said amount of the net public debt of each State includes the debts of that State secured by—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock;
 - (ii) Instalment Stock;
 - (iii) Registered Stock;
 - (iv) Funded Stock;
 - (v) Stock payable to bearer;
 - (vi) Bonds, including registered bonds;
 - (vii) Debentures, including registered debentures and instalment debentures;
 - (viii) Treasury Bills not repayable within twelve months from the date of issue; or
 - (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes;
- issued or created by the State or by or on behalf of a Colony the predecessor of the State in respect of moneys borrowed by the Colony or State together with debts of the State to the Commonwealth of the amount set out respectively hereunder opposite to the name of the State so far as those last-mentioned debts are not included by being secured in manner aforesaid :—

	£
New South Wales	12,553,698
Victoria	23,688,269
Queensland	16,082,583
South Australia	18,446,197
Western Australia	16,739,872
Tasmania	3,948,613†
	<u>91,459,232</u>

after deducting therefrom the amount for which the Commonwealth by this Agreement assumes liability under Part III., Clause 4, of this Agreement and the amount of any moneys or securities standing to the credit of a sinking fund, redemption fund, or a fund of a like nature of the State as on 30th June, 1927, and does not include any moneys raised by the State by way of overdraft, fixed deposit, or special deposit for temporary purposes only.

* These amounts have been varied in accordance with the terms of the “Agreement relating to Soldier Settlement Loans” made 3rd July, 1934. The amended figures are—

	£
New South Wales	233,153,779
Victoria	136,348,982
Queensland	101,840,622
South Australia	84,029,376
Western Australia	61,060,675
Tasmania	22,314,150
	<u>638,747,614</u>

† An agreement between the Commonwealth and Tasmania was made under power conferred by Part III., Clause 3 (l) of this Agreement by which the Commonwealth took over as at 1st July, 1928, certain securities of the Tasmanian Sinking Fund to the value of £1,137,720 and thus reduced the debt of £3,948,613 due by the State to the Commonwealth by a like amount. (See Commonwealth Act No. 43 of 1928.)

The said sum of £234,088,501 (being the amount of the debt of New South Wales above-mentioned) comprises the debts referred to in, and has been computed in the manner shown in, the statement signed by representatives of the Commonwealth and of New South Wales.

"*Gross Public Debt of a State existing on 30th June, 1927,*" means in respect of each State the amount of debt set forth hereunder opposite to the name of that State, viz. :—

	£
New South Wales	239,441,363
Victoria	144,844,530
Queensland	105,259,916
South Australia	87,614,005
Western Australia	70,705,913
Tasmania	24,254,688
	<hr/>
	672,120,415

The said amount of the gross public debt of each State includes the net public debt of that State together with the amount for which the Commonwealth by this Agreement assumes liability under Part III., Clause (4), of this Agreement and the amount of any moneys or securities standing to the credit of any sinking fund redemption fund or fund of a like nature of the State as on 30th June, 1927.

"*Transferred Properties*" means the properties mentioned or specified in the Schedule of Transferred Properties signed by representatives of the Commonwealth and the States as revised to the 30th June, 1927, being properties which became vested in the Commonwealth pursuant to Section 85 (i) of the Constitution of the Commonwealth.

"*The Loan Council*" means the Australian Loan Council created in pursuance of this Agreement.

"*Bondholder*" means an owner of any—

- (i) Inscribed Stock, including Local Inscribed Stock and Government Inscribed Stock ;
 - (ii) Instalment Stock ;
 - (iii) Registered Stock ;
 - (iv) Funded Stock ;
 - (v) Stock payable to bearer ;
 - (vi) Bonds, including registered bonds ;
 - (vii) Debentures including registered debentures and instalment debentures ;
 - (viii) Treasury Bills not repayable within twelve months from the date of issue ; or
 - (ix) Fixed deposit receipts or special deposit receipts for moneys borrowed for other than temporary purposes ;
- issued or created by a State or by or on behalf of a Colony the predecessor of the State in respect of borrowed moneys but does not include the Commonwealth.

