

9

STATEMENT BY THE PRIME MINISTER

LETTERS PATENT RELATING TO THE OFFICE OF GOVERNOR-GENERAL.

IN OCTOBER 1900 THE QUEEN ISSUED LETTERS PATENT AND ROYAL INSTRUCTIONS RELATING TO THE OFFICE OF GOVERNOR-GENERAL IN ANTICIPATION OF THE CREATION OF THE COMMONWEALTH OF AUSTRALIA ON 1 JANUARY, 1901.

IN RECENT YEARS, THERE HAS BEEN A GROWING RECOGNITION THAT THE LETTERS PATENT NO LONGER MADE ADEQUATE PROVISION IN THE LIGHT OF MODERN AUSTRALIAN NEEDS. MORE IMPORTANTLY, THE THEN SOLICITOR-GENERAL, IN 1975, ADVISED THAT, HAVING REGARD TO THE EXPRESS TERMS OF THE CONSTITUTION RELATING TO THE GOVERNOR-GENERAL AND THE COURSE OF AUSTRALIA'S CONSTITUTIONAL DEVELOPMENT SINCE FEDERATION, NO PLACE REMAINED FOR THE INSTRUCTIONS TO THE GOVERNOR-GENERAL.

THE SOLICITOR-GENERAL'S ADVICE MADE IT PLAIN THAT THE ONLY PROPER COURSE WAS FOR THE INSTRUCTIONS TO BE REVOKED. WORK WAS THEREFORE BEGUN ON A REVISION OF THE LETTERS PATENT TO BRING THAT DOCUMENT INTO LINE WITH MODERN NEEDS, INCORPORATING ANY PROVISION FROM THE INSTRUCTIONS THAT WAS APPROPRIATE.

THE WORK WAS BEGUN UNDER THE PREVIOUS LABOR GOVERNMENT. IT CONTINUED ALMOST TO COMPLETION UNDER THE FRASER GOVERNMENT, AND HAS NOW BEEN BROUGHT TO FINALITY BY THIS GOVERNMENT. HER MAJESTY THE QUEEN OF AUSTRALIA, ACTING ON MY ADVICE AS HER PRIME MINISTER, MADE NEW LETTERS PATENT ON 21 AUGUST 1984 RELATING TO THE OFFICE OF GOVERNOR-GENERAL.

THE TITLE OF THE NEW LETTERS PATENT REFLECTS TWO THINGS. THE LETTERS PATENT ISSUED IN 1900 PURPORTED TO CONSTITUTE THE OFFICE

OF GOVERNOR-GENERAL AND COMMANDER-IN-CHIEF IN AND OVER THE COMMONWEALTH OF AUSTRALIA. HOWEVER, THE OFFICE OF GOVERNOR-GENERAL IS CONSTITUTED BY SECTION 2 OF THE CONSTITUTION AND DOES NOT NEED THE SUPPORT OF LETTERS PATENT FOR ITS EXISTENCE. ALSO, THE TITLE COMMANDER-IN-CHIEF IN AND OVER THE COMMONWEALTH IS NOT SUPPORTED BY THE CONSTITUTION.

WHILE SECTION 68 VESTS A FUNCTION OF COMMAND IN THE GOVERNOR-GENERAL IN RELATION TO THE NAVAL AND MILITARY FORCES OF THE COMMONWEALTH, THAT FUNCTION MAY ONLY BE EXERCISED ON ADVICE, AND IN ANY EVENT DOES NOT CREATE THE STATUS OF COMMANDER-IN-CHIEF IN AND OVER THE COMMONWEALTH. WHILE THE NEW STYLE AND TITLE OF THE GOVERNOR-GENERAL WILL THEREFORE NOT INCLUDE SUCH A REFERENCE, THE GOVERNOR-GENERAL WILL CONTINUE TO USE THE TITLE ADOPTED IN RECENT YEARS OF "COMMANDER-IN-CHIEF OF THE DEFENCE FORCE" FOR CEREMONIAL PURPOSES CONNECTED WITH THE ARMED FORCES.

