

AUSTRALIA ACTS (REQUEST) BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Constitutional Legislation (Repeal) Bill 1985 is cognate with this Bill.

The object of this Bill is to enable similar legislation to be passed by the Commonwealth Parliament and the United Kingdom Parliament which will sever the remaining constitutional links with the United Kingdom (other than the Crown). In particular, the proposed legislation will—

- (a) terminate the power of the United Kingdom Parliament to legislate for the Commonwealth, the States and the Territories of Australia;
- (b) terminate the restrictions on the legislative powers of State Parliaments arising from the subordination of State laws to laws of the United Kingdom Parliament applying to the States;
- (c) provide that the powers of the Queen in respect of a State are exercisable by the Governor;
- (d) remove the power of the Queen to disallow State legislation and remove the requirement for certain State legislation to be reserved for the Queen's assent; and
- (e) terminate appeals to the Privy Council from Australian Courts, including State Supreme Courts.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on the date it receives the Royal assent.

Clause 3 requests the Commonwealth to enact the proposed legislation (set out in the First Schedule) in pursuance of a power contained in the Commonwealth Constitution for the Commonwealth Parliament to legislate, at the request of the States, on any matter on which the United Kingdom Parliament could legislate for the States.

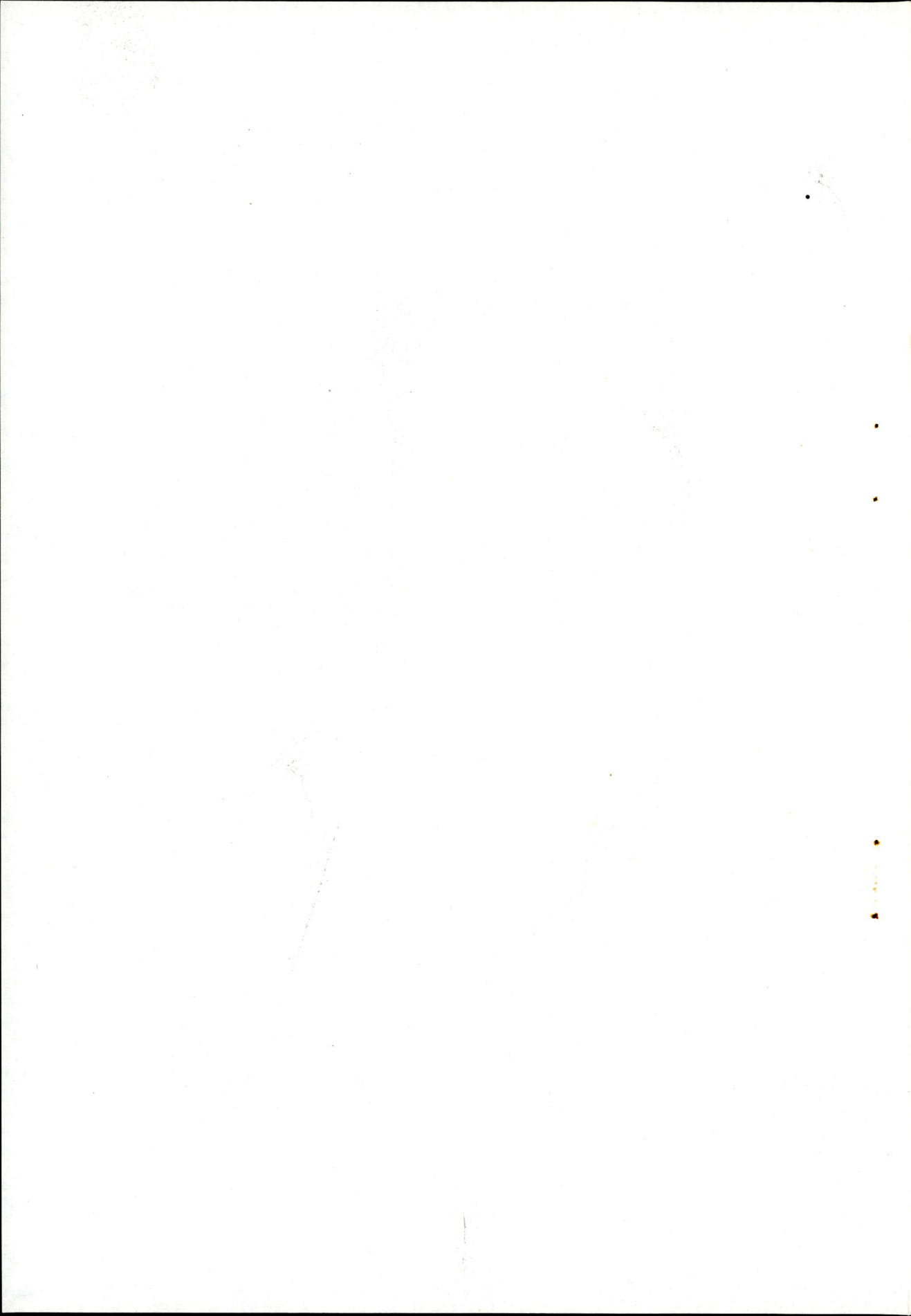
Clause 4 requests, in accordance with constitutional convention, the United Kingdom Parliament to enact the same proposed legislation.

