1958.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

REPORT

FROM THE

JOINT COMMITTEE

ON

CONSTITUTIONAL REVIEW.

By Authority:
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REPORT FROM THE JOINT COMMITTEE ON CONSTITUTIONAL REVIEW.

I.—APPOINTMENT OF THE COMMITTEE.

1. The House of Representatives resolved, on 24th May, 1956, as follows:—

(1) That a Joint Committee be appointed to review such aspects of the working of the Constitution as the Committee considers it can most profitably consider, and to make recommendations for such amendments of the Constitution as the Committee thinks necessary in the light of experience.

(2) That the Prime Minister and the Leader of the Opposition in the House of Representatives be *ex officio* members of the Committee.

(3) That in addition, the following Members of the House of Representatives, namely, Mr. Calwell, Mr. Downer, Mr. Drummond, Mr. Hamilton, Mr. Joske, Mr. Pollard, Mr. Ward and Mr. Whitlam, be appointed to serve on the Committee.

(4) That the Senate be requested to appoint four Members of the Senate to serve on the Committee, and to appoint one of those Members to be the Chairman of the Committee.

(5) That the Chairman of the Committee may, from time to time, appoint another member of the Committee to be the Deputy Chairman of the Committee, and that the member so appointed act as Chairman of the Committee, at any time when the Chairman is not present at a meeting of the Committee.

(6) That, in the absence of both the Chairman and the Deputy Chairman from a meeting of the Committee, the members present may appoint one of their number to act as Chairman.

(7) That the Committee have power to appoint sub-committees consisting of four or more of its members, and to refer to any such sub-committee any matter which the Committee is empowered to examine.

(8) That the Committee or any sub-committee have power to send for persons, papers and records, to adjourn from place to place and to sit during any adjournment of the Parliament and during the sittings of either House of the Parliament.

(9) That the Committee have leave to report from time to time, and that any member of the Committee have power to add a protest or dissent to any report.

(10) That six members of the Committee constitute a quorum of the Committee and two members of a sub-committee constitute a quorum of the sub-committee.

(11) That, in matters of procedure, the Chairman, or person acting as Chairman, of the Committee, have a deliberative vote and, in the event of an equality of voting, have a casting vote, and that, in other matters, the Chairman, or person acting as Chairman, of the Committee have a deliberative vote only.

(12) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

(13) That a Message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.

2. On the same day a resolution was passed in the Senate in the following terms—

(1) That the Senate concurs in the Resolution transmitted to the Senate by Message No. 30 of the House of Representatives relating to the appointment of a Joint Committee to examine Problems of Constitutional Change.

(2) That Senators Kennelly, McKenna, Spicer and Wright be members of the Joint Committee.

(3) That Senator Spicer be the Chairman of the Joint Committee.

(4) That the Resolution, so far as it is inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

(5) That the foregoing resolutions be communicated to the House of Representatives by Message.

3. Shortly after the Committee commenced its deliberations, Senator Spicer was appointed Chief Judge of the newly formed Commonwealth Industrial Court. Some months later, on 24th October, 1956, the Attorney-General, Senator O'Sullivan, was, by resolution of the Senate, appointed to fill the vacancy on the Joint Committee in place of Senator Spicer. It was also resolved that Senator O'Sullivan be Chairman of the Committee.

4. The ending of the first session of the twenty-second Parliament made it necessary for the Committee to be reconstituted. This was done by resolutions of the Senate and the House of Representatives respectively in March, 1957. By amendment of the Senate, agreed to by the House of Representatives, a minor change was made to the resolution first transmitted to the Senate, which was in almost identical terms to the resolution agreed to by the Houses in the previous year, to enable the Committee to sit during any recess as well as an adjournment of the Parliament. Thus paragraph (8) of the resolution as originally passed by the House of Representatives was amended to read as follows—

(8) That the Committee or any sub-committee have power to send for persons, papers and records, to adjourn *from* place to place and to sit during any recess or adjournment of the Parliament and during the sittings of either House of the Parliament.

5. The Committee was again constituted in 1958, after the commencement of the third session of the Parliament, by resolutions of the two Houses similar in substance to those of the preceding year.

II.—PROCEEDINGS OF THE COMMITTEE.

6 The Committee decided at an early meeting, to assume for general purposes, the title of Constitution Review Committee.

7. The Committee also appointed the following officers:—

Mr. J. E. Richardson, Attorney-General's Department—Legal Secretary.

Mr. K. O. Bradshaw, Usher of the Black Rod—Clerk of the Committee.

8. The necessity for the appointment of a new Chairman, following the resignation of Senator Spicer from his place in the Senate, precluded the Committee from sitting as frequently as it would have hoped during the second half of 1956. The Committee sat on only eleven days in that year. In 1957 the Committee sat on 54 days and this year it sat on 29 days.

9. The Labour members of the Committee considered that full legislative powers should be vested in the Commonwealth Parliament with the duty and authority to create States possessing delegated constitutional powers, but since it was not possible to gain agreement to this effect the Committee was concerned to ascertain what measure of agreement was possible between members from both sides of the Parliament For this reason, the Committee considered that its work would be better advanced if its proceedings were not conducted in public. Moreover, as the Prime Minister indicated in his speech when first moving for the establishment of the Committee, it was not intended that the Committee should assume the character of a Royal Commission with many people giving evidence. The Committee did not issue an open invitation for people to attend and give their views but it invited, either on its own initiative or upon receipt of a request, individual persons and representatives of organizations with specific views or experience to give the benefit of their knowledge. In addition, the Committee invited the leaders of political parties in the various States to confer with it on matters of concern to the States. Leaders in most, but not all, of the States responded to the invitation. A list of the persons who appeared before the Committee is contained in Annexure "C" to this Report. To these persons the Committee expresses its appreciation and thanks. The Committee also wishes to acknowledge the many written submissions of views which it received from other persons and organizations.

III.—MODE OF ALTERING THE CONSTITUTION.

10. It is well to recall at this juncture that, for all practical purposes, the Constitution may only be altered in accordance with the procedure laid down in section 128 of the Constitution.

11 The amendment process (with certain exceptions not material here) first requires the Commonwealth Parliament to pass a proposed law for the alteration of the Constitution; the proposed law must then be submitted to the electors of the Commonwealth. Thus the first paragraph of section 128 provides—

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

12. The second paragraph of section 128 makes provision, in certain circumstances, for a proposed law altering the Constitution, which has been passed by one House but not the other, to be submitted to referendum.

13. It is further prescribed in the section that, subject to certain exceptions, if the proposed law is approved in a majority of States by a majority of electors who vote and also by a majority of the total number of electors who vote, the proposed law must be submitted for the Royal assent. Thus the fourth paragraph of section 128 provides—

> And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

14. Certain amendments have, by the fifth paragraph of the section, also to be approved by a majority of electors in each of the States affected thereby. Thus the fifth paragraph of the section reads—

> No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

15. Clearly, therefore, no constitutional alteration is possible unless action is first taken by the Commonwealth Parliament to frame a proposed law for submission to the electors.

16. The foregoing account of the constitutional position in connexion with the making of constitutional changes substantially explains the Parliament's decision to undertake a constitutional review by a Joint Committee comprising an equal number of members of the Government and Opposition Parties.

17. In answer to a question in the Senate arising from a reported statement of a State Premier advocating the addition of representatives of the States to the Committee, the then Attorney-General, Senator Spicer, explained the purpose of the Committee as follows:—

> Its purpose is to have a number of members of both Houses of this Parliament, and from both sides, devote themselves to the task of reviewing the Constitution with a view to seeing if there are means by which it might be usefully amended in certain respects on which both parties could agree From time to time over the years we have had agitations for the creation of a constitutional convention. They have never come to anything. In many ways I do not regard that as very surprising because the truth is that if we have anything like an elected constitutional convention we shall have merely a replica of this Parliament. What is overlooked these days is the fact that this Parliament is in truth a continuing convention of the people of Australia to consider amendments to the Constitution. The great difficulty for a number of members is to find time to devote to a consideration of the kind of amendment which the years have shown to be desirable. Therefore, it seems to me to be a very wise course to commence the process by creating a committee of this Parliament drawn from all sides of both chambers to concentrate on that task. If, as a result of our deliberations, we reach agreement on matters, upon which no doubt it will be necessary to be in agreement, then we shall have gone a long way indeed along the road to getting a desirable constitutional reform, because those decisions will have been reached by a committee comprising members of both Houses of the Parliament, and it must always be remembered that the consent of both Houses of the Parliament is a necessary step in the process of constitutional alterations which after being approved by this Parliament, must be approved by the people by way of referendum

18. The record of past attempts to obtain approval to proposed laws to alter the Constitution has shown how difficult the task can be. There have, in the history of the Commonwealth, been twenty-four proposed laws, some of which dealt with several subjects, submitted to the electors. Only in four instances have the requisite majorities been obtained in favour of the proposed constitutional change The first was in 1906 when a change was made in the date on which the terms of newly elected senators should begin; the second in 1910 concerned the taking over of State debts by the Commonwealth; the third in 1928 was to enable effect to be given to the Financial Agreement between the Commonwealth and the States; and the fourth in 1946 vested the Commonwealth Parliament with concurrent legislative power to provide certain types of social services. The opinion is widely held, and is shared by the Committee, that the main reason for the failure of many of the other proposals submitted to the people has been that they have usually been opposed by the opposition parties in the Federal Parliament and in their concomitant political organizations in the States. On different occasions the same parties have proposed and opposed somewhat similar proposals. Accordingly, it is important to obtain party agreement at the Federal level for any substantial constitutional changes.

19. The Committee's sole responsibility is to report to the Parliament, and any subsequent action with a view to obtaining constitutional reform, as for example, consultation with the States in appropriate cases, will rest with the Government, the Parliament itself and ultimately, of course, the people.

IV.—NATURE OF THE REVIEW.

20. The Committee concluded that it would not fully discharge its obligation to the Parliament if it confined its deliberations to isolated features of the Constitution and that the proper approach was to ascertain whether experience since the inception of the Commonwealth on 1st January, 1901, had demonstrated the need or desirability to make constitutional alterations in respect of any of the provisions contained in the eight Chapters of the Constitution.

