Shadow of Dispute

ASPECTS OF COMMONWEALTH — STATE RELATIONS 1901-1910

D. I. Wright

This book is the first detailed study of what happened when the well-established Australian colonial governments joined together to form the Commonwealth of Australia. It tells how the State politicians, anxious not to lose the political limelight, strove to maintain their former power and status virtually unchanged, and how the politicians of the new Commonwealth Government seized every opportunity to enhance their own authority and prestige.

The part played by the Colonial Office in settling some of the disputes which arose is of particular interest now that its influence has waned completely.

The study also reveals something of the jealousy which persisted between Victoria and New South Wales and of the first attempts at co-operation between Commonwealth and State. One thing which emerges clearly from this book is that during the period 1901–10 a pattern of inter-governmental relations was formed in Australia which has not greatly changed since — a pattern marked at the same time by co-operation and antipathy, where the steady growth of Commonwealth power has continued to be resisted firmly by the States.

The writing of this book involved research into a mass of hitherto unexamined official government correspondence, both Commonwealth and State. Its interest is not only for historians, but for all who wish to learn something of the background to Commonwealth-State relations and who seek to understand the continuing rivalries which are a feature of the relationship.

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FOR JANICE

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University of Newcastle D.I.W.
April 1969

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Abbreviations

A. (followed by a number)	Australian joint copying project microfilm (reel number)
C.A.O.	Commonwealth Archives Office
C.O.	Colonial Office
C.P.	Commonwealth Papers
C.P.D.	*Commonwealth Parliamentary Debates*
C.P.P.	*Commonwealth Parliamentary Papers*
C.R.S.	Commonwealth Record Series
C.S.I.L.	Chief Secretary's In-Letters
C.S.O.	Chief Secretary's Office
D.P.	Deakin Papers
G.G.	Governor-General
G.O.	Governor's Office
Gov.	Governor
G.R.G.	Government Record Group
Lt-Gov.	Lieutenant-Governor
N.L.A.	National Library of Australia
N.S.W.A.	State Archives Office of N.S.W.
N.S.W.P.D. 2 Ser.	*New South Wales Parliamentary Debates*, second series
N.S.W.P.P.	*New South Wales Parliamentary Papers*
P.D.	Premier's Department
P.D.V.I.L.	Premier's Department of Victoria, In-Letters
P.D.V.O.L.	Premier's Department of Victoria, Out-Letters
P.M.	Prime Minister
Prem.	Premier
P.R.O.	Public Record Office (London)
Q.S.A.	Queensland State Archives
S.A.A.	South Australian Archives
S.A.P.D.	*South Australian Parliamentary Debates*
S.A.P.P.	*South Australian Parliamentary Papers*
S.B.	Special Bundle
S. of S.	Secretary of State for Colonies
T.S.A.	Tasmanian State Archives
V.S.A.	Victorian State Archives
W.A. (number)	Western Australian State Archives (accession number)

The term 'Premiers' Conference' has been used to describe all conferences of Commonwealth and State ministers mentioned in this book.

Introduction

ON Tuesday 1 January 1901, the Commonwealth of Australia was proclaimed in Sydney amidst great rejoicing. The weather was bright and hot and the brilliantly decorated streets were filled with a vast crowd of people who displayed unbounded enthusiasm. A new century and a new nation had been born together. The dream of Australian nationalists, 'One continent, one people', had at last been fulfilled. For them, this was the climactic event of Queen Victoria's long and almost completed reign.

There was every reason for federalists to rejoice. Federation had been a topic for discussion for many years, and more than ten had passed since the Melbourne Premiers' Conference of 1890 had inaugurated the most important phase of the movement. The wait had been long and many disappointments had been overcome: the stillbirth of the 1891 draft Constitution; the considerable delays before further action could be taken; the absence of Queensland from the 1897–8 Conventions; the failure of the 1898 referendum in New South Wales; the delay before Queensland and Western Australia decided to join and the difficulties which had surrounded the passage of the Constitution Bill through the Imperial Parliament. On 1 January 1901, all this was behind them. The framework of nationhood had been created and it remained to breathe life into it.

Even on the inaugural day there were those who realised that many difficult problems would have to be solved before the new political machinery settled down and the old and new governments learned to work together reasonably amicably, if never in perfect harmony. Alfred Deakin, one of the most ardent of the federalists and a central figure in the story which follows, recognised that 'the Commonwealth would not begin its reign without much friction, much misunderstanding, and much complaint'.[1] Deakin's realisation was, no doubt, the result of his deep involvement in the federal campaign. Anyone so involved could not but be aware of the narrow parochialism which many members of the Federal Conventions had

shown, of the considerable heat generated during the two referendum campaigns in New South Wales and of the apathy of large numbers of citizens everywhere. All of these were pointers to an uneasy transition.

The States soon realised that they no longer enjoyed their former independence, and they resented it. By the first anniversary of federation, Deakin's prophecy had been fulfilled. On that day, P. McM. Glynn, a member of the Conventions and of the first Commonwealth Parliament, noted in his diary that if the question of federation were again put to the people it was likely that the vote would go against it.[2] After five years, the Chief Justice of South Australia described federation as 'like a foreign occupation'.[3]

Politically, the period 1901–10 saw the discussion and settlement, on the federal level, of a number of important questions. The machinery of the new government had to be established. Existing departments were transferred from the States and made to function as a unit. New departments were created. A public service was established. A national executive government had to be made to work. A new judicial system was inaugurated and, in part, integrated with the old. The machinery itself was, for the main part, familiar enough, but the scale of its operation was new and provided many difficulties. In itself, the integration of disparate administrative methods was no easy business. The fiscal question had to be settled and a decision made between free trade and protection since the tariffs, a perpetual source of strife between the various colonies, were now a matter solely for the Commonwealth. The financial needs of the States, five of which had long depended heavily on customs revenue and which were to receive back three-quarters of the net customs and excise revenue of the Commonwealth for the first ten years, partly pre-determined this question. Sufficient room for manoeuvre was left to ensure that the old fiscal rivalry between New South Wales and Victoria would be transferred to the Commonwealth Parliament for a time. Once protection had been more or less firmly adopted, the question of 'new protection', the passing on of the benefits of 'old protection' to the worker as well as the manufacturer, was raised more or less urgently both by the Victorian liberals and by the Labor Party. The question of immigration restriction which, despite its neutral name, meant the exclusion of coloured peoples, was regarded as urgent and occupied much

attention for a time. Later in the decade, defence became an issue which concerned the Parliament closely.

All these were important questions, but none was more important than the need to define the relations between the States and the Commonwealth. On 31 December, there were in Australia six separate political communities, each enjoying sovereignty, subject to the imperial veto, over the full range of political subject matter except, in practice, external relations with foreign countries. Five of them had existed for nearly fifty years and the sixth for ten years. They had different histories and, sometimes, divergent policies. There had been limited co-operation between them, but rivalry was a more characteristic mark of their relations. From 1 January 1901, a new government was added, but the six did not cease to exist. The new government had jurisdiction over the whole territory occupied by the other six. It immediately removed some areas of power from their control: the customs power was transferred at once and defence and post and telegraphs followed soon afterwards. Other agreed areas of power, such as the control of quarantine and immigration restriction, could be removed as soon as the Commonwealth Parliament could legislate on them. Even in these areas, there was the possibility of both human and definitional conflicts, but the example of the United States showed that it was probable that the Federal Government and Parliament would encroach in unforeseen ways on still further areas of power. This was known to those who were familiar with the constitutional history of the United States, but few men concerned with practical politics and administration were students and this encroachment would cause deep resentment.

A wide range of matters brought the Commonwealth and State Governments into executive and administrative contact, much, but not all of it, happy and fruitful. Departments had to be transferred from the control of one government to another. When this was virtually immediate and automatic there were few difficulties, but in other cases there was sometimes much friction before a *modus vivendi* was reached. Governments performed services for each other on a reciprocal basis, or lent each other buildings, to minimise costs. This was the kind of co-operation which made federation work.