THE NEW LETTERS PATENT EXTEND THE PROVISION FOR THE APPOINTMENT OF ADMINISTRATORS TO TAKE ACCOUNT OF THE REALITIES OF LIFE IN THE LATE 20TH CENTURY. THE FORMER LETTERS PATENT WERE SILENT AS TO THE PERSON OR PERSONS WHO MIGHT REQUEST THE HOLDER OF A DORMANT COMMISSION FROM THE QUEEN TO ASSUME THE ADMINISTRATION OF THE GOVERNMENT. THIS HAD TO BE GLEANED FROM THE DORMANT COMMISSIONS THEMSELVES. THE NEW LETTERS PATENT DO NOT ATTEMPT TO CHANGE THE CIRCUMSTANCES IN WHICH AN ADMINISTRATOR MAY ACT; THEY DO, HOWEVER, EXTEND THE CATEGORY OF PERSONS WHO MAY MAKE THE NECESSARY REQUEST. PREVIOUSLY, THAT FUNCTION WAS CONFINED BY THE DORMANT COMMISSIONS TO THE GOVERNOR-GENERAL AND THE PRIME MINISTER, BUT THE NEW DOCUMENT MAKES PROVISION FOR THE SITUATION WHERE NEITHER OF THEM IS AVAILABLE TO MAKE A REQUEST. IN ADDITION, IT WILL NO LONGER BE NECESSARY FOR AN ADMINISTRATOR, ON EVERY OCCASION ON

WHICH HE ASSUMES OFFICE, TO TAKE THE OATHS OF ALLEGIANCE AND OFFICE. THE OATHS WILL BE ADMINISTERED ONLY ON THE FIRST ASSUMPTION OF OFFICE, THUS GREATLY SIMPLIFYING THE ARRANGEMENTS REQUIRED WHEN THE SERVICES OF AN ADMINISTRATOR ARE NEEDED.

WHILE THE ROYAL INSTRUCTIONS OF 1900 REQUIRED THAT THE COMMISSIONS OF GOVERNORS-GENERAL SHOULD BE PUBLISHED, THEY DID NOT SPECIFY THE MEANS OF PUBLICATION. BY COMPARISON, THE NEW LETTERS PATENT REQUIRE THAT THE LETTERS PATENT THEMSELVES, THE COMMISSIONS OF GOVERNORS-GENERAL AND ADMINISTRATORS AND INSTRUMENTS OF APPOINTMENT OF DEPUTIES BE PUBLISHED IN THE COMMONWEALTH GAZETTE. THIS NEW PROVISION IS CONSISTENT WITH CURRENT ATTITUDES REGARDING ACCESS TO OFFICIAL INFORMATION, PARTICULARLY IN RELATION TO KEY CONSTITUTIONAL DOCUMENTS.

I BELIEVE HONOURABLE MEMBERS WILL AGREE THAT THE NEW LETTERS PATENT ACHIEVE THE OBJECTIVE OF MODERNISING THE ADMINISTRATIVE ARRANGEMENTS OF THE OFFICE OF GOVERNOR-GENERAL AND, AT THE SAME TIME, CLARIFY HIS EXCELLENCY'S POSITION UNDER THE CONSTITUTION. I WOULD EMPHASIZE THAT THE NEW LETTERS PATENT DO NOT IN ANY WAY AFFECT THE POSITION OF HER MAJESTY AS QUEEN OF AUSTRALIA OR DIMINISH IN ANY WAY THE CONSTITUTIONAL POWERS OF THE GOVERNOR-GENERAL.

FINALLY, I CAN ASSURE HONOURABLE MEMBERS AND THE CITIZENS OF AUSTRALIA THAT THE LETTERS PATENT RECENTLY ISSUED BY HER MAJESTY ON MY ADVICE DO NOT REPRESENT A STEP IN THE DIRECTION OF A REPUBLIC. THEY RECOGNIZE AUSTRALIA'S INDEPENDENT STATUS, AND THEY DO SO IN A MANNER ENTIRELY CONSISTENT WITH THE CONTINUING ROLE OF HER MAJESTY AS QUEEN OF AUSTRALIA.