21. At the same time, valuable though the lessons of the past often are, a review so limited would, in the opinion of the Committee, have failed to appreciate that the Constitution as an organic instrument of government in a democratic federalism must also serve the legitimate needs of future generations. It is not enough that the Constitution should be sufficient to serve the present-day requirements of the community within its ambit. It should be capable also of promoting or giving effect to the will of the people at any particular time in the foreseeable future as expressed by democratic processes.

22. That the Constitution should be the expression of the will of the people has always been true. Indeed, the preamble of the Commonwealth of Australia Constitution Act of the United Kingdom Parliament which constituted the Commonwealth of Australia begins with the words—

> Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

Later, in covering clause 3 of the Constitution, it is mentioned that Western Australia should also be united in the Federal Commonwealth "if Her Majesty is satisfied that the people of Western Australia have agreed thereto";

23. Accordingly, in reviewing the Constitution, the Committee has had regard both to past experience of the federal system of government and to probable future developments which may have a bearing on laws required to meet new needs of the community.

24. For example, in relation to the number of members of the House of Representatives, experience showed that the continued increase in population since Federation had brought about a situation shortly after the conclusion of the second World War in which many electorates were unwieldly. Steps were taken in 1948 to increase the number of members of the House of Representatives from 74 for the six States to 121. At the same time, if only for constitutional reasons, it was necessary to increase the number of senators from 36 to 60. At the present time, the average number of persons, as distinct from electors, for every Federal electoral division is about 80,000. If the average is to remain unchanged, on an estimated population of the six States of 12,000,000 in 1968, there would be an increase of about 28 in the total membership of the House of Representatives. A question then arises whether the Senate should also be increased in size according to the proportion at present specified in section 24 of the Constitution.

25. The means of transport provide another example. The several sections of the Constitution which deal with the management and control of State railways appear to the casual observer to accord to railways an exaggerated importance. The Convention Debates show, however, that railways were considered at the turn of the century to be major instruments of policy capable of aggressive use by one State to divert the flow of wealth from its natural economic outlets to the detriment of neighbouring States. But other factors have intervened since Federation to mitigate some of the harmful possibilities, which many of the Founders envisaged, of unrestricted competition between State railways. One of these factors has been the growth since Federation of civil aviation as an important transportation service. Yet the full impact of aviation on the life of the community has yet to be experienced, as for example, in promoting the development of thinly settled areas of Australia.

V.—SCOPE OF THE REPORT.

26. The Committee intended to furnish a report containing its recommendations and draft constitutional alterations to give effect to them, accompanied by a full exposition. Members have given as much time as possible to the very responsible task committed to them by the Parliament as to which the Committee's record of 89 sitting days since November, 1956, bears witness. Nevertheless, the early interruption of the Committee's work, caused by the appointment of Senator Spicer to judicial office, and the dissolution of the present Parliament which will occur somewhat before the Committee had anticipated, has regrettably precluded the Committee from attaining its objective. It has been unable to complete the writing of the Report.

27. The Committee decided, after most anxious consideration, that the proper course of action was to make a report to the Parliament setting out separately but summarily its recommendations and not including either explanatory draft constitutional amendments or supporting exposition. The recommendations in detail, the draft amendments and the considerations which have been responsible for the making of the recommendations set out in this Report will be furnished separately in a paper which should be available for tabling when the twenty-third Parliament is summoned next year. Should the Committee be reconstituted, the paper would be presented as a further report.

28. The ensuing paragraphs of this Report will reveal the extensive nature of the Committee's inquiries. The Committee wishes to point out, however, that because of insufficient time it was not able to conclude its deliberations on all aspects of the Constitution which it wished to consider fully.

VI.—COMMONWEALTH LEGISLATIVE MACHINERY.

29. The Committee considered it appropriate to commence its review with an examination of the sections of Chapter I. of the Constitution relating to such matters as the number of senators and members of the House of Representatives, relationships between the two Houses, terms of senators, rotation of senators and the duration of the House of Representatives, or in other words, those sections which provide for the legislative machinery of the Commonwealth of Australia.

30. In creating machinery for the exercise of Commonwealth legislative power, the Founders were able to draw upon the examples of established federal systems of government in the United States of America and Canada. Nevertheless, the bicameral parliamentary machinery written into the Constitution was, in many respects, fashioned against a background of indigenous colonial politics and conditions. Domestic considerations led the Founders to insert provisions in Chapter I. which were virtually without precedent in 1900, as for example, section 57 which provides machinery for the settlement of deadlocks between the two Houses. Again, in 1900 only a speculative forecast was possible as to how the Senate with its power to reject any bill and with its members directly chosen by the people of the States, would function.

31. The Commonwealth body politic has been profoundly affected since Federation by the emergence and entrenchment of nationally organized political parties with sufficient strength individually or in combination to form and maintain a government. In particular, the evolution of political parties has upset the speculations of many of the Founders as to how the Senate would function. The Senate has for many years been as susceptible to party political influences as the House of Representatives and proceedings in the Senate usually find party divisions corresponding to those in the House of Representatives. The history of deadlocks between the two Houses is, for example, one of conflicting policies of the national parties. The loyalty of senators to their parties has been largely responsible for the sublimation of the original dual conception of the Senate as a States House and a House of review. An important contributing factor has been the increase in the number and importance of national interests and issues, some of which are referred to hereunder in paragraphs 77 to 103 of this Report

32. At the same time, the party system and the growth in matters of national interest have inevitably given greater prominence to the House of Representatives. Since Federation, the Prime Minister has always been a member of the House of Representatives and members of that House have provided the bulk of the members of successive Ministries. And, as was contemplated by the Founders, most legislation originates in the House of Representatives upon introduction by a Minister. It is customary for the general body of electors to think of the party or coalition of parties returned with a majority at the general election of members of the House of Representatives as having a mandate to give effect to the policies advocated on the hustings.

33. The Committee considers that some constitutional changes are now necessary to facilitate the maintenance of continuous sound democratic government in the light of changed conditions since Federation. It is, for example, clearly required that the House of Representatives should be of sufficient size to provide adequate representation for the ever increasing number of electors and that, in the spirit of democracy, as a general rule equal weight should be accorded to the votes of electors. It can happen, moreover, that legislation introduced by a government in the House of Representatives and passed by that House is rejected by the Senate even though the government clearly possesses the confidence of the electors as expressed at the most recent elections. Party divisions in the Senate usually correspond to those in the House of Representatives. However, by reason of the principle of continuous existence of the Senate, under which the places of only one-half of the number of senators become vacant at the same time, and the operation of the system of proportional representation for the counting of votes for the election of senators, a government may find that it does not command a majority in the Senate. In such circumstances, the Committee considers that there should be some alternative to double dissolution as a means of resolving deadlocks which does not involve the disruption of Parliamentary government or necessarily require the electors to attend the polling booths.

34. The Committee's recommendations, on Commonwealth legislative machinery, are set out in paragraphs 35 to 69 below.

Number of Senators and Members of the House of Representatives.

35. Section 7 of the Constitution states that the Senate shall be composed of senators for each State directly chosen by the people of the State. The section also empowers the Parliament to make laws increasing or diminishing the number of senators for each State, provided that equal representation of the six original States is maintained and the number of senators for each of those States is never less than six.

36. Section 24 of the Constitution provides that the House of Representatives should be composed of members directly chosen by the people of the Commonwealth. The number of members chosen in the several States has to be in proportion to their respective populations subject to there being at least five members chosen in each original State. The section provides further that the number of members of that House should be, as nearly as practicable, twice the number of senators, a requirement which is commonly known as the two to one ratio.

37. Section 27 of the Constitution empowers the Parliament, subject to the Constitution, to make laws for increasing or diminishing the number of members of the House of Representatives. This section, and section 7 so far as it relates to the number of senators, have to be read subject to the application of the two to one ratio.

38. There are, at present, ten senators for each State making a total of 60 senators, and 122 members of the House of Representatives chosen in the various States. Plainly, as the Constitution now stands, an increase in the number of members of the House of Representatives to take account of a substantially increased population must be accompanied by an increase in the number of senators.

39. The Committee Recommends that the Constitution be amended to provide as follows:—

(1) The number of members of the House of Representatives should be no longer tied to being as nearly as practicable twice the number of senators.

(2) The Parliament should have power to determine the number of Senators, provided equal representation of the original States is maintained, but there should be not less than six nor more than ten senators for each original State.

(3) The Parliament should continue to have power to make laws for increasing or diminishing the number of members of the House of Representatives, and the number of members chosen in the several States should remain in proportion to population. However, the power of the Parliament to determine the number of members of the House of Representatives should be subject to the qualification that the number of members to be chosen in any State should be determined by dividing the population of the State by a figure determined by the Parliament which is the same for each State and is not less than 80,000, thus providing that there should be on average at least 80,000 people for every member. Where, upon a division, there is a remainder greater than one-half of the divisor, there should be an additional member to be chosen in the State concerned.

(4) The power of the Parliament referred to in sub-paragraph (3) above should be subject to the present constitutional provision that there should be no less than five members chosen in each original State.

DISAGREEMENTS BETWEEN THE SENATE AND THE HOUSE OF REPRESENTATIVES.

40. Section 57 of the Constitution deals with disagreements between the Senate and the House of Representatives in respect of any proposed laws passed by the House of Representatives. If the Senate rejects or fails to pass a proposed law or passes it with amendments which the House of Representatives will not accept and that House, after an interval of three months, in the same or the next session, again submits the proposed law to the Senate, either with or without any amendments made or suggested by the Senate, and the Senate again rejects or fails to pass the bill or makes amendments unacceptable to the House of Representatives, the Governor-General may dissolve both Houses simultaneously. Such a dissolution may not take place within six months before the date of expiry of the House of Representatives by effluxion of time.

41. The section provides further that if the House of Representatives, after the double dissolution and the ensuing general election, again passes and submits the proposed law whether with or without amendments or suggested amendments and the Senate still resists, the Governor-General may convene a joint sitting of the two Houses to deliberate and vote on the proposed law and any amendments made by one House which have been unacceptable to the other. If the proposed law, with or without amendments, is carried by an absolute majority of the total number of members of the two Houses at the joint sitting, it is taken to have been passed by both Houses and must be presented for the Royal assent.