3. AUSTRALIAN LOAN COUNCIL.

(a) * There shall be an Australian Loan Council which shall consist of one representative of the Commonwealth who shall be—

- (i) the Prime Minister of the Commonwealth ; or
- (ii) in the absence of the Prime Minister at any time from a meeting of the Council—
a Minister nominated in writing by the Prime Minister, and

* Paragraph (a) is an amendment effected by the Agreement relating to Soldier Settlement Loans (Commonwealth Act of 1934) replacing the original paragraph (a). The amendment provided that the Financial Agreement shall be read and construed as if the amendments to Clause 3 of Part I. of that Agreement, insofar as they authorize the Prime Minister and the Premier of a State to represent respectively the Commonwealth or a State on the Australian Loan Council, had been incorporated in that Agreement at the date of the making thereof.

One representative of each State who shall be —

- (i) the Premier of that State ; or
- (ii) in the absence of the Premier at any time from a meeting of the Council—
a Minister nominated in writing by the Premier of that State.

Provided that if in the opinion of the Prime Minister or of any Premier of a State, special circumstances exist at any time which make it desirable so to do, the Prime Minister or the Premier, as the case may be, may nominate some other person to represent the Commonwealth or the State (as the case may be) as a member of the Loan Council.

Any nomination of a representative of a State shall be notified in writing by the Premier of the State to the Prime Minister.

(b) The member representing the Commonwealth on the Loan Council shall hold office during the pleasure of the Prime Minister of the Commonwealth and a member representing a State shall hold office during the pleasure of the Premier of the State which the member was appointed to represent.

(c) A decision in which all the members for the time being of the Loan Council concur shall be a unanimous decision of the Loan Council notwithstanding any vacancy then existing in its membership.

(d) A meeting of the Loan Council may at any time be convened by the member representing the Commonwealth, and shall be so convened upon the request of at least three members representing States.

(e) A majority of the members of the Loan Council shall constitute a quorum of the Loan Council for the exercise of its powers at any meeting. Provided that—

- (i) a member may at any time appoint in writing a deputy to act in his absence ; and any deputy so appointed may in the absence of the member exercise all the powers and functions of the member and his presence shall be deemed the presence of the member ; and
- (ii) an absent member who has not appointed a deputy may vote by letter or by telegram, and in such case that member shall be counted as being present in relation only to the questions on which he has voted.

(f) The Loan Council may make rules of procedure including rules relating to places, times, and notices of meetings, and conduct of business at meetings, and from time to time may alter such rules.

(g) The Commonwealth and each State will from time to time while Part II. of this Agreement is in force, and while Part III. of this Agreement is in force, submit to the Loan Council a programme setting forth the amount it desires to raise by loans for each financial year for purposes other than the conversion, renewal or redemption of existing loans or temporary purposes. Each programme shall state the estimated total amount of such loan expenditure for the year, and the estimated amount of repayments which will be available towards meeting that expenditure. Any revenue deficit to be funded shall be included in such loan programme, and the amount of such deficit shall be set out. Loans for Defence purposes approved by the Parliament of the Commonwealth shall not be included in the Commonwealth's loan programme or be otherwise subject to this agreement.

(h) If the Loan Council decides that the total amount of the loan programme for the year cannot be borrowed at reasonable rates and conditions it shall decide the amount to be borrowed for the year, and may by unanimous decision allocate such amount between the Commonwealth and the States.

(i) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause allocating the amount to be borrowed for any year, the amount to be borrowed for that year shall be allocated as follows :—

- (i) The Commonwealth shall, if it so desires, be entitled to have one-fifth or any less proportion of such amount allocated to the Commonwealth ; and
- (ii) Each State shall be entitled to have allocated to it a sum (being a portion of the balance of such amount) bearing to the balance of such amount the same proportion which the net loan expenditure of that State in the preceding five years bears to the net loan expenditure of all the States during the same period. Provided that any State may, if it so

desires, have allocated to it a sum less than the sum to which it is entitled under this sub-clause or no sum, and that when a less sum or no sum has been allocated to any State or States in manner aforesaid the amount then remaining available for allocation shall be allocated to the other States in the proportion which the net loan expenditure of each of such other States in the preceding five years bears to the net loan expenditure of all such other States during the same period. For the purposes of this sub-clause net loan expenditure does not include expenditure for the conversion, renewal, or redemption of loans, but means the gross other loan expenditure of a State less any amounts of such expenditure repaid to the State other than moneys repaid to the State in manner stated in Part II., clause 4 (c), or Part III., clause 3 (i), of this Agreement.