Other, more fundamental, questions caused serious friction. Among the most important of these were the disputes over the channel of communication to be used by the States in their dealings

with the Imperial Government, the power of the Federal and State Governments to tax each other's property and servants, and the return of revenue to the States and the control of State debts.

This study is concerned with only three such areas of contact. The question of the channel of communication to be used between the States and the Imperial Government is discussed at length because it sums up so much of the whole question of the effects of federation on the status of the constituent governments. Furthermore, it had implications outside the boundaries of the Commonwealth, and could only be settled by the intervention of the paramount power, the Imperial Government. The selection and transfer of the site for the federal capital was a particularly exasperating and unnecessary quarrel, involving the most irritating aspects of *amour propre* and illustrating the way in which petty local jealousies and personal animosities could affect the working of the new machinery of government. In the third field chosen for study, the transfer of departments and property from the States to the Commonwealth, there was some genuine attempt to co-operate, though even here difficulties were numerous.*

Today, almost seventy years after the inauguration of the Commonwealth, there is still continual argument about Commonwealth–State relations: apparently this is an inescapable accompaniment of the federal system of government. But at least the existence of Commonwealth power is accepted without question. In the first decade of Australia's federal history, the superior power of the Commonwealth could not be accepted automatically but had to be questioned by the executives or in the courts when it seemed to overstep what the State ministers thought were its clear limits as agreed in the Constitution. It was not a case of one new, progressive government trying to make six old and conservative governments recognise the ineluctable facts of twentieth century political life.

*In this book only basic references are given. The specialist who requires full documentation should consult my Ph.D. thesis 'Commonwealth and States, 1901–10. A study of the executive and administrative relations of the seven governments of Australia in the first decade of the federal system'. This is in the Menzies Library, A.N.U.

I have discussed the financial aspects of this problem in an article 'The Politics of Federal Finance: The First Decade', in *Historical Studies*, vol. 13, no. 52, April 1969, pp. 460–76. Another article, 'The Political Significance of "Implied Immunities", 1901–10', will appear in the *Journal of the Royal Australian Historical Society*, probably during 1969.

There were seven governments, sometimes, but not always, pulling in different directions as they struggled to adjust to a new and complex system of government. The first Prime Minister of the Commonwealth, Sir Edmund Barton, summed up the position thus:

> Provincialism dies a slow death, and all that is possible for a Federal Government, which must not nurse it, is to ease the pangs of its passing.[4]

It is the function of this study to reveal the first pangs of what is proving a slow and painful passing.

Shadow of Dispute

1 A Question of Status

NOT even the inaugural day of the Commonwealth was entirely free from the shadow of dispute. On that day, the first signs of one of the major constitutional debates of the first decade became evident. It concerned the right of the States to communicate directly with the Imperial Government.

Within the federal system, most disputes over the meaning of the Constitution are ultimately settled by the High Court. When the channels of communication dispute first arose there was no High Court. In any case, the dispute was unusual. It involved the interests of a third party, the Imperial Government, as well as those of the Commonwealth and State Governments of Australia. Ultimately, the settlement of large areas of the dispute depended on the will of the paramount power, Britain. The issue was of the utmost importance. The whole question of the political status of the States within the Federation was bound up with the simpler question of the channel of communication and was, to a considerable extent, settled by it.

Initially, the debate arose as a dispute over the right of the States to communicate directly, by means of their governors, with the Crown in routine matters. Later, it assumed more specialised forms. A long and bitter discussion developed over the channel to be used when a foreign government complained about the action of State officials or when an Australian citizen wished to protest against his treatment by a foreign government (that is, in matters of external affairs). A variant of this was the dispute over which government should give permission for the landing of the crews of foreign warships docked in Australian ports. The channel to be used for communications concerning imperial affairs (as in the recommendation of honours) and the question of State representation at the Colonial Conference of 1907 were also strongly contested.

The dispute arose first in South Australia, but quickly involved all States in at least some of its aspects. Throughout, South Aus-

tralia, New South Wales, and Queensland took the lead in the argument for the States against the Commonwealth and the Colonial Office.

The Draft Constitution of 1891 contained a clause which required all communications between the State Governments and the Colonial Office to be sent through the Governor-General. He was to be the sole channel of communication with the Imperial Government. The clause, which was inserted by a majority of sixteen votes to six, had drawn the support of such strong champions of State rights as Sir Samuel Griffith and Mr (later Sir Richard) Baker, who seemed to feel that this single channel was to be a great symbol of Australian unity. The clause was omitted from the original draft of the Constitution presented to the Adelaide Convention in 1897, and Deakin, strongly supported by Edmund (later Sir Edmund) Barton, fought to have it re-inserted. Deakin's aim was to prevent conflicting views reaching England without the knowledge of the Governor-General. He believed that such a provision was essential to the proper administration of Australian affairs on a national scale. C. C. Kingston, Premier of South Australia, expressed a more correctly federal view when he argued that, while the Commonwealth Government should speak for Australia in national affairs, local matters should be left to the States. Deakin's proposal was defeated without a division.

There was no room for doubt that the Constitution in its final form embodied Kingston's view and not Deakin's. The failure to include a clause similar to that in the 1891 Draft Constitution meant that the power of each State Executive to communicate directly with the Imperial Government, in all matters which came within its purview, was left absolutely unimpaired. It is against this background of discussion in the Conventions that the subsequent debate must be seen.[1]

As part of his preparations for federation, Joseph Chamberlain, the Secretary of State for Colonies, took up the question of communication between the seven governments of Australia and the Imperial Government. He drew up a procedure which he submitted to the Governor-General designate, Lord Hopetoun, for comment and approval before he informed the colonies. Chamberlain realised that Australian opinion required the continuance of direct communication between the State governors and the Secretary of State on all matters of purely State concern, while matters of

general Australian interest should be dealt with through the Governor-General. However, he believed that the Governor-General would not be able to perform his duties satisfactorily unless he were aware of all the correspondence passing between the States and the Colonial Office. Because of this, he had decided to send the Governor-General copies of all public and confidential despatches from himself to the governors. He directed them to take similar action with their own despatches and to forward to the Governor-General copies of both inward and outward cables.[2]

Chamberlain apparently had no doubt that both the governors and their ministers would see the necessity for the arrangement if Commonwealth efficiency were to be maintained. He does not seem to have considered that the sending of copies to the Governor-General might be regarded as a breach of the privilege of direct communication.

Chamberlain's meaning was clear enough, but some States questioned whether secret despatches were included in the direction and Queensland wondered whether there was any need to send copies of despatches to the Governor-General until their subject matter had actually come under the administrative control of the Commonwealth. In the light of later Queensland protests, this may be seen as a cautious probing of Chamberlain's intentions, a hint of State disapproval, giving him an opportunity to modify his position without loss of face. If so, Chamberlain did not heed it.[3] The South Australian authorities had no doubt about Chamberlain's meaning. They recognised the importance of the question at once and the Governor, Lord Tennyson, appears to have let Hopetoun know that, rather than send copies of confidential despatches to him, the State ministers would use their Agent-General as their channel of communication. Hopetoun had to take time off from the festivities of the Inauguration to ask Chamberlain to deprecate strongly the proposed action. Chamberlain was inclined to regard Tennyson's warning as an idle threat and did nothing.[4]

Hopetoun was apparently determined to make Chamberlain's instruction work and, early in February 1901, he drew the attention of the governors of Queensland and South Australia to the fact that he had not received the copies of any despatches from them.[5] Tennyson's reply, for South Australia, was blunt. His ministers regarded the matter as a 'grave constitutional question'. They were anxious to maintain the independence of the State in all matters

not transferred to the Commonwealth and felt that Chamberlain's instruction came close to infringing the right of direct communication which had been preserved by the Constitution. The question was likely to assume special importance if the State communications involved any matter where State and Commonwealth interests were in conflict. Tennyson was prepared to send Hopetoun copies of covering despatches and formal acknowledgments, but nothing of a secret or confidential nature.[6]