42. Thus, section 57 prescribes the conditions which must be satisfied before a deadlock can exist. Once a disagreement exists within the meaning of the section, the only action that can be taken with a view to its resolution is a dissolution of the two Houses. It is not possible, for example, for the two Houses to proceed to a joint sitting without a double dissolution first occurring. The deadlock may then be finally determined by a joint sitting of the two Houses if the disagreement still persists after the double dissolution. As indicated, section 57 applies to any bill passed by the House of Representatives whether it be a bill within the competence of the Senate to amend or a bill which the Senate may not amend because it imposes taxation or appropriates revenue or moneys for the ordinary annual services of the Government.

43. THE COMMITTEE RECOMMENDS that the Constitution be amended by the repeal of section 57 and its replacement by a new section which will provide, in substance, for the following:—

(1) A deadlock should be deemed to arise in respect of a proposed law imposing taxation or appropriating revenue or moneys for the ordinary annual services of the Government if, during any session of the Parliament, the Senate has not, at the expiration of a period of 30 days after receipt of the measure from the House of Representatives, passed the proposed law or the proposed law with any amendments it has requested and which the House of Representatives has accepted. It should not be necessary for that House to have to pass the bill for a second time before a deadlock can arise.

(2) In respect of other proposed laws, the House of Representatives should be required, as at present, to pass for the second time a bill which the Senate has resisted and the Senate should be given a further opportunity to consider the measure before a deadlock arises. Conditions of deadlock should be deemed to arise if—

(*a*) during a session, the Senate has not, at the expiration of 90 days after receiving the proposed law from the House of Representatives for the first time, passed the proposed law as transmitted to it or with amendments in respect of which the House of Representatives has expressed its concurrence;

(*b*) the House of Representatives again passes the proposed law in the same or the next session either with or without any amendments made by the Senate; and

(*c*) after receiving the proposed law for the second time, the Senate either again rejects it or has not, at the expiration of 30 days during the session, passed either the proposed law or the proposed law with amendments which the House of Representatives has found acceptable.

In effect, therefore, the Senate must be allowed at least 90 days to make up its mind on a bill which it has received for the first time from the House of Representatives. That period of time must elapse before the House of Representatives again passes the bill even though the Senate should reject the bill within the prescribed time. Upon the submission of the disputed measure to the Senate for the second time, the conditions of deadlock arise immediately upon rejection of the measure, or otherwise at the expiration of a period of 30 days.

(3) When a deadlock arises, the Governor-General, acting on the advice of the Federal Executive Council, should have power to dissolve both Houses except that a dissolution should not be possible within six months of the expiry of the House of Representatives by effluxion of time.

(4) As an alternative to double dissolution, however, the Governor-General in Council should be empowered to convene a joint sitting of the members of the two Houses to deliberate and vote upon the proposed law in dispute together with any amendments which have been made by one House but not agreed to by the other. A disputed bill may only be presented for the Royal assent if at the joint sitting it is approved by an absolute majority of the total number of members of the two Houses and by at least one-half of the total number of members of the two Houses chosen for and in a State in at least one-half of the States.

(5) If a deadlock is not resolved at a joint sitting, or if a bill passed by the House of Representatives is rejected at a joint sitting, the Governor-General in Council should also be authorized to dissolve both Houses provided that, as at present, the double dissolution does not occur within six months of the expiry of the House of Representatives by effluxion of time.

(6) As a further alternative to double dissolution, either without a joint sitting being held or where disagreement persists after a joint sitting, if the House of Representatives should be dissolved within twelve months of the deadlock first arising, for the purposes of the proposed section the dissolution of the House of Representatives should be treated as a stage in the settlement of deadlocks in similar manner to a double dissolution, as to which *see* sub-paragraph (7) hereunder.

(7) If after a double dissolution, or if after a general election of members of the House of Representatives has occurred as contemplated in sub-paragraph (6) above, the House of Representatives again passes the proposed law within six months of the commencement of the first session of the new Parliament and the Senate either rejects the law or otherwise has not, at the expiration of a period of 30 days after the transmission of the bill to it, passed the law or the law with any amendments acceptable to the House of Representatives, the Governor-General in Council may convene a joint sitting. If the proposed law together with any of the amendments in dispute is affirmed by an absolute majority of the total number of members of the two Houses, then the bill should be deemed to have been duly passed and must be submitted for the Royal assent.

TERMS OF SENATORS.

44. Section 7 of the Constitution provides, among other things, that senators shall be chosen for a term of six years.

45. Section 13 prescribes the date of commencement of senators' terms. The term of service of a senator begins on the first day of July following the date of his election with the exception that after a dissolution of the Senate, which may occur under section 57 of the Constitution, the term of a senator is taken to begin on the first day of July preceding his election.

46. All senators do not retire at the same time. Sections 13 and 14 together provide for the expiry of terms at two different times.

47. The allotment of fixed terms for senators is in contrast to the position of members of the House of Representatives. Under section 28 of the Constitution, the House of Representatives may continue for three years from its first meeting and no longer and it may be sooner dissolved by the Governor-General.

48. As a result of the operation of the constitutional provisions above-mentioned in paragraphs 44 to 46, it is always possible for general elections for members of the House of Representatives to take place without being accompanied by an election for senators. The Committee considers that elections for members of the House of Representatives and one-half of the number of senators for a State should be held at the same time. Simultaneous elections for members of the two Houses would also enhance the effectiveness of a dissolution of the House of Representatives as a stage in the settlement of deadlocks between the two Houses in accordance with the Committee's recommendations contained in paragraph 43 above.

49. THE COMMITTEE RECOMMENDS that the Constitution be altered to omit the provision now made for senators to be chosen for terms of six years and to provide instead that senators should hold their places until the expiry or dissolution of the second House of Representatives after their election, unless the Senate should be earlier dissolved under the provisions of section 57 of the Constitution.

ROTATION OF SENATORS.

50. As mentioned in paragraph 44, the Constitution provides that senators should have six-year terms. Consistently with the principle of continuous existence of the Senate, the Constitution also provides, as indicated in paragraph 46, that only one-half of the senators for each State, or as near to one-half as practicable, should retire every three years. This is known as the rotation of senators. Section 13 entrusts to the Senate the function of arranging for the rotation of senators.

51. Section 14 of the Constitution makes further provision for the rotation of senators when the number of senators for a State is increased or diminished. In this instance, the function is vested in the Parliament as a whole.

52. Section 13 does not restrict the Senate as to the means which it may adopt in dividing senators into two classes, first, those whose places will become vacant after three years and, second, those whose places will become vacant after six years from the beginning of their terms of service.

53. Earlier in this Report, the Committee recommended the re-writing of section 57 but it is still possible under the Committee's proposal for a double dissolution to take place. Accordingly, the provisions of section 13 so far as they deal with the rotation of senators after a double dissolution remain operative even though section 57 should be amended as recommended.

54. On the occasions on which section 13 has been applied, terms have been allotted to senators for each State according to the degree of their success at the elections. The Committee considers that constitutional effect should be given to past practice.

55. THE COMMITTEE RECOMMENDS that section 13 of the Constitution be amended to provide that—

(1) the Senate should, when first meeting after a dissolution, divide the senators chosen for each State into two classes in such a way that the terms allotted to the senators chosen for each State accord with their relative order of success at the elections resulting from the dissolution; and

(2) the Parliament should have power to make laws providing for the manner in which the relative success of senators at an election is to be ascertained for the purposes of the section.

56. It is doubtful, as section 13 now reads, whether a person who has been validly chosen as a senator for a State at the elections taking place after a double dissolution, but who later dies, resigns or becomes disqualified from sitting as a senator before the division of senators into classes, can be included in the division and thus a term allotted to the place which the senator would have held.

57. THE COMMITTEE RECOMMENDS that the name of any senator chosen for a State who has died, resigned or been disqualified before the division of senators into classes, should be included among the names of the senators to be divided into classes and an allotment made to one of the two classes of senators in accordance with the requirements of section 13 as recommended to be altered.

CASUAL VACANCIES IN THE SENATE.

58. Section 15 of the Constitution deals with the filling of casual vacancies in the Senate. It provides, in the first instance, that if a vacancy occurs in the place of a senator before the expiration of his term, the Parliament of the State for which the Senator was elected should appoint a person to fill the vacancy. Provision is made if the Houses of Parliament of the State are not in session, for the Governor in Council of the State to make an appointment to hold the place in the meantime. A person appointed by a State to fill a casual vacancy does not necessarily hold the place for the unexpired portion of the vacating senator's term. If, before the expiration of the term, a general election of members of the House of Representatives or an election of senators for the State occurs, whichever is the earlier, a successor must be chosen at the election to hold the place until the expiration of the term.

59. The Committee desired to recommend a constitutional amendment whereby, if the senator for a State whose place has become vacant was a member of a political party, the Parliament of the State or the Governor of the State should be required, in filling the vacancy, to choose a person who was a member of the same political party as the vacating senator. The Committee was, however, unable to find a form of amendment which would satisfactorily express the objective it had in mind

60. The Committee wishes to record, however, that although its members belong to different political parties, all were strongly of the view that the principle referred to in the last preceding paragraph should be observed without exception.

61. It is open to doubt whether a person who was validly chosen as a senator for a State and who dies, resigns or becomes constitutionally incapable of sitting as a senator before the commencement of his term of service, has a place which becomes vacant under section 15. If the situation cannot be dealt with under section 15, a fresh election is necessary.

62. THE COMMITTEE RECOMMENDS that the Constitution be amended to provide that, in the circumstances mentioned in paragraph 61, a place should become vacant within the meaning of section 15.

DIVISION OF STATES INTO ELECTORAL DIVISIONS.

63. The Parliament may, under section 29 of the Constitution, make laws for determining the divisions in each State for which members of the House of Representatives may be chosen and the number of members to be chosen for each division. A division may not be formed out of parts of different States.

64. Although section 24 of the Constitution requires the number of members to be chosen in the several States to be in proportion to the population of the States, once the number of members of a State is ascertained in accordance with the section, the Parliament may, under section 29, divide the State into electoral divisions of its own choosing. There could, for example, be twice the number of electors in one electoral division in a State compared with another division in the same State or there could be one member for one division but more than one member for another division.

