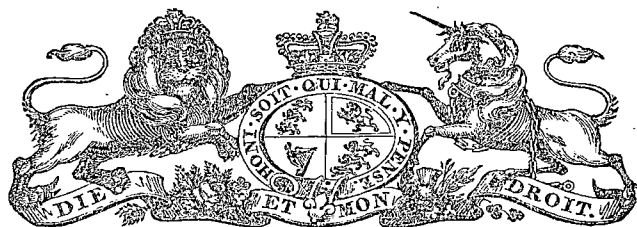


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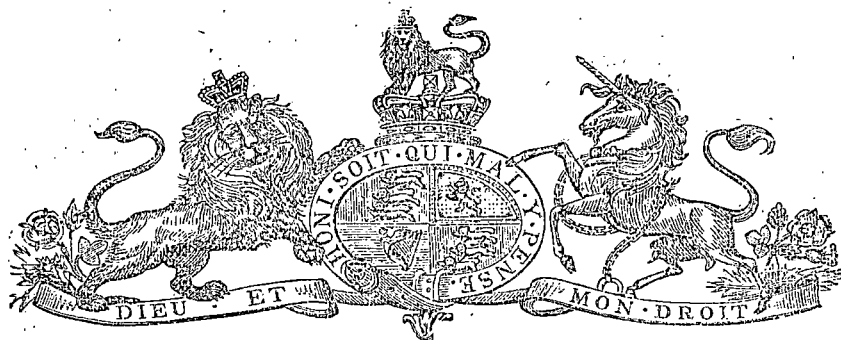
PARLIAMENT OF TASMANIA.

COMMONWEALTH OF AUSTRALIA CONSTITUTION
BILL :

Suggested Amendments by the Honourable Sir SAMUEL GRIFFITH,
G.C.M.G., Chief Justice of Queensland.

Presented to both Houses of Parliament by His Excellency's Command.

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COMMONWEALTH OF AUSTRALIA CONSTITUTION BILL.

SUGGESTED AMENDMENTS

BY

THE HON. SIR. S. W. GRIFFITH, G.C.M.G.,
Chief Justice of Queensland.

I HAVE adverted to some of the more important questions of principle raised by the work of the Convention. I proceed briefly to refer to some matters of detail which seem to require further attention.

ACT: Section 2.—This Section begins with the words, “This Act shall bind the Crown”—an expression which is at least unusual in Statutes, and which is, surely, unnecessary. How can it be suggested that an Act in which the Crown is continually mentioned, and which establishes a new Dominion under the Crown, does not bind the Crown?

Section 4.—It is suggested that this Section should read as follows:—“The provisions of this Act relating to the Constitution of the Commonwealth shall commence and have effect on and from the day appointed,” &c., the introductory words, “Unless it is otherwise expressed or implied” being omitted and replaced by the following provision at the end of the Section:—

“But the Parliaments of the several Colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had been established at the passing of this Act.”

The need of such a provision is apparent, having regard to the necessity to constitute electoral divisions for the first election of members of the House of Representatives (s. 29). And, if a suggestion previously made is adopted, a power to provide for the first election of Senators will be equally necessary.

Section 5.—If the alteration made in s. 114 is adhered to, this Section requires consequential amendment. If it is not adhered to, the mode by which a Colony is to join the Commonwealth should be specified.

CONSTITUTION: Sections 3, 4.—The theory of the “Civil List” is that there is placed at the disposal of the Sovereign a sufficient sum to defray the salaries of the officers mentioned; the time at which, and conditions under which, it is drawn being determined by the Sovereign. Thus we know that Governors receive half pay from the date of embarkation and while on leave. These sections, as now framed, appear to be inconsistent with the existing practice, or, if construed in conformity with it, might, in the event of a reduction of the Governor-General’s salary, lead to the anomaly of an Administrator of the Government having his emoluments actually reduced by reason of his discharge of the duties of that office. It is suggested that Section 3 should read as follows:—

“There shall be payable to the Queen out of,” &c., “for the salary of the Governor-General, an annual sum which, until The Parliament otherwise provides, shall be £10,000,” and that the concluding sentence of Section 4 should be omitted. This is, surely, a matter with which the Federal Parliament can deal, as the Parliament of Queensland did many years ago.