Clause 5 requests the Commonwealth Parliament to enact the necessary legislation (set out in the Second Schedule) that, in accordance with the requirements of the Statute of Westminster 1931, will authorise the United Kingdom Parliament to enact the same proposed legislation.

The proposed legislation is the Australia Act 1986 of the Commonwealth and the Australia Act 1986 of the United Kingdom. Those Acts, which are identical in all material respects, contain the following provisions:

- (a) Clause 1 terminates the power of the United Kingdom Parliament to enact legislation having effect as part of the law of the Commonwealth, a State or a Territory.
- (b) Clause 2 (1) removes any limitation that may exist on the power of a State Parliament to make laws connected with the State that have extra-territorial operation (a similar provision applies to the Commonwealth under section 3 of the Statute of Westminster 1931). Clause 2 (2) removes any other limitation that may exist on the legislative powers of a State Parliament arising from the former colonial status of the States (in particular, any limitations on the powers to legislate to affect the exercise by the Crown in the United Kingdom of the Crown's powers in respect of a State).
- (c) Clause 3 provides that the Colonial Laws Validity Act 1865 and the common law doctrine of repugnancy do not apply to future State laws (a similar provision applies to Commonwealth laws under section 2 of the Statute of Westminster 1931). As a consequence a State Parliament will have full legislative power to repeal or amend any United Kingdom law which presently applies in the State.
- (d) Clause 4 expressly repeals sections 735 and 736 of the Imperial Merchant Shipping Act 1894 in its application to the States (a similar provision applies to the Commonwealth under section 5 of the Statute of Westminster 1931). The sections so repealed require certain State shipping laws to be confirmed by Her Majesty or reserved.
- (e) Clause 5 makes the grant of full legislative power to the States subject to the Commonwealth Constitution, the Statute of Westminster 1931 and the other provisions of the proposed Australia Act.
- (f) Clause 6 preserves any existing or future entrenched provisions of State Constitutions, namely, laws respecting the constitution, powers or procedures of State Parliaments which require a referendum or other manner or form for the passage of the legislation. The clause is necessary because of the proposed repeal of the Colonial Laws Validity Act 1865 which at present authorises the entrenched provisions.
- (g) Clause 7 (1) and (2) provide that the Governor is to be Her Majesty's representative in the State and that the Governor, and not Her Majesty, is to exercise all Her Majesty's powers and functions (with certain exceptions) in respect of the State. By virtue of clause 7 (3) and (4), Her Majesty is to continue to exercise the power to appoint or dismiss the Governor and is not precluded from exercising Her powers and functions when personally present in the State. Any advice to Her Majesty is to be given by the Premier of the State (clause 7 (5)). The conferring of Imperial honours is not dealt with by the clause.
- (h) Clause 8 removes any existing power of Her Majesty to disallow State legislation and removes any existing requirement for the operation of State legislation to be suspended pending signification of Her Majesty's pleasure.