(j) If the total amount to be borrowed as aforesaid for any year is to be borrowed by means of more than one loan the Loan Council may by unanimous decision apportion between the Commonwealth and the States the amount to be borrowed by each such loan other than the loan by means of which the balance of the total amount to be borrowed as aforesaid for the year is borrowed.

(k) If the members of the Loan Council fail to arrive at a unanimous decision under the last preceding sub-clause apportioning the amount to be borrowed as aforesaid by any loan the amount to be borrowed by that loan shall be apportioned between the Commonwealth and the States in proportion to the amount then to be borrowed as aforesaid for the Commonwealth and for each State for the year.

(l) The Commonwealth and each State will also from time to time, while Part II. of this Agreement is in force and while Part III. of this Agreement is in force, submit to the Loan Council a statement setting out the amount it requires for each financial year for the conversion, renewal or redemption of existing loans.

(m) If the members of the Loan Council fail to arrive at a unanimous decision on any matter other than the matters referred to in sub-clauses (h) and (j) of clause 3 and sub-clause (b) of clause 4 of this part of this Agreement, the matter shall be determined by a majority of votes of the members.

On every question for decision by the Loan Council the member representing the Commonwealth shall have two votes and a casting vote, and each member representing a State shall have one vote.

(n) A decision of the Loan Council in respect of a matter which the Loan Council is by this Agreement empowered to decide shall be final and binding on all parties to this Agreement.

(o) In this clause the expressions "Prime Minister" and "Premier" include the persons for the time being respectively acting as such.

4. FUTURE BORROWINGS OF COMMONWEALTH AND STATES.

(a) Except in cases where the Loan Council has decided under sub-clause (b) of this clause that moneys shall be borrowed by a State, the Commonwealth, while Part II. or Part III. of this Agreement is in force, shall, subject to the decisions of the Loan Council and subject also to clauses 5 and 6 of this Part of this Agreement, arrange for all borrowings for or on behalf of the Commonwealth or any State, and for all conversions, renewals, redemptions, and consolidations of the Public Debts of the Commonwealth and of the States.

(b) If at any time the Loan Council by unanimous decision so decides, a State may in accordance with the terms of the decision borrow moneys outside Australia in the name of the State, and issue securities for the moneys so borrowed. The Commonwealth shall guarantee that the State will perform all its obligations to bondholders in respect of the moneys so borrowed. For all the purposes of this Agreement, including the making of sinking fund contributions, the moneys so borrowed shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(c) If any State after the 30th June, 1927, and before this Agreement has been approved by the Parliaments of the Commonwealth and of the States, has borrowed moneys in the name of the State and issued securities for the moneys so borrowed, such moneys shall for all the purposes of this Agreement, including the making of sinking fund contributions, be deemed to be moneys borrowed by the Commonwealth for and on behalf of that State.

(d) While Part II. or Part III. of this Agreement is in force, moneys shall not be borrowed by the Commonwealth or any State otherwise than in accordance with this Agreement.

5. BORROWING BY STATES.

For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) a State may, while Part II. or Part III. of this Agreement is in force :—

(a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the State from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and

(b) use any public moneys of the State which are available under the laws of the State.

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State, and may be retained by the State. A State may convert securities given or issued at any time by that State for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council. The amount for which such new securities are issued shall be deemed to be moneys borrowed by the Commonwealth for and on behalf of the State.

If the moneys deemed under this clause to be moneys borrowed by the Commonwealth on behalf of a State, together with the amounts raised by the Commonwealth for and on behalf of the State exceed the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the State for the financial year in which the money is deemed to be borrowed, the excess shall, unless the Loan Council otherwise decides, be deemed to be moneys received by the State in the following year on account of its loan programme for that year.