65. The Committee considers that a constitutional alteration should be made which would ensure that all electorates are single member electorates and that the number of electors in each division is, as nearly as practicable, uniform.

66. THE COMMITTEE RECOMMENDS that the Constitution be amended to provide that—

(1) the Parliament may make laws dividing each State into electoral divisions equal in number to the number of members to be chosen in the State with one member to be chosen for each division;

(2) upon the division of a State into electoral divisions, the number of electors in a division in a State should not exceed by more than one-tenth, or fall short of by more than one-tenth, a quota ascertained by dividing the total number of electors in the State by the number of members to be chosen in that State;

(3) the division of a State may be reviewed at any time but the division of every State into electoral divisions should be reviewed at least once in every ten years and where, upon review, the number of electors in a division in a State is found not to be within one-tenth of the quota, there should be a further division of that State into divisions;

(4) for the purposes of the division of each State into electoral divisions and any subsequent division of a State into divisions, including the required decennial review, the Governor-General in Council should be required to constitute an Electoral Commission for each State to make recommendations to the Parliament in connexion with the division of the State into divisions;

(5) the division at any time of a State into electoral divisions should not take place until the Electoral Commission constituted for the State has reported to the Parliament; and

(6) each Electoral Commission should consist of not less than three members and all Electoral Commissions in existence at the one time should have the same number of members.

RECKONING OF POPULATION.

67. Section 24 requires generally that the number of members of the House of Representatives chosen in the several States shall be in proportion to the respective numbers of their people.

68. Section 127 of the Constitution provides that, in reckoning the numbers of the people of the Commonwealth or of a State or other part of the Commonwealth, aboriginal natives shall not be counted. The main effect of the section is to preclude the aboriginal population of a State from being taken into account when determining the number of members of the House of Representatives to be chosen in the State.

69. THE COMMITTEE RECOMMENDS the repeal of section 127 of the Constitution.

VII.—CONCURRENT LEGISLATIVE POWERS.

70. It seems to be a widespread misconception that the grant of an additional legislative power to the Commonwealth Parliament necessarily involves a withdrawal of power from the States. Most of the legislative powers vested in the Commonwealth Parliament are known as concurrent powers, that is to say, they do not belong exclusively to that Parliament but are also retained by the States. Where the powers are concurrent, section 109 of the Constitution accords paramountcy to Commonwealth laws over State laws. This means that State laws may be displaced in so far as they are inconsistent with valid Commonwealth laws. Nevertheless, States may, and in fact continue to, legislate in respect of subjects upon which the Commonwealth Parliament may also pass laws.

71. The Committee considers it most important, moreover, for it to be more commonly understood and appreciated that the laws which the Commonwealth Parliament passes under any head of its legislative powers must, in the long run, accord with the people's wishes. The Federal Parliament is democratically elected to express the will of the people and general elections for members of the House of Representatives must be held at least every three years. The Committee considers that criticism of increased legislative powers for the central Parliament has often failed to do justice to the explicit pronouncements in the Constitution itself that the members of each House of the Federal Parliament must be directly chosen by the people. In proper perspective the question to be determined is whether the people wish to have their will expressed through the national Parliament or through the Parliaments of the respective States.

72. There is also a tendency on the part of some to assert that the Commonwealth Parliament possesses more legal power than it has. In the Committee's opinion, this is mainly because the responsibilities of the Commonwealth frequently lead to action in matters which arouse national interest.

73. From the commencement of the Convention Debates, the Founders assumed that the sharing of power between the Commonwealth and the States should be effected by the States continuing to have general legislative powers and allotting to the new Commonwealth such specific legislative powers as could be generally agreed upon by the representatives of the separate Colonies. The powers given to the fledgling Federal Parliament were the expression both of conservatism and legalism consistent with the preservation of independent interests of the States.

74. In the course of the first half century of Federation there has been a decisive shift in the balance struck in 1900 between Federal and State interests, caused by modern developments that have affected the Commonwealth as a whole rather than the States individually.

75. The division of legislative power between the Commonwealth and the States has meant that matters affecting more than one State which are beyond the reach of Commonwealth legislative power and which, in the public interest, require regulation, will be outside the exercise of effective governmental authority unless the States voluntarily agree between themselves on the formation and maintenance of common policy. Experience has shown that it is frequently difficult for six independent States to reach agreement and that there are, in practice, vacuums of legal power.

76. In the opinion of the Committee, the growth in number and importance of matters affecting the people of the Commonwealth as a whole requires the vesting of additional concurrent legislative powers in the national Parliament. Some of the more significant aspects of developing nationhood to which the Committee has had regard are shortly described in paragraphs 77 to 103 below.

GROWTH IN POPULATION.

77. When the first Commonwealth census was taken in 1901, it showed the population of Australia to be less than 4,000,000. The population at the taking of the census in 1933 was 6,630,000 and at the last census in 1954 it had reached 8,987,000. At the end of 1957 there were 9,747,471 people or more than two and one-half times the number at 1901. It is safe to assume that future growth, even from natural increase alone, will continue to be substantial.

78. A notable feature of the expanding population has been the net migration intake in the post-war years. The increase in population was of the order of 2,000,000 for the ten years ended December, 1957 This comprised a natural increase of approximately 1,180,000 and a net gain of some 940,000 new settlers under Australia's migrant programme.

79. The community's acceptance of the intake of large numbers of people from old-established countries indicates its recognition of the urgent need for progressive economic development and increased defensive strength. The rapid increase in population, however, brings with it immediate and large demands for housing, public works and services and other facilities of a capital nature. Increasing population, therefore, although essential to development, accentuates the growing pains of a young country in search of adequate capital to sustain the desired rate of national development.

80. Since the last war, about 1,000,000 persons have entered Australia as migrants, making up about one-tenth of the total population. These persons have no traditional ties to any particular State as a separate entity in the Federation.

DEFENCE.

81. The need for a single system of defence was one factor which led to the foundation of the Commonwealth. However, the concept of total war was then unknown and international conflicts were confined to limited areas and to the armed forces of the contending parties Two world wars have since demonstrated that industrial capacity will provide the sinews of any future wars and it is clear that the health of the national economy in peacetime is a vital factor in building up and maintaining adequate defences against aggression.

NATIONAL DEVELOPMENT.

82. The rate and balance of national development affects every Australian. It calls for concerted effort on the part of all and the best utilization of the nation's resources and may be said to be the composite responsibility of the community, and the Governments, Federal and State.

83. State Governments have expended substantial sums on the provision of capital works and services and the level of activity is far greater than in the earlier days of Federation and far greater, moreover, in the years since the second World War than before. Most of the capital works and services undertaken by the States have been financed by loan funds. Expenditure by the States out of loan moneys on works and services (excluding local and semi-governmental works and services) was £9,000,000 in the first full financial year of Federation. In 1921 22 the amount so expended increased to £34,000,000 and in 1951–52 it was £198,000,000. In the five financial years ended 1956 57, total net loan expenditure on State capital works and services was £803,000,000. In some years State expenditure would have been higher except for the inability of the loan market to meet all requirements and, in recent years, the Commonwealth Government, by subscribing to special loans, has made possible the completion of State works and housing programmes far larger than could have been financed from ordinary loan raisings.

84. The Commonwealth has also been committed over recent years to heavy programmes of a capital nature. Commonwealth expenditure on capital works and services was £42,000 in 1901–02 Twenty years later it was £9,000,000 and in 1951 52 it was £155,000,000 Total expenditure over the past five financial years has been £693,000,000, all of which has come from the Consolidated Revenue Fund, compared with a total of £35,000,000 for the last five pre-war years ended in 1938 39

85. The furtherance of national development by means of private investment in its various forms is apparent in every State of the Commonwealth and the application of private capital provides striking evidence of confidence in the future of this country It is obvious, however, that the extent of private investment on projects, which may be described as developmental, depends largely on their attractiveness compared with forms of investment which may fulfil little or no developmental purpose.

SCIENTIFIC PROGRESS.

86. The present century has so far been an age of outstanding scientific achievements affecting the daily life of the people of the Commonwealth. At Federation, knowledge of electro-magnetism had enabled telegraphic and telephonic services to be established. Further progress in the use of electro-magnetic waves has already made possible radio and television. Australia profits greatly from research into problems of the primary and secondary industries carried on by the States and the Commonwealth, as for example, pasture improvement, pest control and the extraction of valuable minerals from their ores. Medical research has had beneficial results for the community, for example, research into tuberculosis has made a substantial contribution towards eradicating the disease.

87. The limits of scientific development are indeterminable and the process is continuous. Practical benefits should be derived in the foreseeable future, for instance, from current research on nuclear energy and weather modification. If Australia is to maintain a satisfactory rate of development and its place in the community of nations, there will have to be further expansion of research programmes.

TRANSPORT AND COMMUNICATION.

88. The dispersal of the population and resources of Australia over an area of 3,000,000 square miles creates acute transport problems. The paucity of communications between large areas of Australia at Federation suggested that some types of legislative power could not be appropriately vested in the Commonwealth Parliament.

89. In 1900, railways and shipping were the prime means of transportation as they continued to be for many years afterwards. Other means of transport have become important since Federation. Technical progress in the construction of roads and the design of motor vehicles has enabled a considerable volume of trade and commerce between the States to be carried on by road. The provision of roads has involved the States and the Commonwealth in heavy financial commitments. Carriage by air has also been developed and there is now an umbrella of commercial air services extending over the length and breadth of Australia. Air transport, besides being a major means of communication

between the States, is an instrument of geographical development, as for example, in outback parts of the continent. The provision of facilities such as aerodromes and navigational aids is, however, costly and the burden of providing them has fallen almost entirely on the Commonwealth.

90. In relation to navigation, ships may use the same waterways irrespective of whether they are engaged in interstate or intrastate trade. Similarly, aircraft engaged in interstate and intrastate flights usually make use of the same facilities and airspace. This would suggest that there are practical reasons why the legal power over these forms of transportation should not be divided on the basis of the nature of a voyage or flight but should be vested in one Government.

Emergence of a National Economy.

91. Federation brought together six colonies, each with its own distinctive economy—New South Wales, for instance, was an ardent advocate of free trade but Victoria was a protectionist stronghold.