- (i) Clause 9 removes any existing requirement that the Governor withhold assent to any Bills of State Parliaments and any existing requirement for the Governor to reserve any such Bills for Her Majesty's assent.
 - (j) Clause 10 terminates formally any responsibility of the United Kingdom Government in relation to the government of a State.
 - (k) Clause 11 terminates appeals to the Privy Council from Australian Courts. The clause affects appeals from State Supreme Courts only, because appeals from the High Court or other Federal Courts have already been abolished. The clause does not affect pending appeals.
 - (l) Clause 12 supplements clause 1. The clause repeals provisions of the Statute of Westminster 1931 that are inconsistent with the proposed Australia Act.
 - (m) Clauses 13 and 14 make consequential amendments to provisions of the Queensland and Western Australian Constitutions. The Constitutions of the other States do not have equivalent provisions.
 - (n) Clause 15 is designed to ensure that the proposed Australia Act and the Statute of Westminster 1931 as it operates in Australia may not be repealed or amended except by the Commonwealth with the agreement of all the States.
 - (o) Clause 16 is an interpretation provision.
 - (p) Clause 17 specifies the short title of the Act and provides that the Act is to commence on a date to be proclaimed. It is proposed to commence the Commonwealth and United Kingdom Acts on the same date.
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AUSTRALIA ACTS (REQUEST) BILL 1985

NEW SOUTH WALES

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(COMMONWEALTH)

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AUSTRALIA ACTS (REQUEST) BILL 1985

No. 1985

A BILL FOR

An Act to enable the constitutional arrangements affecting the Commonwealth and the States to be brought into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation.

See also Constitutional Legislation (Repeal) Bill 1985.

Australia Acts (Request) 1985

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

AND WHEREAS it has been agreed that the Parliament of the Commonwealth at the request of the Parliaments of the States in pursuance of section 51 (xxxviii) of the Constitution of the Commonwealth of Australia should enact an Act in the terms of the First Schedule:

AND WHEREAS it has been agreed that each State should request and consent to the enactment by the Parliament of the United Kingdom of an Act in the terms of the Schedule to the Act contained in the Second Schedule:

AND WHEREAS it has been agreed that the Parliament of the Commonwealth with the concurrence of all the States should enact an Act requesting and consenting to the enactment by the Parliament of the United Kingdom of an Act in the terms of the Schedule to the Act contained in the Second Schedule:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Australia Acts (Request) Act 1985".

Commencement

2. This Act shall commence on the date of assent to this Act.

Request for Commonwealth legislation

3. The Parliament of the State requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the First Schedule.

*Australia Acts (Request) 1985***Request and consent to United Kingdom legislation**

4. The Parliament and Government of the State request and consent to the enactment by the Parliament of the United Kingdom of an Act in, or substantially in, the terms set out in the Schedule to the Act contained in 5 the Second Schedule.

Request and consent to Commonwealth legislation

5. The Parliament and Government of the State request and consent to the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the Second Schedule.

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FIRST SCHEDULE

(Sec. 3)

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

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

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

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

- 25 **Termination of power of Parliament of United Kingdom to legislate for Australia**

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

Legislative powers of Parliaments of States

- 30 2. (1) It is hereby declared and enacted that the legislative powers of the Parliament of each State include full power to make laws for the peace, order and good government of that State that have extra-territorial operation.

- (2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United 35 Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued***Termination of restrictions on legislative powers of Parliaments of States**

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

- 5 (2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to
10 repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

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

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—
- (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and
- 20 (b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time.

25 Manner and form of making certain State laws

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

Powers and functions of Her Majesty and Governors in respect of States

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

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

State laws not subject to disallowance or suspension of operation

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

State laws not subject to withholding of assent or reservation

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

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

(a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and

(b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15

The Judicial Committee Act 1833

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

The Judicial Committee Act 1844

The Australian Constitutions Act 1850, section 28

The Colonial Courts of Admiralty Act 1890, section 6.