For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the office of the State Treasury, and at such other places as may be decided upon by the Loan Council.

The Commonwealth shall not be under any obligation to make sinking fund contributions in respect of moneys borrowed or used pursuant to this clause to meet a revenue deficit of a State, but the provisions of clause 4 (d) of Part II. and of clause 3 (j) of Part III. of this Agreement shall apply respectively to all moneys borrowed or used for that purpose.

Except in cases where the Loan Council has otherwise decided under sub-clause (b) of clause 4 of Part I. of this Agreement a State shall not have the right to invite loan subscriptions by the issue of a public prospectus.

Notwithstanding anything contained in this Agreement, any State may use for temporary purposes any public moneys of the State which are available under the laws of the State, or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft, or fixed, special, or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys.

6. BORROWING BY COMMONWEALTH.

For any purpose (including the redemption of securities given or issued at any time for moneys previously borrowed or used in manner stated in this clause) the Commonwealth may—while Part II. or Part III. of this Agreement is in force—

- (a) Subject to any maximum limits decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow moneys within the Commonwealth from authorities, bodies, funds or institutions (including Savings Banks) constituted or established under Commonwealth or State law or practice and from the public by counter sales of securities, and
- (b) use any public moneys of the Commonwealth which are available under the laws of the Commonwealth.

Any securities that are issued for moneys so borrowed or used shall be Commonwealth securities, to be provided by the Commonwealth upon terms approved by the Loan Council.

Where any such borrowing or use is solely for temporary purposes, the provisions of this Agreement, other than this clause, shall not apply.

Where any such borrowing or use is not solely for temporary purposes, and Commonwealth securities are issued in respect thereof, the moneys borrowed or used may be retained by the Commonwealth. The Commonwealth may convert securities given or issued at any time by the Commonwealth for moneys previously borrowed or used in manner stated in this clause. New securities issued on any such conversion shall be Commonwealth securities to be provided by the Commonwealth upon terms approved by the Loan Council.

If the moneys so borrowed or used are not borrowed or used solely for temporary purposes and Commonwealth securities are issued in respect thereof, and such moneys, together with other moneys borrowed by the Commonwealth for and on behalf of the Commonwealth as part of the total amount of loan moneys decided upon by the Loan Council as the moneys to be raised for and on behalf of the Commonwealth for the financial year in which the securities are issued, exceed such total amount the excess shall unless the Loan Council otherwise decides be deemed to be moneys received by the Commonwealth in the following year on account of its loan programme for that year.

For the purposes of this clause counter sales of securities shall be deemed to mean sales of securities made at the offices of the Commonwealth Treasury, and at such other places as may be decided upon by the Loan Council.

Notwithstanding anything contained in this Agreement, the Commonwealth may use for temporary purposes any public moneys of the Commonwealth which are available under the laws of the Commonwealth or may, subject to maximum limits (if any) decided upon by the Loan Council from time to time for interest, brokerage, discount and other charges, borrow money for temporary purposes by way of overdraft, or fixed, special or other deposit, and the provisions of this Agreement other than this paragraph shall not apply to such moneys.

7. PAYMENT OF INTEREST AND SINKING FUNDS.

[Not reprinted.—This section which is obsolete provided for payment of interest and sinking fund on certain loans in the event of Part III. of the Agreement not coming into force.]

PART II.

[Not reprinted.—This Part which is obsolete provided for interest and sinking fund during the period 1st July, 1927, up to the actual taking over of States' debts by the Commonwealth on 1st July, 1929. The intention was to carry out the permanent arrangements proposed in Part III. so far as they were applicable to the interim period.]

PART III.

This Part of this Agreement shall not come into force or be binding upon any party hereto unless before the 1st July, 1929, the Constitution of the Commonwealth has been altered in accordance with the proposals referred to in Part IV. of this Agreement and a law of the Parliament of the Commonwealth has been made thereunder validating this Agreement, but shall come into full force and effect if and when before the said date the Constitution is so altered and this Agreement is so validated.

