

COMMONWEALTH OF AUSTRALIA.

GEORGE THE FIFTH, *by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India:*

TO our *trusty and well-beloved* THE HONORABLE JOHN BEVERLEY PEDEN, K.C., M.L.C.; SENATOR PERCY PHIPPS ABBOTT, C.M.G., V.D.; THOMAS RAMSDEN ASHWORTH, Esquire; THE HONORABLE ERIC KENDALL BOWDEN, M.P.; THE HONORABLE SIR HAL PATESHALL COLEBATCH, K.B., C.M.G.; MAURICE BOYCE DUFFY, Esquire, J.P.; THE HONORABLE DANIEL LAURENCE McNAMARA, M.L.C.

GREETING:

KNOW ye that We do by these Our Letters Patent, issued in Our name by Our Deputy of Our Governor-General of Our Commonwealth of Australia, acting with the advice of Our Federal Executive Council, and in pursuance of the Constitution of Our said Commonwealth, the "Royal Commissions Act 1902-1912," and all other powers him thereunto enabling, appoint you to be Commissioners to inquire into and report upon the powers of the Commonwealth under the Constitution and the working of the Constitution since Federation; to recommend constitutional changes considered to be desirable; and, in particular, to examine and report upon the following subjects from a constitutional point of view:—

- (i) Aviation.
- (ii) Company law,
- (iii) Health,
- (iv) Industrial powers,
- (v) Interstate Commission,
- (vi) Judicial power,
- (vii) Navigation law,
- (viii) New States,
- (ix) Taxation, and
- (x) Trade and commerce:

AND WE APPOINT you the said JOHN BEVERLEY PEDEN to be the Chairman of the said Commissioners:

AND WE DIRECT that, for the purpose of taking evidence, four Commissioners shall be sufficient to constitute a quorum, and may proceed with the inquiry under these Our Letters Patent:

AND WE REQUIRE you with as little delay as possible to report to Our Governor-General of Our said Commonwealth the result of your inquiries into the matters entrusted to you by these Our Letters Patent:

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent, and the Seal of Our said Commonwealth to be thereunto fixed.

WITNESS our *trusty and well-beloved* the Honorable Sir WILLIAM HILL IRVINE, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Our Deputy of Our Governor-General and Commander-in-Chief in and over Our Commonwealth of Australia, this eighteenth day of August, in the year of our Lord One thousand nine hundred and twenty-seven, and in the eighteenth year of Our Reign.

W. H. IRVINE,
Deputy of the Governor-General.

By His Excellency's Command,

S. M. BRUCE,
Prime Minister.

ENTERED on record by me, in Register of Patents, No. 56, page 24, this eighteenth day of August, One thousand nine hundred and twenty-seven.

F. STRAHAN.

Effect could, we think, be given to this recommendation by inserting in section 51 of the Constitution the following paragraph:—

(xxiia). The operation throughout the Commonwealth of probate or letters of administration granted in any State or Territory or in the United Kingdom or in any British possession.

ELECTION OF SENATORS.

At present, as already mentioned in section v. of this report, although parties may be almost equally divided in the constituencies, one party may so far predominate in the Senate that there may be no opportunity for the presentation of different points of view. We think that such a condition of affairs is undesirable, and that the Senate would be better qualified to act as a chamber of revision if senators were elected under a system of proportional representation. We recomemnd that the Constitution should be amended so as to provide for the adoption of such a system for a period of at least ten years.

Effect could, we think, be given to this recommendation by inserting at the end of section 7 of the Constitution the following paragraph:—

During a period of ten years after the day of _____ and thereafter until the Parliament otherwise provides, the election of Senators shall be according to the principle of proportional representation.

Mr. Ashworth.—For the views of Mr. Ashworth, see section xxiv., pp. 277-293.

Sir Hal Colebatch.—For the views of Sir Hal Colebatch, see section xxiv., p. 300.

powers recommended in the minority statement in section xxii. will tend to make those ideals national. The elector in disregarding the temptations of sectionalism and self interest will work the two-party system in the consciousness that he is performing a high ethical duty.

Part VII.—Electoral Systems.

Electoral methods are just as vital to a system of Cabinet government as is the responsibility of the Executive to Parliament. The significance of electoral machinery is insufficiently recognized in our British communities. The electorate is a poorly developed chapter in the scheme of political science; the result is that its regulation is in general relegated to the haphazard mercies of ill-considered legislation. I believe that we should make the same definite provision in the Constitution for the proper functioning of electors as we do for the functioning of members of Parliament. Only in that way will we recognize the true significance of the electorate; only in that way will it be surrounded by the respect and protection that it merits. The machinery available to members of Parliament in the discharge of their function is well cast for securing organization and responsible leadership through the interaction of two national parties; the machinery which the electors have to work in the discharge of a function of equal importance is destructive of party and responsibility. To secure the effective functioning of the whole the two machines must be brought into adjustment. The electors must have the wherewithal to enable them to function properly. I desire to dwell on the importance of the electorate in the make up of the parliamentary system.