(4) Nothing in the foregoing provisions of this section—

- 5 (a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or
- (b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—
- 10 (i) pursuant to leave granted by an Australian court on an application made before that commencement; or
- (ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

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

Amendment of Statute of Westminster

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

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867–1978 of the State of Queensland is in this section referred to as the Principal Act.

(2) Section 11A of the Principal Act is amended in subsection (3)—

- 25 (a) by omitting from paragraph (a)—
- (i) “and Signet”; and
- (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and
- (b) by omitting from paragraph (b)—
- 30 (i) “and Signet”; and
- (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.

(3) Section 11B of the Principal Act is amended—

- 35 (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
- (b) by omitting subsection (1); and

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(c) by omitting from subsection (2)—

(i) “(2)”;

(ii) “this section and in”; and

(iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

(4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B.”.

10 Amendment of Constitution Act of Western Australia

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

(i) “and Signet”; and

(ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;

(b) by omitting from paragraph (b)—

(i) “and Signet”; and

(ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and

(c) by omitting from paragraph (c)—

(i) “under the Great Seal of the United Kingdom”; and

(ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.

(3) Section 51 of the Principal Act is amended—

(a) by omitting subsection (1); and

(b) by omitting from subsection (2)—

(i) “(2)”;

(ii) “this section and in”; and

(iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to
5 repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

10 **Interpretation**

16. (1) In this Act, unless the contrary intention appears—

“appeal” includes a petition of appeal, and a complaint in the nature of an appeal;

“appeal to Her Majesty in Council” includes any appeal to Her Majesty;

15 “Australian court” means a court of a State or any other court of Australia or of a Territory other than the High Court;

“court” includes a judge, judicial officer or other person acting judicially;

“decision” includes determination, judgment, decree, order or sentence;

“Governor”, in relation to a State, includes any person for the time being administering the government of the State;

20 “State” means a State of the Commonwealth and includes a new State;

“the Commonwealth of Australia Constitution Act” means the Act of the Parliament of the United Kingdom known as the Commonwealth of Australia Constitution Act;

25 “the Constitution of the Commonwealth” means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time;

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

30 (2) The expression “a law made by that Parliament” in section 6 above and the expression “a law made by the Parliament” in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

35 (3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.

40 (2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.

Australia Acts (Request) 1985

SECOND SCHEDULE

(Secs. 4 and 5)

An Act to request, and consent to, the enactment by the Parliament of the United Kingdom of an Act in the terms set out in the Schedule to this Act

- 5 WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:
- 10 BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Australia (Request and Consent) Act 1985*.

Commencement

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

Request and consent to United Kingdom legislation

3. It is hereby declared that the Parliament and Government of the Commonwealth, with the concurrence of all the States, request and consent to the enactment by the Parliament of the United Kingdom of an Act in the terms set out in the Schedule.

20

SCHEDULE

Section 3

An Act to give effect to a request by the Parliament and Government of the Commonwealth of Australia.

- 25 WHEREAS the Parliament and Government of the Commonwealth of Australia have, with the concurrence of the States of Australia, requested and consented to the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth:

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

30 Termination of power of Parliament of United Kingdom to legislate for Australia

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

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued***Legislative powers of Parliaments of States**

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

5 (2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

10 Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

15 (2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

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

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—

25 (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and

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

30 Manner and form of making certain State laws

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

Powers and functions of Her Majesty and Governors in respect of States

7. (1) Her Majesty's representative in each State shall be the Governor.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued*

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

5 (4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

10 **State laws not subject to disallowance or suspension of operation**

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

State laws not subject to withholding of assent or reservation

15 9. (1) No law or instrument shall be of any force or effect in so far as it purports to require the Governor of a State to withhold assent from any Bill for an Act of the State that has been passed in such manner and form as may from time to time be required by a law made by the Parliament of the State.