When this Part of this Agreement comes into force every matter or thing done and payment made under or in pursuance of Part II. of this Agreement shall be deemed, so far as is practicable, to have been done or made under this Part of this Agreement to the same extent as if this Part had then in fact been in force, and all necessary adjustments shall be made in respect of moneys so paid in order to ensure that no party hereto shall be liable for or make double payments in respect of the same matter.

PERMANENT PROVISIONS.

I. TAKING OVER STATES' PUBLIC DEBTS.

Subject to the provisions of this Part of this Agreement the Commonwealth will take over on the 1st July, 1929 :—

- (i) the balance then unpaid of the gross public debt of each State existing on 30th June, 1927; and
 - (ii) all other debts of each State existing on the 1st July, 1929, for moneys borrowed by that State which by this Agreement are deemed to be moneys borrowed by the Commonwealth for and on behalf of that State—
- and will in respect of the debts so taken over assume as between the Commonwealth and the States the liabilities of the States to bondholders.

2. PAYMENT OF INTEREST.

(a) Subject to this clause the Commonwealth will pay to bondholders from time to time interest payable on the Public Debts of the States taken over by the Commonwealth as aforesaid other than debts due by the States to the Commonwealth.

(b) The Commonwealth will in each year during the period of 58 years, commencing on 1st July, 1927, provide by equal monthly instalments the following amounts in respect of each State as shown hereunder towards the interest payable by that State :—

	£
New South Wales	2,917,411
Victoria	2,127,159
Queensland	1,096,235
South Australia	703,816
Western Australia	473,432
Tasmania	266,859
	<hr/>
	7,584,912

(c) Each State shall in each year during the same period of 58 years pay to the Commonwealth the excess over the amounts to be provided by the Commonwealth under the last preceding sub-clause necessary to make up as they fall due the interest charges falling due in that year on the public debt of that State taken over by the Commonwealth as aforesaid and then unpaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid, and after the expiration of the said period each State shall in each year pay to the Commonwealth, as they fall due, the whole of the interest charges on any debt then unpaid and included in the public debt of that State taken over by the Commonwealth as aforesaid, and on any moneys borrowed by the Commonwealth on behalf of that State and then unpaid.

(d) The method by which payments shall be made by a State under sub-clause (c) of this clause shall be arranged from time to time between the Commonwealth and that State.

(e) The rate of interest payable under sub-clause (c) of this clause in respect of moneys borrowed by the Commonwealth on behalf of a State shall be the full rate of interest payable by the Commonwealth in respect of the loan by which such moneys were borrowed or such other rate of interest as may be payable by the State to the Commonwealth under any Agreement made or to be made between the Commonwealth and that State in respect of such moneys and such interest shall be payable by the State for the full term of that loan.

3. SINKING FUNDS.

(a) A sinking fund at the rate of 7s. 6d. per annum for each £100 of the net public debts of the States existing on 30th June, 1927, shall be established in the manner hereinafter set forth.

(b) During the period of fifty-eight years commencing on the 1st July, 1927, the Commonwealth shall pay from revenue annually a sinking fund contribution at the rate of 2s. 6d. for each £100 of the net public debts of the States existing on 30th June, 1927, and each State (other than the State of New South Wales) shall in each year during the said period pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of such State existing on 30th June, 1927. The State of New South Wales during the period of fifty-eight years commencing on the 1st July, 1928, shall in each year pay from revenue a sinking fund contribution at the rate of 5s. for each £100 of the net public debt of that State existing on 30th June, 1927.

(c) Where in respect of any debt included in the gross Public Debt of a State existing at the 30th June, 1927, there is under laws or contracts existing at that date an obligation to provide a sinking fund at a rate in excess of 7s. 6d. per annum for each £100, any amount to be so provided in excess of 7s. 6d. per annum for each £100 shall be provided out of the National Debt Sinking Fund, established under the laws of the Commonwealth. Provided that if any law imposing such an obligation is repealed or is amended so as to reduce the rate of sinking fund to be provided the only amount (if any) to be provided out of the National Debt Sinking Fund pursuant to this sub-clause in respect of that debt shall as from the date of such repeal or amendment be the amount (if any) by which the reduced rate of sinking fund for the time being exceeds 7s. 6d. per annum for each £100.