92. Progressive national development and defence necessities, already referred to have, however, been strong integrating forces. The denial in the Constitution of legal power to the States to impose customs and excise duties and the trend towards greater uniformity in industrial conditions in Australia, in which Commonwealth industrial machinery has played an important part, have also been major contributing factors in this integration.

93. The economy's assumption of a national character may be illustrated in various ways. A substantial increase has occurred, for example, in the volume of trade between Australia and other countries. In the first financial year of Federation, export earnings were valued at £50,000,000. In 1921–22 they were £128,000,000 and in the five financial years from 1934–35 to 1938–39 averaged £142,000,000 annually. In the financial year ended June, 1952 they had attained the value of £675,000,000 and in 1956–57 the total value of exports from Australia was £993,000,000. Increases, particularly since the end of the war in 1945, are substantial even after allowing for the decline in the value of money. Wool exports, for instance, which were the equivalent of 529,000,000 lb. of greasy wool in 1901–02, had risen to 1,036,000,000 lb. 50 years later and 1,408,000,000 lb. in 1956–57. At corresponding dates, wheat exports were 543,000 tons, 1,685,000 tons and 2,440,000 tons, respectively. Imports increased in value from £38,000,000 in the first Federal financial year and an annual average of £107,000,000 for the five years ended 30th June, 1939, to a record figure of £1,053,000,000 in 1951–52. Total value of imports for the financial year ended June, 1957, was £719,000,000. External trade has been predominantly a Commonwealth responsibility.

94. Experience in recent years has made it apparent that there is a close connexion between Australia's balance of payments and general economic conditions in the community. For example, internal inflation quickly leads to a rising demand for imports.

95. The bulk of Australia's export earnings continues to be derived from the export of primary products. In 1901–02 primary products constituted about one-half the value of total exports. Fifty years later, in 1951–52, exports of wool, wheat, flour, meat and butter alone constituted £452,000,000 out of a total value of exports of £675,000,000. In 1956–57 the exports of these products were worth about £635,000,000 or nearly two-thirds of the total value of exports from Australia. Competition in the world markets among countries exporting primary products is intense and the greatest efficiency is required in production and marketing methods to preserve the welfare of the primary industries and maintain a satisfactory volume of export earnings. Without doubt, it is a matter of national importance that Australia should not be priced out of world markets.

96. Australia's trade and payments relationships with other countries represent, of course, only one example of the connexion between one segment and the whole of the Australian economy. Putting the matter in more general terms, it is undoubtedly true that the integration of the Australian economy is such that there is an inter-dependence not only as between the many and various economic activities which go to make up the Australian economy but also as between these activities and the state of the economy as a whole.

Changing Pattern of the Economy.

97. The national economy in the process of expansion has also become more sophisticated. The prosperity of the Colonies until Federation depended mainly on primary production and mineral wealth. But there has, during the present century, been a remarkable transformation from an economy, predominantly rural, to one which to a great extent is industrial. This has occurred even though primary production has increased over the same period and primary products remain the most important commodities of export.

98. In 1921–22 the net value of primary production, including minerals, was £232,000,000 compared with factory production valued at £122,000,000. By 1938–39 the net value of primary production was £185,000,000 but the net value of factory production had risen in the meantime to £203,000,000. Since the last war, the growth in factory production has increased rapidly and by 1956–57 value of production stood at £1,622,000,000 compared with £1,232,000,000 for primary production.

99. If the value of materials and fuel used in production is included, output of factories was valued at £29,000,000 in 1901 and primary production was worth £86,000,000. In 1921–22 factory output was £320,000,000 compared with primary production valued at £226,000,000. By 1938–39 factory output had increased to £500,000,000 and primary production in the same year was £255,000,000. In 1956–57 the gross value of factory output was £4,021,000,000 compared with a gross value of £1,526,000,000 for primary production.

100. Increasing industrialization has brought with it an increase in the number of persons employed in factories from an average of 379,000 in 1922 to 1,063,000 last year This has been accompanied by a growth in the membership and strength of industrial organizations of employers and employees and the use of governmental industrial machinery for the determination of conditions of employment. In 1954 about 90 per cent. of the total number of employees in industry in Australia were subject to State or Commonwealth awards and determinations.

101. The Commonwealth's express industrial power was narrowly conceived and takes the form of a power to make laws for the prevention and settlement, by the means of conciliation and arbitration, of industrial disputes extending beyond the limits of any one State. In spite of the limitations of the power, the number of employees in Australia whose conditions of employment are regulated by Commonwealth awards and determinations is not far short of the number whose conditions are determined by State industrial machinery Commonwealth awards and determinations have, moreover, had material effects on the work of State authorities and upon the conditions of employment of persons not covered by awards at all.

102. It was commented earlier that progressive industrialization and defence were inseparable. Countries with a self-contained capacity to manufacture nuclear energy have a greatly increased defence potential. It is now apparent that nuclear energy will also have important peace-time uses such as in the generation of power for industrial purposes. Nuclear energy provides a striking illustration of the inter-relation of industrial virility and the safety of the Commonwealth.

103. Another example of the changing economy is the emergence of specialized financial institutions which have supplemented the traditional field occupied by the banking system Hire purchase finance companies, for example, have become great repositories of private moneys. They accept deposits and offer unsecured and secured short-term investments to the public at attractive rates of interest. Their activities are also capable of extensively influencing the general level of expenditure on goods produced by Australian industries. Furthermore, there have been developments in the domestic capital market with issuing houses, stronger underwriters and stock exchanges making possible the wider participation of the public in the direct provision of capital.

104. There are other matters indicative of a maturing Commonwealth. Thus, the independent international status which Australia has acquired since Federation, formally recognized in the Statute of Westminster, and the extensive activities of the Commonwealth in connexion with the provision of social services would be matters worthy of inclusion in a comprehensive account of post-Federation trends. But in the present compendious survey the Committee has confined itself to the more important national developments underlying the recommendations which follow later in this Report.

105. In reviewing Commonwealth power, the Committee has also derived assistance from the knowledge that has accumulated over more than half a century of judicial interpretation of the Constitution. The penetrating scrutiny of the courts, especially the High Court of Australia, has helped to clarify the scope and limitations of many of the Parliament's legislative powers The decided cases have also supplied illustrations of the difficulties which may arise from specific limitations of power Thus, the Parliament's authority to make laws for navigation and shipping was held not to extend to intrastate shipping operations. Later cases served to emphasize the difficulty of determining in particular situations, for instance, in collisions between ships, whether Commonwealth or State marine law applied Again, the High Court has held that the Parliament's power to make laws with respect to trading or financial corporations formed within the limits of the Commonwealth does not confer power to deal with the creation of corporations or to legislate generally for the control of restrictive trade practices of corporations. Judicial interpretation of the frequently litigated Federal conciliation and arbitration power has shown that, in spite of the adoption by the Court of a flexible and progressive judicial approach to the meaning of the power, excessive legalism is the inevitable result of the technical form in which the power is expressed.

106. The Committee's recommendations as to the additional concurrent legislative powers which it considers should be vested in the Commonwealth Parliament are set out in paragraphs 107 to 157 below.

Navigation and Shipping.

107. Section 51 (i.) of the Constitution empowers the Parliament to make laws with respect to trade and commerce with other countries and among the States. Section 98 declares that the power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping.

108. The High Court has held that the power conferred by section 98 is subject to the limitations inherent in section 51 (i.) which means that the effect of the two provisions is to endow the Parliament not with a substantive power to deal with navigation and shipping at large, but only with power to deal with navigation and shipping insofar as they are relevant to interstate and foreign trade and commerce

109. *Section 51 (vii.) of the Constitution authorizes the Parliament to make laws with respect to* lighthouses, lightships, beacons and buoys. It is also possible for intrastate navigation and shipping to be subject to some Federal regulation by the exercise of other constitutional powers vested in the Parliament. However, it is still true to say that intrastate navigation and shipping in general is beyond the reach of the Parliament.

110. THE COMMITTEE RECOMMENDS that the Constitution should be amended to vest the Commonwealth Parliament with an express power to make laws with respect to navigation and shipping.

AVIATION.

111. In the absence of an express power over aviation, the Commonwealth has had to rely principally on the power of the Parliament under section 51 (i.) of the Constitution to make laws with respect to interstate and overseas trade and commerce to provide necessary legal support for many of its extensive activities in this field of transport and communication. The Commonwealth is precluded by the limitations of the trade and commerce power from legislating with respect to intrastate aviation.

112. THE COMMITTEE RECOMMENDS that the Constitution should be amended to confer on the Commonwealth Parliament an express legislative power over aviation.

SCIENTIFIC AND INDUSTRIAL RESEARCH.

113. The Parliament does not have a specific power to carry on scientific and industrial research

114. Research carried on by the Commonwealth involves the expenditure of public funds rather than an exercise of governmental power as ordinarily understood, but it may be that the purposes for which the Parliament can lawfully appropriate moneys from the Consolidated Revenue Fund are not unrestricted.

115. Most scientific and industrial research carried on by the Commonwealth and its authorities may well be regarded as incidental to various subjects of legislative power of the Parliament and, for that reason, the expenditure of public funds may, on any tenable view as to the Parliament's power of appropriation, be lawful. The Committee considers, however, that the Commonwealth's capacity to engage freely in research should not be hampered by possible constitutional restrictions.

116. THE COMMITTEE RECOMMENDS that the Commonwealth Parliament be vested with power to make laws for the carrying on and promotion of scientific and industrial research.

NUCLEAR ENERGY.

117. The growth of nuclear physics, making possible the application of nuclear energy for practical purposes, is a phenomenon of the present century and alone this would explain the absence of any reference to it in the Commonwealth Constitution.

118. By reason of its various constitutional powers, notably with respect to defence and overseas trade, the national Parliament is not without some effective legal powers at the present stage of nuclear development in Australia. Expected developments in the use of nuclear energy for constructive and destructive purposes will inevitably, however, reveal serious deficiencies in Commonwealth legal power, particularly if it should be sought to promote a self-contained integrated nuclear power industry serving the needs of industry and national development as well as defence.

119. It seems also that the Commonwealth Parliament has insufficient legislative power to make proper provision for the protection of the health and welfare of the community as a whole from dangers which can arise from the use of radio-active materials and isotopes.