20 (2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

25 11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

30 (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and

35 (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

40 (3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15

The Judicial Committee Act 1833

The Judicial Committee Act 1844

The Australian Constitutions Act 1850, section 28

45 The Colonial Courts of Admiralty Act 1890, section 6.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued*

(4) Nothing in the foregoing provisions of this section—

(a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or

5 (b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—

(i) pursuant to leave granted by an Australian court on an application made before that commencement; or

(ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

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

Amendment of Statute of Westminster

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

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867–1978 of the State of Queensland is in this section referred to as the Principal Act.

(2) Section 11A of the Principal Act is amended in subsection (3)—

20 (a) by omitting from paragraph (a)—

(i) “and Signet”; and

(ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and

(b) by omitting from paragraph (b)—

25 (i) “and Signet”; and

(ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.

(3) Section 11B of the Principal Act is amended—

30 (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;

(b) by omitting subsection (1); and

(c) by omitting from subsection (2)—

(i) “(2)”;

35 (ii) “this section and in”; and

(iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

40 (4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B.”.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued***Amendment of Constitution Act of Western Australia**

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

- 5 (a) by omitting from paragraph (a)—
- (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;
- (b) by omitting from paragraph (b)—
- (i) “and Signet”; and
 - 10 (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and
- (c) by omitting from paragraph (c)—
- (i) “under the Great Seal of the United Kingdom”; and
 - 15 (ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.

(3) Section 51 of the Principal Act is amended—

- (a) by omitting subsection (1); and
 - (b) by omitting from subsection (2)—
- 20 (i) “(2)”;
- (ii) “this section and in”; and
 - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

25 Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

30 (2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

35 (3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

40 Interpretation

16. (1) In this Act—

- “appeal” includes a petition of appeal, and a complaint in the nature of an appeal;
- “appeal to Her Majesty in Council” includes any appeal to Her Majesty;

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued*

- “Australian court” means a court of a State or any other court of Australia or of a Territory other than the High Court of Australia;
- “court” includes a judge, judicial officer or other person acting judicially;
- “decision” includes determination, judgment, decree, order or sentence;
- 5 “Governor”, in relation to a State, includes any person for the time being administering the government of the State;
- “State” means a State of the Commonwealth and includes a new State;
- “Territory” means a territory referred to in section 122 of the Constitution of the Commonwealth;
- 10 “the Commonwealth” means the Commonwealth of Australia as established under the Commonwealth of Australia Constitution Act;
- “the Constitution of the Commonwealth” means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time.
- 15 (2) The expression “a law made by that Parliament” in section 6 above and the expression “a law made by the Parliament” in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.
- (3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.
- 20

Citation and commencement

17. (1) This Act may be cited as the Australia Act 1986.
- (2) This Act shall come into force on such day and at such time as the Secretary of State may
- 25 by order made by statutory instrument appoint.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

AUSTRALIA ACTS (REQUEST) ACT 1985 No. 109

NEW SOUTH WALES



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AUSTRALIA ACTS (REQUEST) ACT 1985 No. 109

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 109 1985

An Act to enable the constitutional arrangements affecting the Commonwealth and the States to be brought into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation. [Assented to, 27th September, 1985.]

See also Constitutional Legislation (Repeal) Act 1985.

Australia Acts (Request) 1985

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

AND WHEREAS it has been agreed that the Parliament of the Commonwealth at the request of the Parliaments of the States in pursuance of section 51 (xxxviii) of the Constitution of the Commonwealth of Australia should enact an Act in the terms of the First Schedule:

AND WHEREAS it has been agreed that each State should request and consent to the enactment by the Parliament of the United Kingdom of an Act in the terms of the Schedule to the Act contained in the Second Schedule:

AND WHEREAS it has been agreed that the Parliament of the Commonwealth with the concurrence of all the States should enact an Act requesting and consenting to the enactment by the Parliament of the United Kingdom of an Act in the terms of the Schedule to the Act contained in the Second Schedule:

BE it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Australia Acts (Request) Act 1985".