Hopetoun seemed a little stunned by the suddenness and force of this attack. He felt incompetent to discuss the legality of Chamberlain's instruction with Tennyson and passed the whole matter over to the Secretary of State for decision. In doing this, he pointed out that he foresaw difficulties in carrying out his functions properly if he did not have a full knowledge of all communications going to the Colonial Office. The procedure proposed by Tennyson would reduce the whole business to a farce. Hopetoun believed that it was especially important that he should see all despatches relating to recommendations for honours and to disputes between the States.[7]

Meanwhile, F. W. (later Sir Frederick) Holder, Premier of South Australia and afterwards first Speaker of the House of Representatives, was attempting to persuade the other States to join South Australia in its opposition to Chamberlain's instructions of 2 November 1900. The response was good (from his point of view). Most of the States informed the Colonial Office, through their governors, that they supported South Australia.[8]

Sir John Anderson, a senior official in the Colonial Office, felt that the South Australians were 'very obstructive'. He argued that each State was trying to get ahead of its fellows in local matters and that the Imperial Government was entitled to the advice of the Federal Government on the issues involved if it wanted it.[9]

The first two points were just, but the third was not. Anderson clearly had an imperfect understanding of the basic purpose behind the Australian Federation and of the nature of the Constitution by which it had been established. It had been expressly framed to avoid Commonwealth intervention in local matters and there would have been few in Australia who would not have felt that the 'advice' which Anderson wanted was interdicted by the Constitution. Anderson was to give successive Secretaries of State much advice on Australian matters during the first decade, some of it of the same low standard as this.

On this occasion, wiser counsels prevailed. It was recognised that if, after a further explanation, the States continued to reject the Colonial Office's reasoning, they could not be forced to send copies. Accordingly, Chamberlain informed Tennyson on 11 March 1901 that he had no desire to subordinate the States. Despatches of general interest must be sent in copy to the Governor-General, but, if the State Government adhered to its view, he would not insist that the same should be done with those confined to local affairs. He did, however, reserve the right to consult the Governor-General before replying if he considered that federal interests were involved.[10]

This was the only sanction which Chamberlain applied. It did place a certain limitation on the governors' discretion, and, no doubt, was intended to ensure that, whenever there was any reasonable doubt whether federal interests were involved, they would send a copy of the despatch to the Governor-General.

South Australia, a little unreasonably, interpreted Chamberlain's despatch as a definite approval of the principle that copies of despatches dealing with local affairs need not be sent to the Governor-General. The Commonwealth Government had been invited to give its views. Barton stressed the difficulty of making a division between 'local' and 'federal' matters and made it clear that, while he did not wish the Governor-General to be the only channel of communication, he was not prepared to accept the State governors as sole arbiters of whether federal interests were affected. In view of the position taken by Chamberlain, Barton could not very well reject the proposal, but he accepted it as an interim measure which would continue only if it worked satisfactorily.[11]

On 21 June 1901, the Colonial Office made official the compromise foreshadowed on 11 March, with the provision suggested by Barton that it should be regarded as an interim arrangement and subject to modification.[12] The officials had some private reservations and held the vain hope that when the Commonwealth Government and Parliament were in full working order they would be able to bring more pressure to bear on the States. They planned to adopt a suggestion, made by Hopetoun in a private letter to Chamberlain, to ask new governors leaving for Australia to try to carry out what they described as 'our policy' in the matter. At the same time they set aside a worthwhile suggestion made by Tasmania that, just as the States were to send the Governor-General copies of despatches bearing on federal interests, he should send to each State copies of

his correspondence with the Imperial Government which concerned the State.

In the light of the rejection of the Tasmanian suggestion and the proposal to gain the co-operation of future governors, the modification of Chamberlain's original instruction appears grudging. There can be no doubt that the Colonial Office desired to confine its communications with Australia, as far as possible, to one channel, and that such concessions as were made to the States were made from necessity and in the hope that a way would be found around the difficulty later. In spite of the Constitution, the Imperial Government wished either to strengthen the position of the Commonwealth at the expense of the States or to adopt the course most convenient to itself.

Since February 1901, all States except South Australia had sent copies of general despatches to the Governor-General and when that State readily accepted the compromise of 21 June, and showed its satisfaction by sending copies of both general and secret despatches which related to federal interests, the Colonial Office felt that its troubles were over. The ringleaders were 'coming round' and there would be few more difficulties.

This satisfaction was premature. In a private letter to Sir Samuel Griffith, Lieutenant-Governor of Queensland, Tennyson expressed the hope that the States would always protest strenuously against sending copies of all despatches to the Governor-General. He feared for the independence of the governors, as well as for State rights, and urged Griffith to give a lead in the matter as his opinion would have 'great weight'.[13] Griffith, who was administering the Government of Queensland at the time, accepted the June compromise but later sent dire, if vague, warnings to England that any substantial departure from the methods of dealing with the States before federation would strain the relations between the State and Commonwealth Governments and jeopardise the continuance 'of the existing warm regard for the Mother Country'. He pointed to the difference in status between the Canadian Provinces and Australian States and expressed the fear that it might not be sufficiently recognised in England.[14]

It is clear that by mid-1902 the compromise was firmly established and working satisfactorily. The first phase of the debate was complete. The Colonial Office had made demands which were constitutionally unjustifiable and which showed little appreciation of

Australian thinking. It was natural that the Commonwealth should support a move which was to its advantage and equally natural that the States should oppose it. That the States were prepared, within six months, to accept a compromise solution was probably due to the expectation that they would not be involved in much correspondence of federal interest. Aspects of the *Vondel* case (discussed later in this chapter) suggest that South Australia, at least, saw 'federal interest' as being confined to matters specifically transferred by the Constitution and subject to Commonwealth legislation.

The compromise remained undisturbed as long as Hopetoun and his successor, Tennyson, who had both been involved in working it out, remained as Governors-General.[15] It was challenged as soon as Tennyson was succeeded by Lord Northcote early in 1904.

Northcote had been in office little more than two weeks when he sent a strongly worded despatch to the Secretary of State (by this time Alfred Lyttleton) informing him that Chamberlain's instructions of 1 February 1901 (a despatch explaining and confirming that of 2 November 1900) were not being complied with satisfactorily. He repeated all the old arguments and pointed out that the Federal Government must see that it was not impeded, perhaps unintentionally, by the State Governments in the exercise of its duties. He believed that many proposed State Acts must be of a doubtful character and might trespass on the sphere of the Federal Government. That government's greater knowledge would assist the Colonial Office to make decisions about them. He wanted Chamberlain's instructions repeated.[16]

It was an incredible despatch. Northcote was apparently totally unaware of the compromise hammered out between March and June 1901, and finally approved in Chamberlain's despatch of 21 June, yet that compromise drastically modified the earlier instructions. With his despatch, he enclosed a memorandum by his Official Secretary which purported to show that the States were not complying with the instruction of 1 February 1901, but which probably showed that three States (South Australia, Queensland, and Tasmania) were complying with the compromise of 21 June 1901 and left the position with regard to the other States an open question. The proposal that the Commonwealth Government should offer advice on State Acts revealed an abysmal ignorance of the Australian Constitution. Indeed, only limited categories of State Acts were subject to the Imperial Government's veto and possible interference

with federal responsibilities was certainly not a ground for its exercise. Such interference was a ground for an appeal to the High Court, if a test case arose.