(d) When a loan is issued for the conversion, renewal, or redemption of any debt of a State included in the gross Public Debt of that State existing on 30th June, 1927, the only sinking fund contributions to be made by the Commonwealth and that State in respect of the debt so converted, renewed, or redeemed shall be sinking fund contributions at the same rate and for the same period and upon the same amount as if such debt had not been converted, renewed, or redeemed.

(e) Subject to sub-clauses (h) and (j) of this clause a sinking fund at the rate of 10s. per annum for each £100 of the amount of each new loan raised by a State or by the Commonwealth for and on behalf of a State after 30th June, 1927, shall be established.

(f) Subject to sub-clause (h) and (j) of this clause, in each year during the period of fifty-three years from the date of the raising after 30th June, 1927, of any new loan by a State or by the Commonwealth for and on behalf of a State the Commonwealth and that State shall each pay from revenue a sinking fund contribution of a sum equal to 5s. for each £100 of the amount of the new loan.

Provided that the period of fifty-three years during which the State of New South Wales shall make sinking fund contributions in respect of new loans raised in the financial year beginning on the 1st July, 1927, shall commence on the 1st July, 1928.

(g) For the purpose of the last two preceding sub-clauses a loan issued after the 30th June, 1927, to meet a revenue deficit which accrued on or before that date shall be deemed to be a new loan, but a loan issued for the conversion, renewal or redemption of a debt shall not be deemed to be a new loan, and where a loan is issued partly for the conversion, renewal, or redemption of a debt and partly for other purposes, so much only of the loan as has been issued for other purposes shall be deemed to be a new loan.

(h) Where it is agreed between the Commonwealth and a State that a loan or any portion of a loan raised after 30th June, 1927, and expended or to be expended upon wasting assets should be redeemed within a shorter period than fifty-three years, the annual sinking fund contributions of the State, in respect of that loan or the portion thereof, shall be increased to an amount which with the sinking fund contributions of the Commonwealth in respect of that loan or the portion thereof will provide for the redemption of that loan or the portion thereof within such shorter period. All sinking fund contributions of the State in respect of that loan or the portion thereof shall cease on the expiration of the shorter period, but the Commonwealth contributions in respect of that loan shall continue for the remainder of the period of fifty-three years from the date of the raising of that loan, and during such remainder of the period the State contributions to the sinking fund in respect of other loans of that State shall be reduced by the amount of the Commonwealth contributions during that remainder of the period in respect of such redeemed loan or the portion thereof. For the purposes of this sub-clause the sinking fund contributions of the Commonwealth and the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

(i) Where loan moneys have been advanced by a State under terms providing for the repayment of such moneys the State shall as and when such moneys are repaid pay such moneys either to the State Loan Fund or to the account or fund from which such moneys were advanced, or to the sinking fund and shall in addition make from revenue its sinking fund contributions in respect of the loan or loans from which the moneys so advanced were provided.

Provided that when loan moneys have been advanced by a State to a Public or Local Authority or body constituted by the State or under the laws of the State and the Authority or body repays such moneys out of its revenue the State may out of moneys so repaid make its sinking fund contributions in respect of the loan moneys so advanced.

(j) In respect of any loan raised after the 30th June, 1927, by a State or by the Commonwealth for and on behalf of a State to meet a revenue deficit accruing after that date no sinking fund contributions shall be payable by the Commonwealth, but that State shall for a period sufficient to provide for the redemption of that loan pay from revenue in each year during such period a sinking fund contribution at a rate of not less than 4 per centum per annum of the amount of that loan. For the purposes of this sub-clause the sinking fund contributions of the State shall be deemed to accumulate at the rate of $4\frac{1}{2}$ per centum per annum compounded.