Commencement

2. This Act shall commence on the date of assent to this Act.

Request for Commonwealth legislation

3. The Parliament of the State requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the First Schedule.

Australia Acts (Request) 1985

Request and consent to United Kingdom legislation

4. The Parliament and Government of the State request and consent to the enactment by the Parliament of the United Kingdom of an Act in, or substantially in, the terms set out in the Schedule to the Act contained in the Second Schedule.

Request and consent to Commonwealth legislation

5. The Parliament and Government of the State request and consent to the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the Second Schedule.

FIRST SCHEDULE

(Sec. 3)

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

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

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

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

Termination of power of Parliament of United Kingdom to legislate for Australia

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

Legislative powers of Parliaments of States

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

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Australia Acts (Request) 1985

FIRST SCHEDULE—*continued***Termination of restrictions on legislative powers of Parliaments of States**

3. (1) The Act of the Parliament of the United Kingdom known as the Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

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

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—

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

Manner and form of making certain State laws

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

Powers and functions of Her Majesty and Governors in respect of States

7. (1) Her Majesty's representative in each State shall be the Governor.

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

State laws not subject to disallowance or suspension of operation

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

State laws not subject to withholding of assent or reservation

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

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

- (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
- (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

The Australian Courts Act 1828, section 15

The Judicial Committee Act 1833

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

The Judicial Committee Act 1844

The Australian Constitutions Act 1850, section 28

The Colonial Courts of Admiralty Act 1890, section 6.

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

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

Amendment of Statute of Westminster

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

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867–1978 of the State of Queensland is in this section referred to as the Principal Act.

- (2) Section 11A of the Principal Act is amended in subsection (3)—
- (a) by omitting from paragraph (a)—
 - (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and
 - (b) by omitting from paragraph (b)—
 - (i) “and Signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.
- (3) Section 11B of the Principal Act is amended—
- (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
 - (b) by omitting subsection (1); and

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(c) by omitting from subsection (2)—

- (i) “(2)”;
- (ii) “this section and in”; and
- (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

(4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B,”.

Amendment of Constitution Act of Western Australia

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

- (i) “and Signet”; and
- (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;

(b) by omitting from paragraph (b)—

- (i) “and Signet”; and
- (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and

(c) by omitting from paragraph (c)—

- (i) “under the Great Seal of the United Kingdom”; and
- (ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.

(3) Section 51 of the Principal Act is amended—

(a) by omitting subsection (1); and

(b) by omitting from subsection (2)—

- (i) “(2)”;
- (ii) “this section and in”; and
- (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

*Australia Acts (Request) 1985*FIRST SCHEDULE—*continued*

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

Interpretation

16. (1) In this Act, unless the contrary intention appears—

“appeal” includes a petition of appeal, and a complaint in the nature of an appeal;

“appeal to Her Majesty in Council” includes any appeal to Her Majesty;

“Australian court” means a court of a State or any other court of Australia or of a Territory other than the High Court;

“court” includes a judge, judicial officer or other person acting judicially;

“decision” includes determination, judgment, decree, order or sentence;

“Governor”, in relation to a State, includes any person for the time being administering the government of the State;

“State” means a State of the Commonwealth and includes a new State;

“the Commonwealth of Australia Constitution Act” means the Act of the Parliament of the United Kingdom known as the Commonwealth of Australia Constitution Act;

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

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

(2) The expression “a law made by that Parliament” in section 6 above and the expression “a law made by the Parliament” in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

(3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.

Australia Acts (Request) 1985

SECOND SCHEDULE

(Secs. 4 and 5)

An Act to request, and consent to, the enactment by the Parliament of the United Kingdom of an Act in the terms set out in the Schedule to this Act

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

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

Short title

1. This Act may be cited as the *Australia (Request and Consent) Act 1985*.

Commencement

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

Request and consent to United Kingdom legislation

3. It is hereby declared that the Parliament and Government of the Commonwealth, with the concurrence of all the States, request and consent to the enactment by the Parliament of the United Kingdom of an Act in the terms set out in the Schedule.

SCHEDULE

Section 3

An Act to give effect to a request by the Parliament and Government of the Commonwealth of Australia.