120. THE COMMITTEE RECOMMENDS that the Commonwealth Parliament should be empowered by constitutional amendment to make laws with respect to—

(1) the manufacture of nuclear fuels and the generation and use of nuclear energy; and

(2) ionizing radiations.

POSTS AND TELEGRAPHS AND OTHER LIKE SERVICES.

121. The Parliament has, under section 51 (v.) of the Constitution, power to make laws with respect to postal, telegraphic, telephonic and other like services.

122. In 1935 a majority of the High Court held that paragraph (v.) conferred on the Commonwealth Parliament power to legislate with respect to radio broadcasting, most of the Justices agreeing that broadcasting was a service which could be classed with telegraphic and telephonic services.

123. Since that time, television services which, like broadcasting, involve transmission by means of electro-magnetic waves, have begun in Australia under Commonwealth control. The Committee is of opinion that any possible doubt as to the power of the Commonwealth to make laws with respect to broadcasting and television should be removed by constitutional alteration.

124. Services, such as broadcasting and television, in which transmission or reception is by electro-magnetic systems, fall within the category of telecommunication services. Without doubt there will be further progress in telecommunications and the Committee considers that any constitutional alteration should be flexible enough to take account of it as a matter of national importance.

125. THE COMMITTEE RECOMMENDS that the Constitution should be altered to make it clear that *the Commonwealth Parliament has power to make laws with respect to broadcasting, television and* other services involving transmission or reception by electro-magnetic means.

INDUSTRIAL CONDITIONS.

126. Section 51 (xxxv.) of the Constitution authorizes the Commonwealth Parliament to make laws with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

127. Paragraph (xxxv.) is not the only source of Commonwealth industrial power. The Parliament may deal with industrial conditions so far as they come within other subjects of constitutional power vested in it, such as section 51 (i.) which empowers the Parliament to make laws for interstate and overseas trade and commerce, and section 122 under which laws may be made for the government of the Territories of the Commonwealth. Nevertheless, the power conferred by paragraph (xxxv.) mainly determines the extent of the Commonwealth's activity in the broad field of industrial employment.

128. *Paragraph (xxxv.) is limited to the prevention and settlement of industrial disputes* It does not apply to all industrial disputes but only to those which extend beyond the boundaries of a single State. Conciliation and arbitration are the only processes available in the prevention and settlement of such disputes. These qualifications upon Federal power have, in practice, restricted the Parliament to legislation such as the Conciliation and Arbitration Act which creates independent specialized machinery to deal with industrial disputes.

129. The limited Federal power provides a contrast to the general power of the States to deal with conditions of employment of persons within their jurisdiction by means of their own choosing, such as direct legislative intervention and the setting up of industrial courts, wages boards and other authorities.

130. The Committee considers that the character of the Commonwealth's industrial power should correspond more closely to State power by vesting in the Parliament more extensive legislative power with respect to the determination of industrial conditions. The Committee contemplates, however, that the Parliament would continue to provide for the handling of employer-employee relationships by existing forms of Commonwealth and State industrial machinery and, accordingly, *that it should be constitutionally possible for the Commonwealth Parliament to make use of State* authorities for the purpose. The proposed extension of Commonwealth power is not intended to imply the withdrawal of the States from responsibilities in regard to industrial matters.

131. THE COMMITTEE RECOMMENDS that paragraph (xxxv.) of section 51 be repealed and a new section inserted in the Constitution which would provide in substance as follows:—

(1) The Commonwealth Parliament should, subject to the Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to terms and conditions of industrial employment.

(2) The power to make laws dealing with terms and conditions of industrial employment should include power—

(*a*) as at present, to make laws with respect to the prevention and settlement of industrial disputes by means of conciliation and arbitration; and

(*b*) to establish authorities of the Commonwealth, and authorize authorities established by or under the law of a State, to determine terms and conditions of industrial employment and to prevent and settle industrial disputes.

CORPORATIONS.

132. The Parliament has, under section 51 (xx.) of the Constitution, power to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

133. The paragraph has been the subject of so much difference of judicial opinion that, beyond saying it has a narrow meaning, it is quite uncertain what power it confers. It is probable that the Commonwealth Parliament is not authorized to legislate generally with respect to the range of matters which are normally included in the Companies Acts of the States.

134. The Committee is of opinion that the national Parliament should have a power over corporations sufficient to enable it to enact a uniform companies law applying throughout the Commonwealth. At the same time the necessary constitutional alteration should be so framed as not to confer a power to regulate the business activities of corporations.

135. THE COMMITTEE RECOMMENDS that section 51 (xx.) of the Constitution should be repealed and replaced by a new paragraph which would provide in substance as follows:—

(1) The Commonwealth Parliament should have power to make laws with respect to corporations.

(2) The power to make laws with respect to corporations should not authorize the Parliament to make laws with respect to the trade, commerce or industry of corporations, or which apply to corporations of a State, including municipal corporations, formed for governmental purposes.

RESTRICTIVE TRADE PRACTICES: INTER-STATE COMMISSION.

136. As already mentioned, section 51 (xx.) of the Constitution confers power upon the Commonwealth Parliament to make laws with respect to foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth. The High Court has held, by a majority, that a law of the Commonwealth Parliament which made it an offence for any of the types of corporations described in paragraph (xx.) to conclude a contract or combine with intent to restrain trade or commerce within the Commonwealth to the detriment of the public, was *ultra vires*.

137. The present legal position is that the Commonwealth can control harmful restrictive trade practices in interstate commerce but not in intrastate commerce or productive industry.

138. The Committee's view is that effective control of restrictive trade practices requires uniform policies applying to trade and commerce within the whole of the Commonwealth.

139. The Committee considers that the Commonwealth Parliament should have power to deal with restrictive trade practices but only so far as they are contrary to the public interest.

140. Section 101 of the Constitution states that there shall be an Inter-State Commission. It also provides that the Parliament may confer upon the Commission powers of adjudication and administration for the execution and maintenance of the provisions of the Constitution relating to trade and commerce and laws made thereunder. The Committee believes that the Commission would be an appropriate authority to inquire and report to the Parliament whether a restrictive trade practice is contrary to the public interest. There has not been an Inter-State Commission for many years, but section 101 provides that there should be such a body. In the Committee's opinion, the Inter-State Commission should be re-established.

141. Section 103 provides, among other things, that members of the Inter-State Commission are to be appointed by the Governor-General in Council for fixed terms of seven years. The Committee's view is that the section should be amended to provide that members may be appointed for terms not exceeding seven years thus enabling different terms to be allotted to individual members and making possible continuity in membership.

142. THE COMMITTEE RECOMMENDS that the Constitution should be altered to provide for the following:—

(1) The Commonwealth Parliament should have an express power in section 51 of the Constitution to make laws with respect to restrictive trade practices found by the Inter-State Commission to be, or likely to be, contrary to the public interest.

(2) For the purposes of the power described in sub-paragraph (1) above, the Parliament should have power to make laws for referring questions to the Inter-State Commission for inquiry and report, and the Commission should be vested with power to make its inquiries and report to the Parliament.

(3) Section 103 of the Constitution should provide for members of the Inter-State Commission to hold office for terms not exceeding seven years subject, as at present, to removal within their respective periods of appointment on the ground of misbehaviour or incapacity.

MARKETING OF PRIMARY PRODUCTS: CONSTITUTION, SECTION 92.

143. Each of the main primary industries in Australia is carried on in more than one State. The Federal Parliament is competent, under its power to make laws with respect to interstate and overseas trade and commerce, to deal with important branches of the marketing of primary products but, under the constitutional division of powers, intrastate marketing is exclusively the domain of the individual States.

144. An effective scheme for orderly marketing of products usually requires the maintenance of a uniform national policy but in Australia such a scheme is generally possible only so long as it is one to which the Commonwealth and up to six States are prepared to subscribe.

145. This is not the only difficulty confronting orderly marketing of nationally important primary products. Section 92 of the Constitution requires trade and commerce among the States to be absolutely free and the section has been held to bind both the Commonwealth and the States The meaning which the Courts have given to the constitutional declaration has had profound effects on marketing schemes by making it necessary to exclude from compulsory marketing arrangements produce which is intended for, or committed to, interstate trade.

146. Accordingly, orderly marketing schemes rest on insecure legal foundations, they are difficult to initiate and susceptible to collapse even though supported by a clear majority of producers in the Commonwealth and perhaps in each of the States of production as well.

147. The Committee believes that a satisfactory legal basis can be found for orderly marketing schemes for the major primary products, only if the national Parliament is vested with a general marketing power free from the operation of section 92. The exercise of the power should be subject to the approval of producers.

148. THE COMMITTEE RECOMMENDS that the Constitution should be altered to provide the Commonwealth Parliament with legislative power as follows:—

(1) The Parliament should have power to make laws for the submission to a poll of primary producers of proposed plans for the organized marketing of primary products.

(2) For the purpose of submitting a proposed plan to producers, the Parliament should be authorized to make such laws as it deems necessary in connexion with the holding of a poll, including laws determining who is a primary producer, eligibility to vote and the number of votes which a producer should have.

(3) If three-fifths of the votes cast at a poll by the producers of a primary product are in favour of a proposed marketing plan for that product, the Parliament should have power to make laws to give effect to the plan free from the operation of section 92 of the Constitution, but otherwise subject to the Constitution.

(4) For the purposes of the power, a primary product should include any product directly produced or derived from a primary product which the Parliament deems to be a primary product.

ECONOMIC POWERS.

149. The Commonwealth Parliament has, under various provisions of the Constitution, legislative powers which can be exercised so as to affect the state of the national economy, such as the powers with respect to taxation, conciliation and arbitration, borrowing money on the public credit of the Commonwealth and banking, but these powers collectively do not permit the development of an integrated economic policy. The banking power (Constitution, section 51 (xiii.)) itself is a far less useful power than at Federation because of the growth of specialized financial institutions outside the banking structure.