Sir John Anderson, who had perhaps told Northcote the Colonial Office's real attitude in the question, hoped that the Commonwealth would 'bring the matter to a head', but his colleagues recognised both the extent of Northcote's blunder and the impossibility of effecting his desire. Northcote's attention was drawn to the compromise and he was informed that the Secretary of State was not prepared to attempt to change it.[17]

Time did not teach Northcote wisdom. In June 1905, he again drew attention to the 'fact' that New South Wales, Victoria, and Western Australia had not, during that year, complied with the instructions of 1 February 1901. The other States had only complied in part. Because of this, he often found himself with the Colonial Office's answer to a despatch but not the despatch itself. Governors had always complied with his requests for copies but they could do this as a courtesy rather than in obedience to instructions. The instructions of 1 February 1901 should be repeated or cancelled.[18]

The Colonial Office doubted whether the States were more likely to accept the original instructions in 1905 than they had been in 1901, but felt bound to make inquiry since Northcote had raised the question again so strongly. It was pointed out to the governors that the arrangement had only been accepted as a provisional measure and that it was causing the Commonwealth inconvenience. To accept the original instructions would not bring the States any more under Commonwealth control and the Governor-General would be under no obligation to show the correspondence to his ministers. Northcote was told what action had been taken and his attention was drawn, for the second time, to the compromise of 21 June 1901 which had superseded the earlier instructions.[19]

The action of the Colonial Office fell far short of what Northcote wanted and, in the circumstances, was little more than a polite way of avoiding the necessity of refusing his request outright. The States were not prepared to agree to the change. After an interchange of letters among themselves, all indicated this to the Secretary of State. In South Australia, the Price Government, assisted by the Lieutenant-Governor, Sir Samuel Way, resisted an attempt by the Governor, Sir George Le Hunte, to persuade them to yield.[20]

When the Governor of Victoria sent Northcote a copy of his

reply, the Governor-General again showed how little he understood the business in which he was meddling. He claimed that his only objects in asking for the instructions to be enforced were to save time and 'to facilitate a good understanding between the Governor-General and any State Governor who may be corresponding with the Secretary of State on a matter of common interest . . .'. The States were adequately protected against Commonwealth interference by the Constitution. While it was natural for them to try to retain all the power, real or apparent, that they could, it was the 'inevitable corollary' of the Constitution that he should be sufficiently informed about the affairs of the States to be able to judge advice given him by his ministers on such matters. Northcote believed that the instructions of 1 February 1901 should be enforced by the threat that, if they were not carried out, the Colonial Office would delay its reply until the Governor-General had seen the whole correspondence.[21]

This bad advice was perhaps the 'inevitable corollary' of Northcote's faulty reasoning. In spite of two reminders, he again ignored the existence of the compromise of 21 June 1901. There was no reason for him to expect advice on State affairs from his ministers and, in the circumstances which existed, it was absurd to claim that his proposal would foster 'a good understanding'. His despatches were a more than adequate indication that there was a kind of encroachment against which the Constitution would provide no adequate safeguard if once the States agreed to send copies of all their correspondence to the Governor-General.

The Colonial Office, aware in 1906 as in 1901 that compliance must be by consent and not by compulsion, refused to fight a pitched battle with all six States at once and informed the Governor-General accordingly. At the same time, it urged the governors to take great care to ensure that copies of all material bearing in any way on federal interests should be sent to the Governor-General.[22] This was a re-assertion of the compromise of June 1901.

Northcote's personal part in the discussion, to this point, is of the greatest interest. His general reputation, won both in Bombay and Australia, seems to preclude the conclusion that he simply bungled the matter from personal incompetence. Since it was made so soon after his arrival in the country, his first move may have been made in partial ignorance, although his Official Secretary, who was able to tell him to what extent the States had complied with the original

instruction, should have been able to direct his attention to the correspondence over the compromise. If he acted in ignorance, the question still remains why he acted so hastily.

During his time in India, he had had considerable experience in the matter of relations between a provincial and a central government, as it was a time when the power of the Central Government, under Lord Curzon, was growing rapidly. He seems to have brought very definite notions concerning the powers of the Federal Government to Australia with him. Shortly after the first despatch referred to, in February 1904, an incident occurred with Western Australia over the issue of a proclamation of neutrality in the Russo-Japanese War. The State Governor challenged Northcote on the channel through which the proclamation should have been issued. Northcote on his own initiative, correctly asserted Commonwealth competence and commented in a letter to Deakin that 'a fight on such a question between State & Federal Govts would not be a bad thing for us . . .'.[23] This was a bold action and statement for a Governor-General still in his first month of office.

The evidence does not allow a decision whether Northcote confided in Deakin at all. Deakin's diaries reveal that he met Northcote, shortly before each despatch was sent but there is no indication of the subjects discussed, and on the second occasion (30 June 1905) Deakin was not in office. The two men met so often that the mere fact that they did meet at the right time is insufficient to prove collusion. Yet the intimacy and general accord which quickly grew up between them makes it difficult to believe that Deakin remained ignorant of the correspondence until he began to take a formal and open part in it in 1906.

The Secretary of State's refusal to do battle with the States caused Northcote to seek Deakin's active assistance. He sent him the refusal for comment. Deakin's memorandum in reply was in his worst style: longwinded, full of flabby reasoning and contradictory arguments. He repeated all the old, pointless, and already rejected, assurances about the friendly feelings that the Commonwealth ministers had for the States. Deakin argued that, although the Constitution demanded the surrender of powers by the States, it was inevitable that State ministers who had previously exercised these powers would resist their surrender. He believed that State governors, whose experience was necessarily confined to one State, would never be able to appreciate federal principles and, therefore,

should not be allowed to determine what despatches were sent in copy to the Governor-General. On the other hand, the Governor-General's occasional journeys through the States were said to give him an 'intimate' knowledge of all Australian affairs, including State politics. He admitted that 'The Commonwealth Constitution is necessarily general in its language, and therefore affords abundant scope for diverse readings of its provisions' but went on to claim that, because of their attitudes in the *Vondel* and Benjamin cases (see pp. 14–26), the State governors and ministers had shown themselves incapable of judging when a matter involved federal interests. The reservation of the right by the Secretary of State to refer to the Governor-General matters which seemed to bear on federal interests was inadequate because the officers advising him were unfamiliar with Australian conditions. Only the Governor-General could decide whether federal interests were involved. He would determine by his own judgment whether a despatch should be referred to his ministers. If, occasionally, they were allowed to comment on some matter which did not really concern them, no harm would be done. Commonwealth interests suffered if the government's right to comment were delayed even for a time. Deakin stressed that, if the practice were changed, the Governor-General would act, not as the official head of the Federal Government, but as the personal representative of the King, 'entirely independent of Government, Ministers and parties'.[24]

The fallacies and inconsistencies of the Prime Minister's memorandum are obvious and it is unnecessary to labour them. It is astonishing that Deakin, an intelligent man constantly and intimately involved in public affairs, could have believed it worthwhile to make his final suggestion in the atmosphere of suspicion and mistrust which pervaded the relationship of the Commonwealth and States in 1906. Since he must have known that no State would willingly have adopted the proposal, it must be assumed that his aim was to gain the support of the English officials (his experiences in the *Vondel* case would have made this appear a real possibility) so that they would order the States to comply. The correspondence which followed showed that Deakin would have regarded this action as perfectly reasonable and very desirable.

The officials doubted whether they could legitimately instruct the governors to adopt such an arrangement and Lord Elgin, the Secretary of State, accepted the advice that the scheme could only

be implemented if the States agreed to it. He informed Northcote in May that Deakin's proposal seemed reasonable and suggested that, as negotiation from England was difficult, it would be best for the Governor-General to consult the State Governments through the governors.

The Colonial Office had no time to waste on hopeless causes. The Commonwealth Government was being told quite clearly and firmly that if it wished to upset the established compromise of June 1901 it could persuade the States itself.