WHEREAS the Parliament and Government of the Commonwealth of Australia have, with the concurrence of the States of Australia, requested and consented to the enactment of an Act of the Parliament of the United Kingdom in the terms hereinafter set forth:

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

Termination of power of Parliament of United Kingdom to legislate for Australia

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

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued***Legislative powers of Parliaments of States**

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

(2) It is hereby further declared and enacted that the legislative powers of the Parliament of each State include all legislative powers that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the peace, order and good government of that State but nothing in this subsection confers on a State any capacity that the State did not have immediately before the commencement of this Act to engage in relations with countries outside Australia.

Termination of restrictions on legislative powers of Parliaments of States

3. (1) The Colonial Laws Validity Act 1865 shall not apply to any law made after the commencement of this Act by the Parliament of a State.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a State shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of the Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State.

Powers of State Parliaments in relation to merchant shipping

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

Commonwealth Constitution, Constitution Act and Statute of Westminster not affected

5. Sections 2 and 3 (2) above—

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

Manner and form of making certain State laws

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

Powers and functions of Her Majesty and Governors in respect of States

7. (1) Her Majesty's representative in each State shall be the Governor.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued*

(2) Subject to subsections (3) and (4) below, all powers and functions of Her Majesty in respect of a State are exercisable only by the Governor of the State.

(3) Subsection (2) above does not apply in relation to the power to appoint, and the power to terminate the appointment of, the Governor of a State.

(4) While Her Majesty is personally present in a State, Her Majesty is not precluded from exercising any of Her powers and functions in respect of the State that are the subject of subsection (2) above.

(5) The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State.

State laws not subject to disallowance or suspension of operation

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

State laws not subject to withholding of assent or reservation

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

(2) No law or instrument shall be of any force or effect in so far as it purports to require the reservation of any Bill for an Act of a State for the signification of Her Majesty's pleasure thereon.

Termination of responsibility of United Kingdom Government in relation to State matters

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

Termination of appeals to Her Majesty in Council

11. (1) Subject to subsection (4) below, no appeal to Her Majesty in Council lies or shall be brought, whether by leave or special leave of any court or of Her Majesty in Council or otherwise, and whether by virtue of any Act of the Parliament of the United Kingdom, the Royal Prerogative or otherwise, from or in respect of any decision of an Australian court.

(2) Subject to subsection (4) below—

- (a) the enactments specified in subsection (3) below and any orders, rules, regulations or other instruments made under, or for the purposes of, those enactments; and
- (b) any other provisions of Acts of the Parliament of the United Kingdom in force immediately before the commencement of this Act that make provision for or in relation to appeals to Her Majesty in Council from or in respect of decisions of courts, and any orders, rules, regulations or other instruments made under, or for the purposes of, any such provisions,

in so far as they are part of the law of the Commonwealth, of a State or of a Territory, are hereby repealed.

(3) The enactments referred to in subsection (2) (a) above are the following Acts of the Parliament of the United Kingdom or provisions of such Acts:

- The Australian Courts Act 1828, section 15
- The Judicial Committee Act 1833
- The Judicial Committee Act 1844
- The Australian Constitutions Act 1850, section 28
- The Colonial Courts of Admiralty Act 1890, section 6.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued*

(4) Nothing in the foregoing provisions of this section—

- (a) affects an appeal instituted before the commencement of this Act to Her Majesty in Council from or in respect of a decision of an Australian court; or
- (b) precludes the institution after that commencement of an appeal to Her Majesty in Council from or in respect of such a decision where the appeal is instituted—
 - (i) pursuant to leave granted by an Australian court on an application made before that commencement; or
 - (ii) pursuant to special leave granted by Her Majesty in Council on a petition presented before that commencement,

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

Amendment of Statute of Westminster

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

Amendment of Constitution Act of Queensland

13. (1) The Constitution Act 1867–1978 of the State of Queensland is in this section referred to as the Principal Act.