Sections 9, 10.—In order to give effect to the arguments already urged, with as little interference as possible with the Draft, it is suggested that the second paragraph of Section 9, which reads, "The Senators shall be directly chosen by the people of the State as one electorate," should be transferred to follow the first paragraph of Section 10, which provides that the Parliament of the Commonwealth may make laws prescribing a uniform manner of choosing the Senators, and that, subject to such laws, the State Parliaments may determine the time, place, and manner of choosing the Senators for their respective States; with introductory words limiting the provision for direct election to the absence of any general provision by the Federal Parliament and of any special provision by the Parliament of the State.

The succeeding Sections would need consequential amendments.

In Section 9 as well as in Section 30 is contained a provision that a person voting more than once shall be guilty of a misdemeanour. I venture to suggest that the Constitution of a Federal State is not an appropriate place for an addition to the Statutory Criminal Law. The matter is, I believe, already effectively dealt with by State legislation in the provisions incorporated by ss. 10 and 42. (*Qu.* Should not these sections be consolidated and transferred to Part IV. of Chapter I.?)

Sections 19, 36.—It is proposed that the place of a member of either House shall become vacant in the event of absence without leave for *two months*. May I respectfully suggest that some members of the Convention do not appear to have realised the enormous extent of the territory of Australia?

Sections 20 and 37 provide that, upon the happening of a vacancy, the necessary steps are to be taken for the election of a new member, without any resolution of the House declaring the vacancy, as was provided in the case of the House of Representatives by the Draft of 1891 (s. 38), and as is provided by the several Australian Constitutions. If the only mode of vacating a seat were by death or resignation, this might be quite satisfactory, but Sections 45, 46, and 47 prescribe other cases in which a seat may be vacated, and in which the happening of the event must, from the nature of the case, be established to the satisfaction of some tribunal. Until a Court exercising Federal Jurisdiction is in existence, this tribunal can only be the House itself. In Sections 21 and 43 this fact is recognised, but Sections 20 and 37 are apparently inconsistent with them. In Section 50, dealing with disputed elections, the fact has been lost sight of, and consequently no provision is made for questions arising at the first elections.

It is suggested that the provisions of the several Australian Constitutions may safely be followed in all these matters.

Sections 22, 28. The Draft of 1891 left the quorum of members of either House entirely within the control of the Federal Parliament, which was probably a mistake. The present Draft fixes it absolutely at one-third of the whole number, without power of increase by the Parliament. Is not this a mistake in the other direction? It is suggested that the minimum number should be fixed, but that the Parliament should have power to increase it.

Section 24.—Apart from any question of principle, it is suggested that the words "As nearly as practicable there shall be two members of the House of Representatives for every one member of the Senate," and "Until the Parliament otherwise provides for the method of determining the number of members for each quota," be omitted and replaced by the words "so that." The section will then read: "The House of Representatives shall be composed of members directly chosen by the people of the several States, according to their respective numbers, so that there shall be one member for each quota of the people of the State. Until the Parliament otherwise provides, the quota shall be ascertained," &c. The words proposed to be omitted are open to the charge of inaccuracy, and they add nothing to the sense.

If Section 114 stands as now drawn, this section should also be altered by mentioning only the Colonies which originally form the Commonwealth.

Section 25.—It is suggested that this section, which is somewhat ambiguous, should read as follows:—

"When by the law of a State the people of any race are not entitled to vote at the elections for the more numerous House of the Parliament of the State, then, in ascertaining the number of the people of that State so as to determine the number of members to which the State is entitled, the number of the people of that race shall be deducted from the whole number of the people of the State."

Section 45.—This section (which is not altered from the Draft of 1891) needs verbal amendment. The words "until," &c., at the end are not applicable to the whole of the cases mentioned. The word "felony" also is, it is suggested, an inappropriate one. Apart from the fact that the word no longer bears any definite descriptive meaning, the use of it has the effect of making the disqualification in question dependent upon State law. In New Zealand the term is no longer used

in criminal law, and it may be disused in other Colonies. Moreover, the same offences are felonies in some Colonies and misdemeanours in others. In all, I believe, manslaughter by negligence is felony.

On this point I submit three alternative suggestions—

1. To leave the imposition of disqualifications to the Federal Parliament ;
2. To establish disqualifications until that Parliament otherwise provides ;
3. To substitute for “felony” words to the effect following: “An offence of such a nature that by the law of the State of which he is a representative a person convicted of it is liable to undergo penal servitude or imprisonment with hard labour for a term of three years.”

Section 47.—The second paragraph of this section should be amended to harmonise with the first paragraph and with s. 46.