At their Conference in 1906, the Premiers discussed the Secretary of State's earlier request (31 August 1905) that they should reconsider their position and send copies of all correspondence to the Governor-General. As a consequence, the Premier of New South Wales, J. H. (later Sir Joseph) Carruthers, protested strongly on behalf of all States. Deakin described the attitude of the Premiers as 'uncompromising' and felt unable, in the face of it, to advise Northcote to undertake the negotiations which Elgin had suggested. He claimed that the States were persistently ignoring the Secretary of State's request to observe carefully the terms of the June 1901 compromise and that for the Commonwealth to initiate a correspondence would cause further unpleasantness. The only solution was for Elgin to issue the necessary instructions.[25]

The States were uncompromising, but so was Deakin. He was harking back to the notions of 1891, which had been firmly rejected at the Adelaide Convention in 1897. The validity of Deakin's claim that the States were not complying with the compromise of June 1901 is at least dubious. Perhaps he had not bothered to check the facts, although they were available. With Deakin's memorandum, Northcote forwarded a document, prepared by his Official Secretary, showing the despatches which each State had sent in copy to the Governor-General. If it showed anything at all, it was that only Victoria was being unco-operative.*

No one at the Colonial Office was prepared to quarrel with the States for the sake of the 'beaux yeux' of the Commonwealth. Dale and Cox would have had Elgin suggest Deakin's proposal to the States so that the Secretary of State could feel that he had done his

*The return gave only the number of despatches sent to the Governor-General by each State. To be sure that the States were co-operating fully, all the despatches not sent would have to be seen, but this is no longer possible. The men at the Colonial Office were satisfied with the action taken by all States except Victoria.

utmost. But Elgin recognised that the correspondence was 'perfectly futile'. He was satisfied that all States except Victoria were behaving well in the matter, and he was thoroughly peeved with the persistent nagging of Northcote and Deakin. He believed that his suggestion that Northcote should consult the State governors should never have been shown to Deakin and the fact that it had been had destroyed the possibility of Northcote exercising a personal and independent influence. He hoped that the forthcoming Commonwealth election would bring a change of government and he simply marked the correspondence 'Put by'.[26]

In spite of strong attacks by the Commonwealth, the States had maintained the compromise of 21 June 1901 and, with it, the right of direct communication with the Imperial Government. This right was limited only by the need to send copies of despatches to the Governor-General if the State governor thought they bore on federal interests. His judgment might be overruled by the Secretary of State, but, from the State's point of view, this was not as bad as being overruled by the Commonwealth.

In itself, the compromise was politically sound and in accord with the spirit of the Constitution. There were admitted difficulties in operating it, but these were not insurmountable and were likely to become less as time passed and politicians and governors were more and more able to make their decisions in the light of established and acceptable precedent. The latter phase of the debate, 1904–6, should never have arisen, due as it was to the failure of Northcote to appreciate the Australian situation and the desire of Deakin (perhaps partly the result of provocation by the Premiers) to extend Commonwealth powers as far as possible, even to the extent of reviving the long rejected ideas of 1891. In staving off this unwarranted challenge, the Colonial Office was a loyal ally to the States, though, it would seem, more from a desire to avoid fruitless wrangling than from any belief in the rightness of their position.

The question of the channel for communications concerning external affairs arose in 1902. Section 51 (xxix) of the Constitution gave the Commonwealth power to 'make laws for the peace, order, and good government of the Commonwealth with respect to . . . external affairs'. Quick and Garran, authorities on the new Constitution, regarded this power as 'singularly vague' and likely to prove 'a great constitutional battleground'. They thought it probably covered the external representation of the Commonwealth through

High Commissioners, the negotiation of commercial treaties and international extradition. They did not think that the Imperial Parliament had transferred its power over 'foreign affairs'. Professor Moore, another authority, was in general agreement with them.[27]

This doubt concerning the meaning of the Commonwealth's external affairs power underlay the discussion on the channel for communications in matters of external affairs. Several incidents bearing on the question occurred in the period 1901–10. Three of these were argued fully at the time. The case of the ship *Vondel* concerned the protest of a foreign government against the alleged refusal of assistance under treaty arrangements by an Australian State. The cases of Messrs Benjamin and Weigall involved claims by individual Australians against foreign governments. The first two cases will be discussed fully and the third in so far as it differs from the second. In addition, there was some debate over the channel of communication to be used by the Imperial Government when foreign consuls were appointed to act in an Australian State.

A further matter must also be discussed because of its relation to external affairs, although it differs markedly from the cases already mentioned. It was the question of whether the State governor or the Governor-General was the correct authority to authorise the landing of soldiers or sailors from foreign warships visiting Australian ports.

The Dutch ship *Vondel* visited Adelaide in August 1901 and the Master had trouble with certain of his crew who refused duty. He asked the State authorities for help under the terms of the Anglo-Netherlands Convention of 1856* but it was refused on the ground that the Convention did not provide for assistance in the existing circumstances. When the men deserted, the Master requested their arrest and imprisonment. This was also refused because the Convention provided only for 'arrest and surrender'. The Netherlands Consul in Adelaide informed his Consul-General and, through him, the Netherlands Government, which approached the Imperial Government with a complaint against the South Australian officials.[28]

In April 1902, the Foreign Office asked that the Governor-General of the Commonwealth should be requested to report on the incident. The Colonial Office considered the correctness of the course proposed and decided to comply with the request. The task of approaching the

*The colonies were automatically bound by British commercial treaties concluded before 1878. Thereafter they had the right to adhere if they wished.

South Australian Government fell to Deakin, who was acting as Prime Minister while Barton was in England for the Coronation of Edward VII.

Deakin wrote to Jenkins, the South Australian Premier, on 29 May 1902 but, in spite of several reminders, he received no reply of any kind until 2 August. No discourtesy was intended, the wheels of government were simply turning slowly. Jenkins pressed his Attorney-General, J. H. (later Sir John) Gordon, to deal with the matter promptly. Gordon, who had been a notable fighter for the rights of South Australia at the Federal Conventions and who was later to become a judge of the State Supreme Court, moved Jenkins to send Deakin a provocative refusal to provide the information. The State Government would be glad to assist the Secretary of State when he approached it through the constitutional channel, the South Australian Governor.[29]

Deakin, who was anxious to avoid the constitutional issue, refused to be provoked. He did not question that Chamberlain might have approached South Australia directly but merely asserted that it was within the function of the Commonwealth to report and that the government would comply with the Secretary of State's request, even if it had to investigate without the assistance of the State, which had been sought as a matter of courtesy and not of necessity.

Unofficially, Deakin suggested that Jenkins should settle the constitutional question with Chamberlain. He presumed that the Federal Government's right to deal with the case was not questioned as he believed that this was assured under the power to deal with trade and commerce with other countries, shipping and navigation and external affairs. But Jenkins did question the Commonwealth's right and felt that his own government had been slighted. He was prepared to instruct his officers to disregard any command issued by another government with respect to their official duties. Even the threat that the Commonwealth might use a royal commission to get the information it wanted failed to move him. The use of the threat was unwise on Deakin's part, as it was likely to make the already obstinate South Australians even more difficult.[30]

On 18 September 1902, the Lieutenant-Governor of South Australia, Sir Samuel Way, informed Chamberlain by cable that his ministers refused to report through the Governor-General but would do so at once through him, if requested. In a further despatch on the same day, he indicated that, while he had only recently found

out about the incident by accident, he agreed with his ministers that the matter was one of State administration and State law. It did not relate to one of the transferred departments and there was no legislation affecting it under section 51 of the Constitution.[31] Chamberlain readily accepted Way's proposal, but reserved his opinion on the constitutional issue until he had received a full expression of the State's views on the question of the channel of communication.