ELIZABETH R



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

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

Greeting:

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

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

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

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

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

- I. We revoke the Letters Patent dated 29 October 1900, as amended, and Our Instructions to the Governor-General dated 29 October 1900, as amended.

II. We declare that—

- (a) the appointment of a person to the office of Governor-General shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia; and
- (b) before assuming office, a person appointed to be Governor-General shall take the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia.

III. We declare that—

- (a) the appointment of a person to administer the Government of the Commonwealth under section 4 of the Constitution of the Commonwealth shall be during Our pleasure by Commission under Our Sign Manual and the Great Seal of Australia;
- (b) the powers, functions and authorities of the Governor-General shall, subject to this Clause, vest in any person so appointed from time to time by Us to administer the Government of the Commonwealth only in the event of the absence out of Australia, or the death, incapacity or removal, of the Governor-General for the time being;
- (c) a person so appointed shall not assume the administration of the Government of the Commonwealth—
 - (i) in the event of the absence of the Governor-General out of Australia—except at the request of the Governor-General or the Prime Minister of the Commonwealth;
 - (ii) in the event of the absence of the Governor-General out of Australia and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth—except at the request of the Governor-General, the Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;
 - (iii) in the event of the death, incapacity or removal of the Governor-General—except at the request of the Prime Minister of the Commonwealth; or
 - (iv) in the event of the death, incapacity or removal of the Governor-General and of the death, incapacity or absence out of Australia of the Prime Minister of the Commonwealth—except at the request of the

Deputy Prime Minister or the next most senior Minister of State for the Commonwealth who is in Australia and available to make such a request;

- (d) a person so appointed shall not assume the administration of the Government of the Commonwealth unless he has taken on that occasion or has previously taken the Oath or Affirmation of Allegiance and the Oath or Affirmation of Office in the presence of the Chief Justice or another Justice of the High Court of Australia;
- (e) a person so appointed shall cease to exercise and perform the powers, functions and authorities of the Governor-General vested in him when a successor to the Governor-General has taken the prescribed oaths or affirmations and has entered upon the duties of his office, or the incapacity or absence out of Australia of the Governor-General for the time being has ceased, as the case may be; and
- (f) for the purposes of this clause, a reference to absence out of Australia is a reference to absence out of Australia in a geographical sense but does not include absence out of Australia for the purpose of visiting a Territory that is under the administration of the Commonwealth of Australia.

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

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

the Chief Judge or another Judge of the Federal Court of Australia or of the Supreme Court of a State or Territory of the Commonwealth.

V. For the purposes of these Letters Patent—

- (a) a reference to the Oath or Affirmation of Allegiance is a reference to the Oath or Affirmation in accordance with the form set out in the Schedule to the Constitution of the Commonwealth of Australia; and
- (b) a reference to the Oath or Affirmation of Office is a reference to an Oath or Affirmation swearing or affirming well and truly to serve Us, Our heirs and successors according to law in the particular office and to do right to all manner of people after the laws and usages of the Commonwealth of Australia, without fear or favour, affection or illwill.

VI. We direct that these Letters Patent, each Commission appointing a Governor-General or person to administer the Government of the Commonwealth of Australia and each instrument of appointment of a deputy of the Governor-General shall be published in the official gazette of the Commonwealth of Australia.

VII. We further direct that these Letters Patent shall take effect without affecting the efficacy of any Commission or appointment given or made before the date hereof or of anything done in pursuance of any such Commission or appointment, or of any oath or affirmation taken before that date for the purpose of any such Commission or appointment.

VIII. We reserve full power from time to time to revoke, alter or amend these Letters Patent as We think fit.

GIVEN at Our Court
at Balmoral
on 21 August 1984

L.S.

By Her Majesty's Command,

BOB HAWKE

Prime Minister