



*the pm
cc*

10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

5 April 1989

Dear Paul,

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

The Prime Minister was grateful for the Lord Chancellor's recent minute about the Commonwealth of Australia Constitution Act and the suggestion that we should try to meet the Australians' wish by offering to produce an Exemplification. She agrees that we should put this proposal informally to the Australians and seek their reactions, making clear that we cannot go any further with this.

I am copying this letter to the Private Secretaries to members of OD, Michael Saunders (Law Officers' Department) and Trevor Woolley (Cabinet Office).

*Yours sincerely,
C. D. Powell*

C. D. Powell

Paul Stockton, Esq.,
Lord Chancellor's Department.

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pm

CC PC ①

Prime Minister

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Prime Minister

Agree that we should offer Mr. Hawke an Exemplification, as

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proposed?

Yes not

CAD

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COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

1. At the OD Committee meeting on 19 July, Ministers considered a request from the Australians to have permanent custody of one of the two originals of the Commonwealth of Australia Constitution Act 1900, and agreed that neither could be permanently released without primary legislation.
2. In response to that decision our officials, in consultation with the Public Record Office (PRO) the House of Lords Record Office and, where necessary, the Palace have considered other ways in which the Australians' request could partly be met.
3. Following the OD meeting, you asked that the concept should be examined of "lodging" the PRO original with the Australians whilst it technically remained part of our national archives. When Mr Hawke last raised the matter in Canberra you explained the problems involved but said you would investigate further the "lodging" option. We have concluded that the option is not practicable. It raises the same difficulties as a permanent loan of the original document to Australia. If the original were to be lodged in Australia, it would take it out of our jurisdiction with the result that the Lord Chancellor would have no effective control over the facilities provided for its preservation and use, as required under the Public Records Act. A further refinement of the "lodging" option, that the original be deposited with the Australian High Commission in London, has been rejected because it would involve the same constraints and the Australians would be unlikely to be satisfied with having the document available for

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inspection by only a minority of Australians visiting London.

4. We have however identified an alternative option which might go some way towards meeting the Australians' wishes. This is to produce an Exemplification, that is, a copy of the original Act certified by Letters Patent under the Great Seal of the Realm. This would be a revival of a practice which was quite common for Acts of Parliament until the eighteenth century and was used for Chancery orders until at least the late nineteenth. To highlight the significance of the document, it is proposed that the Exemplification be authenticated by HM The Queen's Sign Manual.
5. There would be two constituent parts to the final document. The first would be Letters Patent, on vellum using the UK style and title, signed by The Queen and certifying that the copy of the Act annexed is a true copy. A copy of the proposed text of the Letters Patent, adapted from suitable precedents, is attached to this minute. The second part would be a photographic copy with the appearance of vellum of the Act in the Public Record Office, similar to the facsimile which has already been presented to Australia. The two constituent parts would then be brought together with cords in the Australian national colours and sealed with the Great Seal. The Australian government could be invited to suggest an artist to illuminate the Exemplification at the UK's expense. We believe that this would produce an attractive document carrying its own historical significance which would be worthy of permanent display. If it is agreed that the Australians should be offered an Exemplification and they accept, it would be presented this year either when Mr Hawke visits the UK in June or when I (Mackay) visit Australia in the summer.
6. The Australians have not raised the matter since the end of the Bicentenary. But that should not be taken as an indication that they have lost interest. The long summer holiday has intervened and the Australians almost certainly regard the ball as in our court, since you undertook to consider the question further when it was raised with you during your visit. Our High Commissioner believes that Mr Hawke is bound to revert to the issue in June unless it has been settled beforehand.

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7. It is difficult to judge how the Australians would react to an offer of exemplification. Throughout the Prime Ministerial correspondence, Mr Hawke has sought "permanent possession of the original document". It is the original which carries historical significance for Australia and it is unlikely that the Australians will be fully satisfied with anything less. Sir John Coles believes that even if they accept the offer, they will continue their efforts to secure one of the originals, either now or as the centenary of Federation and of the Constitution Act itself approaches in 2001. He nonetheless takes the view that it would be worth making the offer if we really cannot provide an original.
8. On balance we recommend that the Australians be offered an Exemplification of the Commonwealth of Australia Constitution Act. We are agreed that this is the only available option (beyond a straight rejection) which would preserve the Lord Chancellor's responsibility in respect of UK public records, and that the offer might at least earn us some good will. If you agree we will ask Sir John Coles to put the proposition informally to the Australians and seek their reactions. He would at the same time make it clear that no other solution will be put forward.
9. Copies go to members of OD, the Solicitor General and Sir Robin Butler.

M1C

Lord Chancellor's Department
FOREIGN AND COMMONWEALTH OFFICE

Draft of an Exemplification of the Australian Constitution Act

[Royal Sign Manual]

ELIZABETH THE SECOND by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories Queen Head of the Commonwealth Defender of the Faith

To all to whom these Presents shall come, GREETING:

WHEREAS by the desire and at the request of the Government of the Commonwealth of Australia We have inspected a certain Act passed in the Parliament held in the sixty-third and sixty-fourth years of the Reign of Our Royal Predecessor Queen Victoria and in the year of Our Lord One Thousand Nine Hundred and recorded in the Rolls of Our Chancery entitled AN ACT TO CONSTITUTE THE COMMONWEALTH OF AUSTRALIA

NOW KNOW YE THAT We have seen fit to exemplify the said Act of Parliament and Do by these Presents certify the Act hereunto annexed to be a true and perfect exemplification of the Act hereinbefore referred to and We have caused these Our Letters Patent to be made and have signed them AND WE WILL AND COMMAND Our well beloved and faithful Counsellor James Peter Hymers Lord Mackay of Clashfern Chancellor of Great Britain to seal these Our Letters with the Great Seal of Our Realm

In Witness whereof We have caused these Our Letters to be made Patent

Witness Ourselves at Westminster the day of
in the year of Our Reign

By The Queen Herself Signed with Her Own Hand

OULTON