The Commonwealth Government had made a first statement of its position to Chamberlain. It claimed that, as treaty obligations were involved, the consular representative at Adelaide should have approached the Commonwealth, rather than the State, in 1901 and that all such representatives should be instructed to act in that way in future. Apparently still unaware that Chamberlain had sanctioned a direct report by South Australia, it proposed to appoint a royal commission to inquire into the incident.[32] The Secretary of State deprecated the appointment of a royal commission, which he felt the South Australians would flout, and expressed the view that if consuls sent all communications to the Federal Government that body would be unable to get answers and would be humiliated.[33]

To throw further light on the question, the Colonial Office asked the Foreign Office what course it would follow with regard to the United States if the British Government had grounds for complaint against one of the States of the Union. The reply cut across the claims of both Commonwealth and State. Official representations about complaints could only be made to the Federal Government through the Embassy at Washington. When a case required local inquiry or action, it was often found more convenient to instruct the local consul to communicate with the State Government without the intervention of the Federal Government. The Foreign Office believed that this procedure was 'viewed favourably' by the Federal Government and was preferred by the States.[34]

Clearly, the Commonwealth's proposal that all representations by consuls should be made to it was untenable and it was so informed. The arguments in favour of the South Australian position were made the stronger when it was realised that in the United States the Federal Government was the sovereign government of an independent nation. This was not true of the Commonwealth Government in 1902.

The South Australian Government believed that the Common-

wealth was the proper channel of communication for all matters concerning departments actually transferred and for all those matters upon which it had power to make laws and had actually done so. In all other respects, the situation had not been changed by federation. If imperial interests were to be protected, the channel of communication had to be one which held some power of action relative to the subject of the communication. The Commonwealth had no power of action in external affairs or the position of consuls. The vague power given in section 51(xxix) might mean that it could make laws to enforce imperial treaties and punish State officers who violated them, but it had not done so. The Commonwealth could not even call upon a State officer for an explanation of his action in such a case, let alone punish him. To make it the channel of communication was absurd and an indignity to the State which did have the power and was responsible.

This was a forceful statement of a case which was far from unreasonable. Its most serious weakness was the view that Commonwealth responsibility was limited to transferred departments and matters upon which it had power to make laws and had actually done so. This was to forget that some matters, of which external affairs is one, are subjects for executive rather than legislative action.

At the Colonial Office, H. E. Dale agreed with the attitude taken by the South Australian Government. The concurrent right of dealing with external affairs was preserved to the State by the Constitution. That the State had not lost all relations with external governments was shown by its continued direct correspondence with the Secretary of State and the continued appointment of governors from England.[35] The Secretary of State could address either Commonwealth or State as the circumstances required. In the case of the *Vondel* it should have been the State, because the complaint was against State officials and the Commonwealth had 'no authority whatever'. The only ground on which the Imperial Government could decide to communicate with the Commonwealth alone on such matters was the hypothesis that 'to everyone outside Australia the [Commonwealth] Government is the only representative of each and every part of Australia'. That hypothesis Dale believed to be contrary to the spirit and letter of the Constitution.

Sir John Anderson asserted that at its proclamation the Commonwealth had become responsible for such matters as external affairs even though its power might not have been exercised at once. He

could see 'no reason for the S of S indulging in a diet of "humble pie" in this matter'. His draft reply to South Australia was approved by his superiors without material alteration.[36]

The Anderson-Chamberlain despatch of 25 November 1902 strongly asserted that, at federation, the Commonwealth had been given paramount power in all political matters arising between the States and other parts of the Empire or, through the Imperial Government, with foreign powers. In all matters of federal concern, the Commonwealth Government was immediately responsible to the Imperial Government whether it made special federal provision for the discharge of its responsibility or left it to the State machinery for the time. This was a matter of internal arrangement which did not affect the question of responsibility. For the Imperial Government to communicate directly with the States on such matters would involve ignoring the 'obvious intention' of the Constitution to make the Commonwealth finally responsible for them.

Anderson did not even understand his own despatch. He told Barton that it did not go beyond Deakin's contention, in a letter to Jenkins, that in matters between His Majesty's Government as the central government of the Empire and the whole or any part of Australia, communications should be sent through the Commonwealth.[37] Deakin had, in fact, only claimed that the Commonwealth had the power, if asked, to act in such a case. Anderson's view went much further towards a unitary interpretation of the Constitution. His claim that Quick and Garran took practically the same view is not substantiated by reference to those authors.

Deakin, as Attorney-General, set out a detailed statement of the Commonwealth's views in November 1902. He argued that, under section 61 of the Constitution, the Commonwealth had an executive power derived immediately from the throne and independent of and antecedent to legislation. This executive power extended to every matter to which the legislative power extended and the executive power of the States was correspondingly reduced. It certainly extended to external affairs but was not needed in the *Vondel* case. The action of the Commonwealth in that case could only be questioned if its Executive lacked authority to inquire into facts affecting its own reputation, and involving international relations, under its trade and commerce power. The Commonwealth's power over external affairs might not be exclusive, but it was certainly paramount. Deakin did not claim any power of punishment or

control over State officers but only that the Commonwealth was a correct channel of communication in such a matter.

This was a more moderate and intelligent claim and a better argument than the Colonial Office had offered and showed a far deeper appreciation of the Australian political situation. Indeed, it may also be contrasted with the attitude Deakin took as Prime Minister in 1906 on the general question of channels of communication. In 1901 he had the advantage of the advice of R. R. (later Sir Robert) Garran, Secretary of the Attorney-General's Department, and it is clear from Garran's joint work with Dr Quick that his views on such a subject were not likely to be extreme.

J. H. Gordon, the 'brains' of the Jenkins Government, was not a man to be put down easily, and in February 1903, as Acting Premier, he launched a further assault on the Colonial Office. He was anxious to maintain the lines of demarcation between the Commonwealth and State spheres of action quite unblurred because he believed that there was already a move to destroy the federal compact. In effect, his argument now amounted to a statement that the *Vondel* case was only an 'external affair' as far as the Empire was concerned; from the State's point of view it was an 'imperial affair' and the State's responsibility must be to the Imperial Government alone. The Commonwealth Government was simply not involved in the matter at all.

Chamberlain still held to the view that the Constitution had created in Australia, so far as other communities were concerned, a single political community for which the Commonwealth alone could speak. The Federal Government was responsible for everything occurring within its territory which affected any external State or community and no such community could take notice of the distribution of powers between the Federal and State governments as this was purely a matter of internal concern. If the Crown were concerned in a matter solely in its capacity as part of the Constitution of a State, communications should go directly from the State to the Imperial Government. If it were concerned as 'the central authority of the aggregate of communities composing the Empire', they should pass through the Federal Government. In the *Vondel* case, the Crown was involved in the latter capacity.

Clearly this view was not developed from a close consideration of the Australian Constitution, which lent no support to the hierarchical relationship of governments envisaged by Chamberlain. It may be that he (and his permanent officials) did not sufficiently appreciate

the differences between the Australian and Canadian Constitutions. A federal constitution must always present difficulties for men accustomed to a unitary system of government. Not that these suggestions adequately explain Chamberlain's attitude: the feeling persists that Chamberlain, or the Colonial Office, had a private conception of Empire into which the Australian Constitution had to be fitted. But the research involved in this book is not of a kind to allow such a suspicion to be proved.

Sir Samuel Way, Lieutenant-Governor and Chief Justice of South Australia, a man whose legal ability was highly respected, was prepared to concede that many of the arguments used in the Anderson-Chamberlain despatches of 25 November 1902 and 15 April 1903 would have been sound if Australia were an independent and sovereign nation. However, under international law, it was simply a part of the Empire without separate international existence. The Commonwealth had not been given any supervisory power over the States (as in Canada) and no change had been made in municipal law under which the South Australian Government and its officers were charged with carrying out the Merchant Shipping Act which created the Australian obligation in the *Vondel* case. It followed naturally enough from these arguments that he should believe that the true test by which the Colonial Office should determine whether to communicate through the governor or Governor-General was whether the subject of the communication was of Commonwealth or State concern. In the *Vondel* case, it was clearly a State matter.[38]

Way had not answered the main argument and claim raised in Deakin's memorandum of 12 November 1902, but he had dealt very satisfactorily with the emanations from Downing Street. But, in mid-1903, the Secretary of State had no greater liking for a diet of 'humble pie' than he had shown in November 1902. Caesar had spoken and none could gainsay his word.