Section 52, Par. II.—It is suggested that the principle expressed by the words “but so that,” &c., should form the subject of a substantive provision in Chapter IV., as part of s. 84.

Par. VI.—The words relating to the calling out of the Forces to execute and maintain the laws “of any State or part of the Commonwealth,” which were in the Draft of 1891, are omitted. Section 112, however, which deals with the same subject, is not altered. The only effect of the omission, so far as I can see, is to create an ambiguity which may afterwards give rise to discussion and trouble.

Par. X.—Do not “Astronomical and meteorological observations” fall within the term “Statistics” in Par. XIII.?

Par. XVI.—It is suggested that this should read thus: “Insurance, but so as not to include State Insurance relating only to the people of the State concerned or to things within that State, and not extending to persons or things beyond the limits of the State.”

Section 54.—It is suggested that this section should read as follows:—

“Proposed laws for appropriating any part of the public revenue or moneys, or imposing any tax or impost, shall originate in the House of Representatives.

“But this section shall not extend to a proposed law by which a tax or impost is imposed incidentally only, and for the purpose only of securing the execution of the law, or in respect only of benefits taken or services rendered under the law, or by which any tax or impost imposed for such purposes only is appropriated.”

A recommendation from the Crown as to expenditure should in all cases be required, and the words omitted from the Draft Bill of 1891 (s. 56), “or of the produce of any tax or impost,” should be restored in Section 56.

It is suggested also to qualify the references to “laws imposing taxation” in the first and second paragraphs of Section 55, by adding—“which are required to originate in the House of Representatives.”

Section 66.—The omission of the power of delegated appointment contained in the Draft of 1891 is, surely, inadvertent. It could not have been seriously intended that the temporary appointment of a telegraph messenger, for instance, at Normanton, could not be made without the authority of the Governor-General in Council.

In Section 69, bounties and telephones should, apparently, be mentioned.

Section 78.—It is suggested that, for reasons already given, the words “and in such parts of the Commonwealth” or “and in such place or places” (as in the following section) should be inserted.

Section 84.—It is suggested that the first three paragraphs of this section should read as follows:—

“All Customs duties and duties of excise imposed by the Parliament, and all bounties offered by the Parliament upon the production or export of goods, shall be uniform throughout the Commonwealth.

“As soon as uniform duties of Customs have been imposed by the Parliament, all laws of the several States imposing duties of Customs or duties of excise upon goods for the time being the subject of Customs duties, and all such laws offering bounties upon the production or export of goods, shall cease to have effect.

“And thenceforth the Parliament shall have the sole power and authority to impose Customs duties, to impose duties of excise upon goods for the time being the subject of Customs duties, and to grant bounties upon the production or export of goods.”

Then might follow, if thought fit, a proviso dealing with the case of duties on goods imported into isolated parts of the Commonwealth, as already suggested.

Section 86.—All the property mentioned in this section is already vested in the Crown. The provision should be that the property (which would, perhaps, be the better word to use, as in s. 107) shall vest in Her Majesty in right of the Commonwealth.

The words "the like" introduced before "public purposes" at the end of the section, will, if they remain, have the effect of making it inoperative in some cases.

Section 90.—It is suggested that the words "in the State" be inserted after "collected" and "Commonwealth" in the first line of the first and second paragraphs. The words "and in payment of bounties" ought evidently to be added to the second paragraph. In the concluding paragraph it is suggested that the words "in respect of other matters than those hereinbefore specified" be substituted for the words "in the exercise of the original powers given to it by this Constitution," which are open to the charge either of ambiguity or of want of comprehensiveness. A similar amendment is suggested in s. 91.

Section 106.—It is suggested that, for reasons already given, this section should read as follows :—

"After uniform duties of Customs have been imposed, a State shall not, *nor shall any authority constituted by a State, except as provided by this Constitution,* levy any impost or charge on imports or exports except such as may be necessary for executing the inspection laws of the State *or by way of payment for services actually rendered in the improvement or maintenance of ports or harbours or in aid of navigation;* and the net produce of all imposts and charges imposed by a State on imports *or exports by way of payment for such services shall be applied for the support of such services only,* and the net produce of all such imposts and charges imposed for the purposes of inspection laws shall be for the use of the Commonwealth; and any laws imposing any such imposts or charges may be annulled by the Parliament of the Commonwealth." The words in italics are new.

Section 121.—It is suggested that the third paragraph of this section should read thus :—

"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," &c.