The Commonwealth Constitution is the incorporation of the essentials of two constitutions—that of Britain and that of the United States of America, and as I endeavoured to show in Part II. of this statement, it is a combination of machines that are ill suited to such adaptation. I believe that we are similarly at fault in our choice of an electoral system. I believe that we have subjoined to our parliamentary arrangements an electoral edifice altogether foreign to the nature and implications of those arrangements. The fundamental weakness of the single member electorate is that it encourages voters to subordinate national to sectional interests. This evil became so pronounced in Victoria in the case of State railway employees and civil servants that an Act was passed in 1901 giving these bodies separate representation in Parliament. The trouble was that by organizing themselves into a separate section for political purposes, public servants held the balance of voting power in many constituencies. This enabled them to secure pledges for class programmes not in accord with the general weal. Separate representation was enacted as the remedy. The class organisation had been voluntary; under the law it became compulsory. The mischief was transferred from the electorate to Parliament. Public servants are not the only section seeking to exchange votes for concessions, and to penalise one class for a practice that had become general was unfair. After a brief trial the experiment was abandoned.

Another grave defect of the single member electorate is that if more than one candidate of a party is nominated, that party's chances of success are lessened accordingly. To remedy this weakness, pre-selection has become the rule and has generated further evils. It thwarts the

elector in the exercise of his function; it confines his choice to parties; he has no say in the selection of party candidates. What is known as preferential voting has been instituted to obviate the need for pre-selection and widen the elector's choice. It certainly tends to bring more than one candidate into the field for each party, but it sets up an internecine struggle for first preferences. The party becomes disorganised; its campaigning strength is diffused among several candidates. If one party pre-selects, order replaces confusion; the party strength is concentrated on one standard bearer; and when one side pre-selects, the other is compelled to follow suit. Preferential voting has failed completely; it has not put an end to pre-selection; it has intensified the subordination of national to sectional interests. Despite pre-selection, preferential voting tends to bring more than two candidates into the field for each constituency in more ways than one. Calling for a wider choice for electors, it encourages independent candidates and it makes also for party multiplicity. In both the 1914 and 1917 Federal elections there were three constituencies only in which more than two candidates went to the poll. Two parties only were in the field. Preferential voting became law in 1918, and at the next succeeding election in 1919 there were twenty-six electorates with more than two candidates, and as the result a third party of fourteen members made its appearance in the House of Representatives. Preferential voting is a direct encouragement of party multiplicity; on that account it is out of adjustment with the Cabinet system.

Many people favour the Hare system—the single transferable vote for plural member constituencies. Under this device it is possible for a minority of one-sixth in a five-member constituency to secure the return of its candidate. The Hare scheme is well suited to the Swiss referendal system of government; but it is even more out of adjustment with a two-party parliamentary mechanism than preferential voting in single member constituencies. Experience of its application in New South Wales has won for it very few advocates in Australia.

The List method is familiar to the constituencies of continental Europe. It is admirably suited to securing proportional representation for minor groups in plural member constituencies; and like the Hare method it stimulates the group interest to the material detriment and demoralisation of national policy. But it has a distinctive feature which can be made the basis of a method suitable to the Cabinet system—electors vote for a party list instead of for individual candidates. By the expedient of restricting the lists to two and introducing other modifications an electoral method can be secured which will be in perfect adjustment with the parliamentary machinery. I therefore propose such a method of which the following are the essentials:—

1. The Commonwealth shall be divided for electoral purposes into districts, each returning three, four or five members.
2. Before the close of nominations each candidate shall declare to the returning officer for the district in which he stands whether he desires to be classified as a supporter of the Ministry or of the Opposition.
3. Ballot papers shall indicate in every instance whether candidates are Ministerialist or Oppositionist.

4. In the case of electoral districts that are to return three or four members each elector shall be entitled to vote for two candidates; in the case of electoral districts that are to return five members he shall be entitled to vote for three candidates.

5. A unit of representation shall be ascertained in each electoral district by dividing the total number of valid votes cast by the number of members to be returned for that district.

6. In every electoral district the number of aggregate valid votes cast for the Ministerial candidates and the number of aggregate valid votes cast for the Oppositionist candidates shall be divided respectively by the unit of representation, and thereupon each party shall be entitled to the return of a number of members equal to the quotient thus respectively arrived at. In this computation, any fraction less than one-half is ignored; any fraction greater than one-half will count as a whole number.

7. To fill the number of seats ascertained for a party in accordance with proposition number six above the candidates of the party who have received the highest number of votes shall be declared elected.

8. In the event of a tie between candidates the decision shall rest with the returning officer against whose decision there shall be no appeal.

I append in summary form, a table to illustrate how in practice this method will operate. The assumptions are:

- (a) a five member electorate in which the electors voting number 40,000 and the total valid votes cast is 120,000;
- (b) twelve candidates are standing;
- (c) candidates A B C D E F are in the Ministerial interest and candidates G H I J K L are declared Oppositionists.