(2) Section 11A of the Principal Act is amended in subsection (3)—

- (a) by omitting from paragraph (a)—
 - (i) “and Signet”; and
 - (ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”; and
- (b) by omitting from paragraph (b)—
 - (i) “and Signet”; and
 - (ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Queensland”.

(3) Section 11B of the Principal Act is amended—

- (a) by omitting “Governor to conform to instructions” and substituting “Definition of Royal Sign Manual”;
- (b) by omitting subsection (1); and
- (c) by omitting from subsection (2)—
 - (i) “(2)”;
 - (ii) “this section and in”; and
 - (iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

(4) Section 14 of the Principal Act is amended in subsection (2) by omitting “, subject to his performing his duty prescribed by section 11B,”.

*Australia Acts (Request) 1985*SECOND SCHEDULE—*continued***Amendment of Constitution Act of Western Australia**

14. (1) The Constitution Act 1889 of the State of Western Australia is in this section referred to as the Principal Act.

(2) Section 50 of the Principal Act is amended in subsection (3)—

(a) by omitting from paragraph (a)—

(i) “and Signet”; and

(ii) “constituted under Letters Patent under the Great Seal of the United Kingdom”;

(b) by omitting from paragraph (b)—

(i) “and Signet”; and

(ii) “whenever and so long as the office of Governor is vacant or the Governor is incapable of discharging the duties of administration or has departed from Western Australia”; and

(c) by omitting from paragraph (c)—

(i) “under the Great Seal of the United Kingdom”; and

(ii) “during a temporary absence of the Governor for a short period from the seat of Government or from the State”.

(3) Section 51 of the Principal Act is amended—

(a) by omitting subsection (1); and

(b) by omitting from subsection (2)—

(i) “(2)”; and

(ii) “this section and in”; and

(iii) “and the expression ‘Signet’ means the seal commonly used for the sign manual of the Sovereign or the seal with which documents are sealed by the Secretary of State in the United Kingdom on behalf of the Sovereign”.

Method of repeal or amendment of this Act or Statute of Westminster

15. (1) This Act or the Statute of Westminster 1931, as amended and in force from time to time, in so far as it is part of the law of the Commonwealth, of a State or of a Territory, may be repealed or amended by an Act of the Parliament of the Commonwealth passed at the request or with the concurrence of the Parliaments of all the States and, subject to subsection (3) below, only in that manner.

(2) For the purposes of subsection (1) above, an Act of the Parliament of the Commonwealth that is repugnant to this Act or the Statute of Westminster 1931, as amended and in force from time to time, or to any provision of this Act or of that Statute as so amended and in force, shall, to the extent of the repugnancy, be deemed an Act to repeal or amend the Act, Statute or provision to which it is repugnant.

(3) Nothing in subsection (1) above limits or prevents the exercise by the Parliament of the Commonwealth of any powers that may be conferred upon that Parliament by any alteration to the Constitution of the Commonwealth made in accordance with section 128 of the Constitution of the Commonwealth after the commencement of this Act.

Interpretation

16. (1) In this Act—

“appeal” includes a petition of appeal, and a complaint in the nature of an appeal;

“appeal to Her Majesty in Council” includes any appeal to Her Majesty;

Australia Acts (Request) 1985

SECOND SCHEDULE—*continued*

“Australian court” means a court of a State or any other court of Australia or of a Territory other than the High Court of Australia;

“court” includes a judge, judicial officer or other person acting judicially;

“decision” includes determination, judgment, decree, order or sentence;

“Governor”, in relation to a State, includes any person for the time being administering the government of the State;

“State” means a State of the Commonwealth and includes a new State;

“Territory” means a territory referred to in section 122 of the Constitution of the Commonwealth;

“the Commonwealth” means the Commonwealth of Australia as established under the Commonwealth of Australia Constitution Act;

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

(2) The expression “a law made by that Parliament” in section 6 above and the expression “a law made by the Parliament” in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

(3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Citation and commencement

17. (1) This Act may be cited as the Australia Act 1986.

(2) This Act shall come into force on such day and at such time as the Secretary of State may by order made by statutory instrument appoint.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985