150. When the Constitution was drafted, no Government in Australia had a responsibility for the general state of the economy, including the level of employment, stability of the value of the currency, and the rate and balance of economic development. It is only in recent years that the development of economic understanding has made the factors determining these matters sufficiently clear for Governments to take action. It is not surprising, therefore, that the Constitution did not concern itself with the allocation between the Commonwealth and the States of powers necessary to give effect to general economic policy. The question is not one of transferring to the Commonwealth specific powers consciously left with the States under the Constitution, but of allocating between the Commonwealth and the States the power necessary to fulfil a responsibility of government which did not exist when the Constitution was originally framed but which, in the Committee's view, is now generally accepted in the light of developments since Federation, including those mentioned in paragraphs 77 to 103 of this Report. The Committee considers that the Commonwealth should be in a position to discharge such a responsibility and that, for the purpose, the national Parliament should have specific concurrent legislative powers over capital issues, consumer credit and rates of interest charged in connexion with the borrowing of money on the security of land.

151. As to capital issues, the Committee is concerned with various ways in which companies may obtain capital funds, such as by the subscription of share capital, borrowing on deposit, and the issue of debentures, notes and other instruments either on the security of company assets or unsecured. The Committee is not concerned with unincorporated business undertakings such as are carried on by firms, partnerships and individual persons.

152. THE COMMITTEE RECOMMENDS that the Constitution should be amended to provide, in substance, as follows:—

(1) The Commonwealth Parliament should have power to make laws with respect to—

(*a*) the issue, allotment or subscription of capital; and

(*b*) the borrowing of money whether upon security or without security,

by corporations which engage, or may engage, in production, trade, commerce or other economic activities.

(2) The power proposed to be vested in the Parliament under sub-paragraph (1) above is not to apply to—

(*a*) the issue or allotment of capital out of profits or accumulated reserves of corporations; or

(*b*) incorporated authorities of a State, including local government authorities.

153. By consumer credit, the Committee has in mind the various types of transactions under which the purchase or acquisition of goods is financed, such as hire purchase. They are commonly called time payment transactions. The volume and terms of this form of business have important repercussions on the Australian economy.

154. At present, hire purchase is the most popular form of consumer credit. There are, however, other types of transactions, such as instalment purchase arrangements and bills of sale, which achieve much the same result as hire purchase by enabling consumers to obtain on credit goods for immediate use. The Committee considers that any constitutional amendment should be sufficiently flexible to take account not only of existing forms of credit transactions but also of transactions which might be used in future, as for example, perpetual hire of goods.

155. THE COMMITTEE RECOMMENDS *that the Constitution should be amended by vesting the* Commonwealth Parliament with a power to make laws with respect to hire purchase and other agreements or transactions entered into in connexion with the sale, purchase, hire or encumbrance of goods which involve the making of periodical payments or deferment of payment of the full amount payable.

156. The other concurrent power it is proposed to be vested in the Parliament is directed to the regulation of interest rates when money is borrowed upon the security of land outside the banking system.

157. THE COMMITTEE RECOMMENDS that the Commonwealth Parliament should have power to make laws with respect to rates of interest and other charges payable in connexion with loans obtained upon the mortgage or other security of land.

VIII.—INTERSTATE ROAD TRANSPORT.

158. Section 92 of the Constitution proclaims that trade, commerce and intercourse among the States shall be absolutely free. The section has been frequently relied on in recent years in litigation in connexion with interstate commercial road transport. A majority of the High Court has held that, in respect of vehicles using roads within a State in the course of interstate trade and commerce, the State may impose charges that are, in the view of the Court, in the nature of a fair recompense for the actual use made of the highways having regard to the wear and tear caused and the costs of maintenance and upkeep of the highways. It seems that a State can not, in fixing charges, take into account the capital cost of providing new roads or other capital expenditure as distinct from recurrent expenditure incident to the maintenance of roads and other facilities used by interstate road transport.

159. *The Committee considers that vehicles using roads within a State in the course of* transporting persons or goods between States for profit should be prepared to bear a reasonable share of the capital cost to the States of providing the roads and other transport facilities which they use. A State charge which so provides and at the same time imposes no greater burden on interstate commercial traffic than it does on intrastate road transport should be deemed not to infringe section 92.

160. The Committee thinks, furthermore, that an independent authority should determine whether or not a State charge imposed on interstate transport is reasonable and that the matter should be capable of decision in advance of the actual imposition of a charge. The Committee has, in paragraphs 140 to 142 of this Report, already referred to the Inter-State Commission. It is of opinion that the Commission would be an appropriate authority to decide whether State charges are reasonable or not.

161. THE COMMITTEE RECOMMENDS that the Constitution should be altered to authorize a State, notwithstanding section 92 of the Constitution, to impose charges in respect of the carriage interstate by road of persons and goods provided that—

(1) the charges are approved by the Inter-State Commission as being fair and reasonable having regard to the promotion of interstate trade and commerce and the public interest; and

(2) the charges, in their application to road transport, do not discriminate between the carriage of persons or goods interstate.

IX.—COMMONWEALTH-STATE FINANCIAL RELATIONS.

162. There were many indications to the Committee, in the course of its inquiries, of dissatisfaction with the present state of financial arrangements between the Commonwealth and the States. The view was repeatedly expressed that it was necessary for the States to have a greater measure of financial independence and increased responsibilities in the raising of revenue for State purposes. The Committee concluded that some action was needed to improve the position and that it should be prepared to recommend constitutional changes if any should be found necessary.

163. *Searching inquiries indicated, in the opinion of the Committee, that current discontent* largely stemmed from arrangements made within the constitutional framework, as for example, in relation to the imposition of income taxation, which, if the Commonwealth and the States were to agree, could probably be adjusted without the need for constitutional amendment. The Committee felt, however, that it should consider whether constitutional changes could be made to give the States greater financial responsibilities, but it found itself unable to ascertain whether any particular course of action proposed would assist in solving more important Commonwealth-State financial problems and at the same time be acceptable to all or most of the States and the Commonwealth. The Committee's misgivings were accentuated because the States have not so far put forward co-ordinated proposals to effect a material improvement in their financial position.

164. Thus, although the Committee was prepared to deal fully with any constitutional aspects of the inter-governmental financial problem, it was unable to do so and it regretfully reports accordingly. The Committee believes that a conference of the political leaders of the Commonwealth and the States is needed to discover whether any substantial adjustment of the relative financial positions of the Commonwealth and the States could be achieved.

X.—NEW STATES.

165. Section 121 of the Constitution provides that the Parliament of the Commonwealth may, upon such terms and conditions as it thinks fit, admit new States to the Commonwealth or establish new States. By virtue of section 124, however, it is a prerequisite to the formation of a new State by separation of territory from a State that the consent of the Parliament of that State be obtained. A new State may also be formed by the union of two or more States or parts of States but only with *the consent of the Parliaments of the States affected.*

166. New State Movements have existed in Australia over many years and their origins may be traced beyond Federation. Currently, there are well known Movements in two States. The Committee believes that the effect of section 124 has been to prevent the strength of new State feeling being adequately tested. In its opinion, the Constitution should provide an opportunity for the people to determine the question whether a new State should be formed. If a majority of electors both in the area of a proposed new State and in the State as a whole support the formation of a new State, it should not require the approval of the Parliament of the State before the new State can be established as a member of the Commonwealth.

167. THE COMMITTEE RECOMMENDS that the Constitution should be amended by making provision in Chapter VI. as follows:—

(1) The Commonwealth Parliament should have power to form a new State by separation of territory from a State or by the union of two or more States or parts of States if a majority of electors in the area of the proposed State and a majority of electors in the whole State or, in the event of there being more than one State affected, a majority of electors in the area of the proposed State and majorities of electors in each State affected, vote in favour of the formation of the proposed State.

(2) The Parliament may establish a new State within three years, or such other period as the Parliament determines, from the holding of the referendum which the Committee contemplates.

(3) Electors qualified to vote at a new State referendum should be the persons qualified to be electors of members of the House of Representatives.

(4) The Parliament should have power to make such laws as are necessary to deal with all matters in connexion with the formation of a new State in accordance with the provisions of the power now proposed, including the determination of the area and boundaries of a proposed State, the framing and submission of the question of a new State to the electors, eligibility of electors to vote and the terms and conditions on which a new State may become a State of the Commonwealth.

XI.—ALTERATION OF THE CONSTITUTION.

168. The procedure laid down in section 128 of the Constitution for the alteration of the Constitution has been described in Part III. of this Report. As was there mentioned, generally proposed laws for the alteration of the Constitution, including proposed laws similar to those so far submitted to referendum, need to be approved in a majority of States by a majority of electors voting in addition to a majority of all the electors who vote. This means that it is necessary to obtain majorities in four of the six States.

169. The Committee acknowledges the vital interest of the people in proposed constitutional alterations, and considers that if a clear majority of the electors who vote at a referendum are in favour of a proposed law, their will should not be frustrated because separate majorities of electors have not been obtained in a majority of the States. It is, in the Committee's opinion, more in accord with democratic principle and the developments since Federation that it should be sufficient to obtain separate majorities in at least one-half of the number of States. Of the twenty proposed laws which have failed to obtain the necessary majorities under section 128, two were approved by a majority of the electors voting and in addition by majorities of the electors in half of the States.

170. THE COMMITTEE RECOMMENDS that section 128 of the Constitution should be altered to provide that a proposed law to alter the Constitution, which has at present to be approved in a majority of the States by a majority of the electors voting and by a majority of all the electors voting before it can be submitted for the Royal assent, should be submitted for the Royal assent if it has been approved by a majority of all the electors voting and by a majority of the electors voting in at least one-half of the number of States.

XII.—COMPLETION OF THE CONSTITUTIONAL REVIEW.

171. As mentioned earlier, the Committee has been precluded, because of insufficient time, from considering fully many important matters upon which it wished to report. The Committee's hope is that the next Parliament will take up the question of the continuance of the work on which the Committee has embarked, and that a successor Committee, authorized to make use of the Committee's records and work, will be appointed to complete the constitutional review.

XIII.—*EX OFFICIO* MEMBERS.

172. The Prime Minister and the Leader of the Opposition in the House of Representatives, the *ex officio* members of the Committee, did not attend the sittings or participate in the deliberations of the Committee.

XIV.—RESERVATIONS.

173. Mr. Downer's signature is subject to the reservation relating to industrial conditions set out in Annexure "A" to this Report.