In the circumstances, it was probably no great consolation to South Australia that the Colonial Office accepted its explanation of the action taken in the *Vondel* affair as quite adequate.

The view of the Commonwealth's power and responsibility enunciated in Chamberlain's despatches of 25 November 1902 and 15 April 1903 was wide, and its constitutional justification dubious. That Deakin was not prepared to make a comparable claim is evidence that he felt that such a view was not likely to be acceptable to the majority of politically conscious Australians.[39] Furthermore,

as A. B. Keith, a man with legal training and experience in the Colonial Office, later pointed out, Chamberlain's reasoning left much to be desired. Keith was inclined to support the reasoning in Sir Samuel Way's despatch of 18 June 1903, both with respect to the method of determining the correct channel of communication and the Commonwealth's responsibility in external affairs. He pointed out, fairly, that no foreign power would have looked to the Commonwealth for redress at least until the Treaty of Versailles. Moore, Sawer, and Doeker have also lent some support to the view that, in the context of the times, Chamberlain's view was unsound. Doeker, while accepting the view that the States still retained some competence in external affairs, gives specific support to the moderate position adopted by Deakin in the correspondence.[40]

Both South Australia and the Colonial Office made extreme claims. Of the two, the South Australian position was the more in harmony with the Constitution, although it involved certain political difficulties which were lacking from Chamberlain's and which might have caused trouble later. It was the height of unwisdom for the Colonial Office to assert its view in November 1902, when there was a strong reaction against federal power and people were beginning to think of it, in terms used later by Way, as 'like a foreign occupation'. Deakin's view did no violence to the Constitution and made no inroads into South Australia's undoubted right to control the conduct of its own officers. Above all, it had the greatest potential for development with the growth of national sentiment. It is interesting to notice that in a later parallel case of a complaint against a State by a foreign power, involving Western Australia, the Colonial Office was content, while still asserting the principle laid down in the key *Vondel* despatches, to obtain the reports it required directly through the State governor. The Commonwealth did not object to this procedure.

The position of consuls in Australia was discussed to a limited extent in the *Vondel* case. As a result of the case, the question of the channel of communication to be used between the Imperial and State Governments for the notification of the appointment of consuls was also raised.

In May 1903, the Governor-General, Lord Tennyson, informed the Lieutenant-Governor of South Australia and the Governor of Victoria of the appointment of a new consul in each State. Victoria acquiesced in the appointment without demur, but Sir Samuel Way

indicated that the South Australian Government was not prepared to accept the Governor-General as the constitutional channel of communication between itself and the Imperial Government on such a question.[41]

After the establishment of the Commonwealth, the old practice had continued for some time and communications from the Colonial Office inquiring about the person whom it was proposed to appoint or notifying the issue of an exequatur had been sent to the State governors rather than the Governor-General. In October 1902, probably as a result of the *Vondel* case, Sir John Anderson gave verbal instructions that in future such communications were to go to the Governor-General. In the case under review, the Colonial Office had mistakenly made its initial inquiry of the Lieutenant-Governor, who had indicated that the State had no objection to the appointment in question. When the appointment was made it was notified through the Governor-General, with the result already indicated.

It was evident that the South Australian Government was likely to know more about an Adelaide resident proposed as consul than the Commonwealth would. A further difficulty for the Colonial Office arose from the fact that the Foreign Office did not permit its consular officers to correspond directly with the government of the country in which they resided but only with the local authorities, to whom their appointment was also announced. There was much in favour of sending such communications to the State Governments so that the position of foreign consuls in the colonies would not be unduly magnified.[42]

The Colonial Office was clearly caught on the horns of a dilemma of Sir John Anderson's making, and it was perhaps fortunate that Deakin offered a compromise solution. He pointed out that there was no legal necessity for consuls to be recognised by governor or Governor-General, but that it was convenient for them to have some standing with a government with which they might have to communicate. In Australia, because of the dual system of government, it would be as well if both State and Federal Governments were asked to approve appointees and received notification of their appointment. In any matter concerning the treatment of foreigners under State or Commonwealth law, correspondence from the Colonial Office should be to the Governor-General alone, on the understanding that he would obtain the views of the State Government affected.

The Imperial authorities accepted this suggestion.[43] In 1913, the Secretary of State was able to say that the practice had been followed without exception since 1904. The only problem that had arisen was that while the Commonwealth, before indicating its approval or disapproval of an intended appointee, invariably consulted the State concerned, the States did not always do this and, as a result, some confusion had occurred in the Colonial Office. An instruction had to be issued that mutual consultation should always take place before a reply was sent.

The business of appointing consuls was not of any great importance in itself, but, in the circumstances, the dispute could easily have developed into one of major importance. Deakin's compromise solution was one which suited the realities of the Australian political situation and which gave offence to no one's dignity. Acceptance of that solution by the Colonial Office was wise, though it does seem to mark a slight retreat from the principles laid down with so much force in the *Vondel* case.

As each phase in the debate over channels of communication in external affairs ended, a new one began. From 1905 to 1907, attention was drawn to the channel to be used for correspondence with the Imperial Government about the complaints of individual Australians against foreign governments.

On 4 March 1905, G. J. Benjamin, a Queenslander, left Brisbane for the United States. At San Francisco, after what he described as a series of 'cursory' examinations, Benjamin was refused permission to land on the ground that he was suffering from trachoma, a serious and infectious disease of the eye. The immigration authorities were unmoved by the independent evidence of two specialists who attested that he did not have the disease. He was refused permission to fight his case in the courts. Benjamin was kept under strict watch while the ship was in port and, on the last day, was locked up. When he arrived back in Brisbane, he appealed to the Premier of Queensland, Arthur (later Sir Arthur) Morgan, to make representations to the United States Government for redress. What with his passage, the loss of time, 'the indignity of being placed under restraint', and the effect of the knowledge of his supposed illness on his prospects, he considered himself entitled to £200 compensation.[44]

Morgan ascertained the truth of the facts, as far as he could, and urged the Lieutenant-Governor, Sir Hugh Nelson, to bring the case to the attention of the Secretary of State. At that stage, Benjamin, like the ship, *Vondel*, ceased to be of any importance.

Nelson forwarded the papers to the Colonial Office and, apparently assuming on his own initiative that the matter was not of federal interest, marked on the despatch that no copy had been sent to the Federal Government. At the Colonial Office, it was decided to order the Lieutenant-Governor to send a copy of the despatch and papers to Northcote and to seek the concurrence of the Commonwealth in the Queensland request.[45] This concurrence was readily given (during the course of the correspondence the Commonwealth showed itself eager to urge maximum effort on Benjamin's behalf) and the Imperial authorities took action. Morgan must have been surprised to be informed by Deakin, in December 1905, more than six months after his first representation, of the communications between the Colonial Office and the Commonwealth.

More polite than the South Australians, Morgan thanked Deakin for the efforts he had made on Benjamin's behalf. At the same time he asked the governor to transmit a strongly worded memorandum to the Secretary of State, Lord Elgin, deploring the action taken. Morgan held that this action (taken by Lyttleton, Elgin's predecessor in office) was a slur on the Government of Queensland. Federation had not taken away the right of direct communication in such cases and to suggest that it had, or that the right was exercisable only with the concurrence of the Commonwealth Government, was contrary to the spirit of the Constitution and incompatible with the direct appointment by the Crown of the State governor to be the channel of communication between the State and Imperial Governments on all matters not specifically vested in the Commonwealth Government.