(k) All sinking fund contributions to be made in pursuance of this part of this Agreement shall be debts payable to the National Debt Commission as follows:—

(i) As regards the net public debt of a State existing on 30th June, 1927—by half-yearly instalments on 30th September and 31st March in each financial year or on such other dates as may be agreed between the Commonwealth and that State.

(ii) As regards loans raised after 30th June, 1927—by equal instalments on the dates on which interest on such loans is payable or on such other dates as may be agreed upon between the Commonwealth and the State concerned.

(l) Subject to the next succeeding sub-clause all moneys and securities standing to the credit of sinking funds, redemption funds and funds of a like nature of a State existing on 30th June, 1929, shall forthwith be transferred by the States to the National Debt Commission. Nothing in this sub-clause contained shall be deemed to limit the power of a State to cancel before 30th June, 1929, any such securities.*

(m) Where the conditions relating to sinking funds, redemption funds, and funds of a like nature as aforesaid held by a State on trust or by trustees under statutory or contractual obligations preclude the transfer of those funds to the National Debt Commission, such funds shall remain under the control of the State or those trustees, and the National Debt Commission will either directly or through the State concerned make all future payments to the State or to those trustees from the sinking fund.

* An Agreement between the Commonwealth and Tasmania was made under power conferred by this Clause whereby the Commonwealth took over as at 1st July, 1928, certain securities of the Tasmanian Sinking Fund to the value of £1,137,720 and thus reduced the debt of £3,948,613 due by the State to the Commonwealth by a like amount. (See Commonwealth Act No. 43 of 1928.)

(n) The sinking funds to be established under this Agreement shall be controlled by the National Debt Commission. The National Debt Commission may arrange with any State to act as its agent in connexion with payments due to bondholders.

(o) Sinking Fund contributions made under this Agreement in respect of the debts of a State and funds of that State transferred to the National Debt Commission under sub-clause (l) of this clause will not be accumulated, but (subject to sub-clause (m) and (p) of this clause) will be applied to the redemption of the public debts of that State and of loans raised by the Commonwealth for and on behalf of that State, or to the purchase of securities issued in respect thereof.

(p) If at any time it is deemed inexpedient by the National Debt Commission to apply sinking funds in the manner set forth in sub-clause (o) of this clause, such funds may be temporarily invested in any securities in which the National Debt Commission is from time to time by law authorized to invest moneys.

(q) When a security issued in respect of a public debt of a State or of a loan raised by the Commonwealth for and on behalf of a State is repurchased or redeemed by the National Debt Commission such security shall be cancelled—

(i) if a repurchased security—on the last day of September, December, March, or June next ensuing after the date of repurchase, or on the date of maturity of the security whichever shall first occur; and

(ii) if a redeemed security—on the date of redemption.

In addition to the sinking fund contributions otherwise payable in respect of that debt or loan the State concerned shall—

(i) as from the date of cancellation of each security and for the full period during which the said sinking fund contributions are payable make from revenue a further sinking fund contribution at the rate of $4\frac{1}{2}$ per centum per annum of the face value of the cancelled security; and

(ii) also pay to the National Debt Commission interest on the face value of each repurchased security at the rate provided by the security from the last date preceding the repurchase upon which interest was payable under the terms of the security up to the date of cancellation of the security.

4. TRANSFERRED PROPERTIES.

It is agreed that all questions between the Commonwealth and the States relating to State properties transferred to the Commonwealth or acquired by the Commonwealth under section 85 of the Constitution shall be settled as follows :—

The States will as from 1st July, 1929, and as between the Commonwealth and the States be completely free and discharged from all liability whether in respect of principal, interest or sinking fund, or otherwise, which liability shall be assumed by the Commonwealth in respect of so much of the public debts of the States bearing interest at the rate of 5 per centum per annum, taken over by the Commonwealth as aforesaid as amounts to the agreed value of transferred properties, namely, £10,924,323, apportioned to the several States as follows :—

	£
New South Wales	4,788,005
Victoria	2,302,862
Queensland	1,560,639
South Australia	1,035,631
Western Australia	736,432
Tasmania	500,754
Total	<u>10,924,323</u>

The particular portion of the public debt of each State in respect of which the States shall become free and discharged from liability shall be determined by the Commonwealth.