The distribution of votes is as follows:—

Ministerialists.		Oppositionists.	
A	15,000	G	16,000
B	13,000	H	14,000
C	12,000	I	13,000
D	9,000	J	8,000
E	7,000	K	5,000
F	6,000	L	2,000
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62,000		58,000	

The unit of representation being 24,000, the Ministerial party with two units and a remainder of 14,000 is entitled to three seats and the Oppositionist party with two units and a remainder of 10,000 to two seats. A, B, C, G, and H will be declared elected (see propositions 6 and 7 above).

In the last paragraph to this part of my statement I shall endeavour to set out the salient virtues of this electoral mechanism—virtues which in their quality and totality far outweigh any that can be realized in any system of voting of which I am aware.

The issues placed before the elector will be national; there will be no inducement for sectional interests or considerations to be thrust

before him. Suppose that in the illustration just given, candidates D, E and F are canvassing members of an organization such as that of the public servants with the promise of concession or preferment. In that case, Ministerialist supporters may vote for candidates A, B and C without in any way endangering the position of the Ministry or in any way being forced to give their votes to candidates with whose political programme they are out of sympathy. The solid support of Ministerialist suffrages will secure the return of candidates A, B, and C, and the public servants finding that their class vote merely had the effect of increasing the total of one party, would see the futility of voting otherwise than on main party lines. Similarly a Ministerialist elector who may be tempted to vote for a co-religionist in the Oppositionist camp, will, under the method I propose, have a choice of Ministerialist candidates, one or more of whom will be acceptable from the standpoint of his religion. In this way provision is made for the elector to vote on national in place of sectarian lines. A trade unionist of moderate views will no longer be compelled to choose at times between class-biassed extremists of either Labour or Capital. Since candidates will each represent various shades or degrees of the respective party policies, an elector will find it possible to award his votes to the wisest, most upright and most moderate members of either or both panels. The elector will no longer find his choice unduly circumscribed at the hustings. The principal incentive to bribery and corruption will be removed. The politician will be little subjected to the temptation of exercising his ingenuity to manipulate electoral boundaries—a practice known as gerrymandering. We shall reasonably look to an improvement in the type of representative in our parliamentary assemblies. Uncontested seats, which for many voters are the equivalent of disfranchisement, will be unknown. We shall escape the necessity for pre-selection and its accompanying evil, party machine control of nominations. No longer will one party out of all proportion be represented in the legislature, for every vote cast will be effective. The fact that one party has more candidates in the field than the other will in no way redound to its prejudice since votes cast for rejected candidates are not lost; they are not ineffective as with our existing methods; they are thrown into the party aggregate. Cross voting is no longer to be feared; it no longer defeats its purpose. In brief we shall by the adoption of this method, I claim, establish a scientific, just and moral electoral system. We shall show that we agree with Aristotle that politics should not be divorced from ethics.

Part VIII.—The Senate.

Of the major parts of the Commonwealth constitutional machinery, the Senate or upper chamber of the Federal legislature is clearly the most defective. The Senate has failed in the aims for which it was designed. Its mission was the safeguarding of State rights against any attempt at Federal encroachment. It was fashioned on the model of the second chamber of the United States. But in the process of imitation and adaptation it was emasculated, for the control of foreign policy and appointments to high place—functions that lend a peculiar authority and dignity to the American prototype—were stripped from the Australian body. Our Senate was conceived and born in fear—fear of Federal aggression.

further restriction of the right of appeal to the Privy Council. Regarding the suggestion that the High Court should be empowered to give advisory opinions, it seems that if such opinions are not to be final they must be of limited utility, even if they do not set up a false sense of security. To make them final would be to provide that lasting decisions on matters of grave importance are to be reached by other than the best method—the argument of a concrete issue with the interested parties adequately represented. With these qualifications I concur in the recommendations under this heading.

New States.

I approve of this recommendation, excepting that I do not think the Commonwealth Parliament should be empowered to override a majority in the State concerned. I also feel that the proposed amendment, in that particular, would have little chance of acceptance since, for general application it would require—in the terms of the closing paragraph of section 128—an affirmative majority in each of the six States; or for restricted application an affirmative majority in Australia, and in four of the six States including the one in which it was to be applied. It seems improbable that a majority of the people in any State would vote for their own disfranchisement in such a matter.

Defence.

I agree that the defence power of the Commonwealth should be absolute. It does not appear that the limitation referred to has created any serious difficulty, and I feel that no good purpose will be served by inserting in the Constitution a provision specifically authorizing the Commonwealth to establish and conduct business concerns that might be associated to a small extent only with defence.

Election of Senators.

The Constitution as it stands authorizes Parliament to prescribe the method of choosing senators. If the Parliament sees fit it can adopt a system of proportional representation, and it would be much more likely to embark upon such an experiment with its right of retreat unfettered, than to invite the electors to put into the Constitution a provision tying the hands of Parliament.

HAL COLEBATCH.