174. Senator Wright's signature is subject to his observations and reservations appearing in Annexure "B" to this Report.

XV.—PRESENTATION OF THE REPORT.

175. The Committee has the honour to present its Report to the Parliament.

Dated this first day of October, One thousand nine hundred and fifty-eight.

NEIL O'SULLIVAN, Chairman.

P. J. KENNELLY, Member.

N. E. McKENNA, Member.

REG. C. WRIGHT, Member.

ARTHUR A. CALWELL, Member.

A. R. DOWNER, Member.

D. H. DRUMMOND, Member.

LEN. W. HAMILTON, Member.

P. E. JOSKE, Member.

REG. T. POLLARD, Member.

E. J. WARD, Member.

E. G. WHITLAM, Member.

ANNEXURE "A".

INDUSTRIAL CONDITIONS: MR. DOWNER'S RESERVATION.

Mr. Downer wishes to record his dissent from the Committee's recommendation relating to industrial conditions set out in paragraph 131 of the Report.

In Mr. Downer's opinion, section 51 (xxxv.) of the Constitution should be amended so as to enable the Commonwealth Parliament to make laws for the prevention and settlement of industrial disputes without being restricted to the processes of conciliation and arbitration or by the necessity for a dispute to extend beyond the limits of a single State.

Mr. Downer considers, however, that a general power over terms and conditions of industrial employment which the Committee has recommended to be vested in the Commonwealth Parliament provides a greater extension of existing power than is desirable.

ANNEXURE "B".

SENATOR WRIGHT'S OBSERVATIONS AND RESERVATIONS.

COMMONWEALTH LEGISLATIVE MACHINERY: REPORT, PART VI.

1. The reason for the Senate's constitutional voting strength in relation to money bills was its role as representative of the States. Although throughout its history the influence of party has impressed the Senate more than its State representation, a new opportunity was presented by the system of proportional representation for the Senate to function as a States House. That opportunity and challenge to the Senate becomes more urgent in view of the dwindling financial independence of the States. In 1910, the States lost any share in indirect taxes (customs and excise) and in 1942 they lost income tax. I am convinced, therefore, that the Senate's powers should not be weakened either (*a*) in respect of money bills until the States are guaranteed constitutionally a proper share of public revenues to enable them to discharge their proper State governmental functions, or (*b*) in respect of the Senate's numerical strength relatively to the House of Representatives so long as a joint sitting is the means of solving deadlocks.

I will agree to a provision facilitating the synchronization of Senate and House of Representatives elections by providing that senators' terms should be six years provided that if the Senate has rejected any measure on which the House of Representatives goes to the country, half of the Senate should go with it. Or if no decision of the Senate has precipitated the election, then the half of the Senate should go if the Senate so decides.

The recent constitutional development of the right of Heads of Government to obtain a dissolution of the House of Representatives on request in my opinion makes it imperative that the Prime Minister should not have power to treat the States House or the Senate as an appendage to the Popular House and take the Senate out at the will of the Executive Government.

The Senate would be better abolished than exist as an echo of the Federal Executive Government.

It has not shown marked independence except on party lines up to date. But if when it consists of a majority of members whose political policy is to preserve the bicameral system and to have a House of review which has a right to judgment different from the Executive, it could be improved by—

(*a*) having separate party meetings,

(*b*) having no members in the Cabinet,

and thereupon, except on the basis that Caucus controls Parliament, including the Senate, the Senate could be expected to grow into a deliberative Chamber of reconsideration and review with its primary work in the protection of a proper balance between State rights and encroaching Commonwealth power.

Number of Senators and Members of the House of Representatives.

2. I express my dissent from the recommendation set out in paragraph 39 of the Report.

Disagreements between the Senate and the House of Representatives.

3. I express my dissent from the recommendation set out in paragraph 43 of the Report.

Terms of Senators.

4. I express my dissent from the recommendation set out in paragraph 49 of the Report.

Reckoning of Population.

5. I express my dissent from the recommendation set out in paragraph 69 of the Report.

CONCURRENT LEGISLATIVE POWERS: REPORT, PART VII.

Industrial.

6. I particularly justify the power over industrial terms of employment set out in paragraph 131 of the Report. It is an exceedingly wide power, but unless some *Parliament* is given this power, Parliamentary government in respect of it is in danger.

In my opinion, there is no alternative to recognizing that the Commonwealth Parliament should have this power.

ANNEXURE "B"—*continued.*

Corporations and Economic Powers.

7. There would be advantage in a uniform Companies Act as conventionally understood, applicable alike in all States and the Territories. But this proposed power could be used not for ordinary company law purposes, but to regulate and control companies.

And if, in addition, the Commonwealth were to gain the proposed powers over capital issues, credit sales or mortgages of goods and interest on land loans, you would have complete apparatus for rigid regulation on the order and decree system, with licences and permits on the bureaucratic model, very akin to nationalization.

Accordingly, I express my dissent from the recommendations set out in paragraphs 135, 152, 155 and 157 of the Report.

Marketing of Primary Products: Constitution, Section 92.

8. I accept the proposal as to organized marketing set out in paragraph 148 of the Report provided section 99 is amended to prohibit discrimination as well as preference in interstate trade.

ALTERATION OF THE CONSTITUTION: REPORT, PART XI.

9. I dissent from the proposal set out in paragraph 170 of the Report to reduce the majority of States required for constitutional amendment.

OMISSIONS FROM THE REPORT.

10. I am strongly of the opinion that the present recommendations fail to supply most important amendments needed to—

(*a*) ensure constitutionally proper financial revenues to the States;

(*b*) assure to the Federal Parliament ample defence powers; and

(*c*) guarantee fundamental individual liberties.

REG. C. WRIGHT.

ANNEXURE "C".

LIST OF PERSONS WHO ATTENDED MEETINGS OF THE CONSTITUTION REVIEW COMMITTEE.

(According to the order of attendance.)

M. R. O'Halloran, Leader of the Opposition in the House of Assembly of South Australia.

C. R. Cameron, M.P., representing the Executive of the South Australian Branch of the Australian Labour Party.

The Honorable Sir Thomas Playford, G.C.M.G., Premier of South Australia.

The Right Honorable Sir Earle Page, G.C.M.G., C.H., M.P.

J. V. Moroney, O.B.E., Secretary, Department of Primary Industry, Canberra.

P. H. Morton, Leader of the Opposition in the Legislative Assembly of New South Wales, R. W. Askin, M.L.A., and K. M. McCaw, M.L.A.

The Honorable R. Cosgrove, Premier of Tasmania.

The Honorable W. Jackson, Leader of the Opposition in the House of Assembly of Tasmania.

Dr. J. F. Gaha, M.H.A. (Tasmania).

J. Reynolds, Hobart, Tasmania.

F. C. Green, M.C., former Clerk of the House of Representatives.

The Right Honorable Sir John Greig Latham, G.C.M.G., former Chief Justice of the High Court of Australia.

L. W. Barron, V. E. Menadue, the Honorable William Slater, M.L.C., and C. W. Quihampton, representing the Australian Natives' Association.

Sir Garfield Barwick, Q.C., H. W. Robson of Counsel and Colonel R. S. Coates, representing the Institute of Public Affairs (New South Wales).

Sir Roland Wilson, C.B.E., Secretary to the Commonwealth Treasury.

Dr. H. C. Coombs, Governor of the Commonwealth Bank of Australia.

Professor G. Sawer, Professor of Law, Australian National University, Canberra.

P. J. Hannaberry, O.B.E., Commonwealth Railways Commissioner.

C. H. McFadyen, C.B.E., Secretary, Department of Shipping and Transport, Melbourne.

The Honorable A. R. G. Hawke, Premier of Western Australia.

A. Wills-Johnson, Perth, Western Australia.

Mrs. B. M. Rischbieth, O.B.E., Miss I. L. Glasson, Miss M. A. Talbot and Mrs. A. H. Rankin, representing the Australian Federation of Women Voters.

The Honorable D. Brand, Leader of the Opposition in the Legislative Assembly of Western Australia.

A. T. Brendish, representing the Western Australian Country Party.

E. C. Gare, Miss M. A. Talbot, W. L. Grayden, M.L.A., and J. R. Henshaw, representing the Western Australian Native Welfare Council Incorporated.

ANNEXURE "C"—*continued.*

L. E. Williams, G. H. Hopkins, J. H. Peake and A. D. Hooper, representing the New State for North Queensland Movement.

G. H. Hopkins, representing the Ingham Chamber of Commerce.

H. G. Pearce, M.P.

J. O'Malley, G. H. Gray, J. E. Harding and R. Clay, representing the Capricornia New State Movement.

B. Foley and J. Jones, representing the Council of Agriculture (Q'land).

R. J. S. Muir, representing the Queensland Cane Growers' Council and the Australian Cane Growers' Association.

S. O. Cowlishaw and H. Garside, representing the Queensland Grain Growers' Association

P. A. Wright, U. R. Ellis and P. N. Harrison, representing the New England New State Movement.

L. Ainsworth, Chief Electoral Officer for the Commonwealth.

R. M. Eggleston, Q.C.

K. G. Lee, representing the Egg and Egg Pulp Marketing Board (Victoria).

P. B. Ryan and N. Barnett, representing the Egg Marketing Board for the State of New South Wales.

I. T. Serjeant and Mrs. I. L. Waight, representing the Australian Primary Producers' Union.

E. E. Nuske and T. C. Stott, M.P. (South Australia), representing the Australian Wheatgrowers' Federation

E. G. Roberts, R. C. Gibson, A. F. Baird and R. H. Francis, representing the Australian Dairy Farmers' Federation and affiliated organizations.

K. S. Jacobs of Counsel, representing the Graziers' Federal Council of Australia, the Metal Trades Employers' Association and the Chamber of Manufactures of New South Wales, accompanied by W. E. de Vos of the Graziers' Federal Council of Australia and D. G. Fowler and J. M. Hammond of the Metal Trades Employers' Association.

P. J. Self, representing the Australian Council of Employers' Federations.

F. J. Spellacy and R. Rowe, representing the Australian Road Transport Federation.

Professor J. P. Baxter, O.B.E., and A. D. McKnight, C.B.E., representing the Australian Atomic Energy Commission.

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.