Each State will issue to the Commonwealth freehold titles (or, if the laws of any State do not permit of the issue of freehold titles, then titles as near to freehold as the laws of that State will permit) for transferred properties consisting of land or interests in land in that State, and all liability of the Commonwealth to the State in respect of transferred properties shall as from the 1st July, 1929, be extinguished.

The provisions of clauses 2 and 3 of this Part of this Agreement shall not apply to the said amount of £10,924,323.

PART IV.—MISCELLANEOUS.

I. EXPENSES OF LOAN FLOTATION.

Each State shall repay to the Commonwealth all expenses incurred or payments made by the Commonwealth in the performance of this Agreement in relation to the State including the following expenses and payments :—

- (i) Loan flotation charges ;
- (ii) Management charges ;
- (iii) Stamp duties on transfer of securities ;
- (iv) Commission on payment of interest ;
- (v) Expenses incurred in the conversion, renewal, redemption, or consolidation of loans ;
- (vi) Exchange on transference of moneys.

Unless it is otherwise agreed between the Commonwealth and a State the Commonwealth will not do anything in connexion with a loan of that State existing on the 30th June, 1927, or raised thereafter pursuant to this Agreement which if done by that State would be a breach of any now existing agreement by that State with any Bank.

A certificate by the Auditor-General of the Commonwealth stating the amount to be repaid by a State to the Commonwealth and the matter in respect of which the repayment is to be made shall in the event of a dispute be conclusive as to the amount and matter stated.

2. ALTERATION OF THE CONSTITUTION.

The Commonwealth will take the necessary action to submit to the Parliament of the Commonwealth and to the electors proposals for the alteration of the Constitution of the Commonwealth in the following form :—

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

- (a) the taking over of such debts by the Commonwealth ;
- (b) the management of such debts ;
- (c) the payment of interest and the provision and management of sinking funds in respect of such debts ;
- (d) the consolidation, renewal, conversion, and redemption of such debts ;
- (e) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth ; and
- (f) the borrowing of money by the States or by the Commonwealth or by the Commonwealth for the States.

(ii) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(iii) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(iv) Any such agreement may be varied or rescinded by the parties thereto.

(v) 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.

(vi) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section 105 of this Constitution.”

[For result of referendum see Chapter III., § 2.]

3. INDEMNITY.

Each State agrees with the Commonwealth that it will by the faithful performance of its obligations under this Agreement indemnify the Commonwealth against all liabilities whatsoever in respect of the public debt of that State taken over by the Commonwealth as aforesaid (other than the liabilities of the Commonwealth under this Agreement to pay interest and to make sinking fund contributions and under clause 4 of Part III. of this Agreement), and in respect of all loans of that State in respect of which this Agreement provides that sinking fund contributions shall be made.

4. ACCOUNTS.

Separate accounts shall be kept by the Commonwealth for each State in respect of Debt, Interest, and Sinking Funds.

Although the Debt Conversion Agreements already referred to did not affect the wording of the Financial Agreement they contained the following provisions :—

Debt Conversion Agreement—made 21st July, 1931—

“4. So far as the provisions of this Agreement may not be in accordance with any provisions of the Financial Agreement between the parties hereto, dated Twelfth day of December, 1927, the provisions of this Agreement shall prevail.”

Debt Conversion Agreement (No. 2)—22nd October, 1931—

“5. So far as this Agreement may not be in accordance with the provisions of the said Financial Agreement, the provisions of this Agreement shall prevail.”

[*Note re Validity of Act.*—Consequent upon the failure of the State of New South Wales to provide certain interest payments on its public debts in accordance with the Financial Agreement, the Commonwealth Parliament passed a Financial Agreement Enforcement Act (No. 3 of 1932). The State of New South Wales attacked the validity of this Act as being *ultra vires* the Commonwealth Parliament and an infringement of State rights in respect to the appropriation of public moneys for specific services. The High Court by a majority decision of four to two held that this was a valid law and dismissed the action, subsequently refusing leave to appeal to the Privy Council.]