Deakin saw a copy of Morgan's memorandum and expressed the view that it had probably been written without knowledge of the *Vondel* correspondence. The circumstances of Benjamin's case were the reverse of those in the *Vondel* but he believed that the same principles applied: the Commonwealth alone could speak for Australia in any transaction with foreign countries.[46] Elgin was happy to have the matter settled for him and replied to the Queensland Government by sending it a copy of Chamberlain's despatch to South Australia on 15 April 1903. He stated that he accepted its reasoning.

It will be noticed that Deakin had shifted his ground in the three years that had passed since he had stated his position in the *Vondel* controversy. In 1902–3 he was only prepared to assert that the

Commonwealth was a proper medium for such communications. By 1906 he was claiming that it was the only permissible channel. In making this change, he was only accepting the superior status offered to the Commonwealth by Chamberlain's *dicta* in his key *Vondel* despatches of 25 November 1902 and 15 April 1903.

At the beginning of 1906, Morgan resigned the Premiership of Queensland and it passed to his coalition partner and Treasurer, William Kidston, one of the strongest and ablest of Queensland's political leaders in the first decade. Kidston entirely rejected the idea that the *Vondel* affair had any relevance to Benjamin's case. He pointed out that any British subject who believed that he had been ill-treated by a foreign power had the right to ask the Imperial Government to prosecute his claim for redress without the concurrence of the Government of his own country. He had to look for protection to the power which could enforce his claim if it were just. In the case of a Queenslander, that power was the Imperial Government. The only reason for consulting his home government was to establish the character of the claimant. The Queensland Government had done that. Had Benjamin chosen to appeal directly to the Imperial Government, and had it sought information from the Commonwealth, Queensland would willingly have provided the latter with any help desired. While Australia remained part of the British Empire, a citizen must have the right of appeal to the Imperial Government through whatever channel of communication was most convenient to him.

Kidston had chosen his ground carefully. His claim avoided the extreme position taken up by South Australia in the *Vondel* affair and rejected Chamberlain's settlement of that case as inapplicable as well as wrong. His attitude had much in common with that first adopted by Deakin in the *Vondel* correspondence. He was prepared to allow that the Commonwealth was a legitimate channel of communication with the paramount and responsible power, Britain, but also claimed that the State Government was an equally legitimate channel.

Both Deakin and his Attorney-General, I. A. (later Sir Isaac) Isaacs, were inclined to stress that federation had created a dual citizenship and that in matters of external relations the Commonwealth citizenship alone applied. It may have been true, as Isaacs claimed, that it was for the Imperial Government to determine the

channel to be used for such communications.[47] This was not an argument, on the basis of pre-federal history, which should have led the Commonwealth to expect that it would be made the sole channel. The Attorney-General of New South Wales, C. G. (later Sir Charles) Wade, established clearly, in connection with other similar cases, that hitherto an aggrieved British subject had enjoyed the right of communicating with the Secretary of State through whatever channel was most convenient to him.[48] Both men begged the central question raised by Kidston, that in such matters men were to be regarded neither as Queenslanders nor as Australians, but as British subjects.

Elgin again took refuge in Chamberlain's familiar despatch of 15 April 1903 and asserted that the criterion by which the channel of communication was to be determined was whether the Crown was concerned in its capacity as part of the State Constitution or as 'the central Authority of the aggregate communities of the Empire'. It was in vain that Kidston renewed his protest. Elgin's reasoning was not irresistible, but his authority was. The United States Government proved equally obdurate and, as the Imperial authorities were apparently not willing to undertake a 'Benjamin's Eye' war, Mr Benjamin did not get his compensation.

In principle, the case of A. R. Weigall was identical with that of G. J. Benjamin, but there were some differences in its conduct which must be discussed separately.

Weigall, the son of the Headmaster of Sydney Grammar School, with his wife and party, was travelling through Korea on a surveying mission in December 1905 when they were seriously molested by some Japanese soldiers. Weigall complained to the British Ambassador at Tokyo who made representations to the Japanese authorities. The soldiers were punished in a very mild fashion. In spite of Weigall's requests, the Ambassador refused to take further action in the matter.[49]

Weigall was not satisfied with the efforts made on his behalf and, in April 1906, approached J. B. Suttor, Commercial Agent for New South Wales at Kobe (Japan) with the details of his case and the request that they should be brought to the notice of 'the Australian Government' for such action as it might see fit to take. Suttor, as the agent of the New South Wales Government, did the only thing he could and transmitted the papers to the State Government. The Premier, J. H. Carruthers, asked the State governor to forward them to the Colonial Office. No copy of the papers was sent to the Commonwealth, but, as in the Benjamin case, the Colonial Office insisted

that this should be done and sought the concurrence of the Federal Government before it took action.

When Deakin saw the papers he began an acrimonious exchange of letters with Carruthers which lasted throughout October and November 1906. The burden of Deakin's argument was that Carruthers had deliberately 'intercepted' an appeal for help specifically directed to the 'Australian Government', that is, the Commonwealth Government. He demanded an explanation of this conduct and, when challenged, hotly asserted his right, and even his duty, to demand it. Naturally, he insisted that Weigall's case was comparable with the *Vondel* affair and that the question of the channel of communication had been settled by Chamberlain in connection with that incident.[50]

Carruthers was belligerent in reply, asserting that Deakin simply did not understand (indeed, that he was incapable of understanding) the position taken by the States over the channels of communication question. At first he followed Kidston's argument that it was for the aggrieved subject to choose the channel by which he would communicate, but later he asserted that the communications must be through the constitutional channel, the State, no matter what the subject wanted. Perhaps, in a rare moment of humility, it had occurred to Carruthers that when Weigall wrote of 'the Australian Government' he might not necessarily have meant the Government of New South Wales! Not surprisingly, he utterly repudiated Deakin's right to ask him for an explanation of his conduct.[51]

There are a number of interesting features to this case. The Colonial Office entered the debate only at the last stage, and then only to send New South Wales a copy of a despatch to Queensland with reference to the Benjamin affair. For the rest, the argument was conducted entirely within Australia. Deakin was increasingly willing to take up the cudgels on behalf of the Commonwealth, partly, no doubt, because he knew that he could rely with absolute confidence on the support of the Secretary of State. But he was also becoming more assertive in his own right, as his demand for an explanation of Carruthers's conduct suggests. The constitutional basis for such a demand is, at best, dubious. Frustration over the persistence of the question, the unwillingness of the Colonial Office to meet his views in the question of the channel for general communications and the unsatisfactory state of the negotiations over the capital site must all have combined to produce the outburst. Carruthers was perhaps the only Premier who could make Deakin really angry.

It is not possible to be sure why Carruthers had Weigall's appeal to 'the Australian Government' sent to the Colonial Office by the State Governor. It could have been a deliberate act of interception, as Deakin thought. More likely, Carruthers believed that the State Government was the relevant Australian Government. After all, Queensland had not thought it necessary to send a copy of the Benjamin correspondence to the Governor-General. There is no need to impute a bad motive to Carruthers in this instance.

A striking feature of the incident is that no one denied the right of Weigall to make his initial request for redress directly to the British Ambassador at Tokyo. This was close to being a *de facto* admission that the subject could seek the assistance of the Imperial Government through whatever channel was most convenient to him, an admission destructive of the claim that the State Government was not a proper channel of communication in such a case.

At the end of October 1906, Carruthers drew the threads of the channels of communication in external affairs dispute together. He was anxious that the other Premiers should join him in standing firm against this encroachment by the Federal Government on what he regarded as the sphere of the States. If the States accepted the position taken by the Commonwealth, they would be perilously close to admitting its right to supersede them in matters quite outside federal politics. Kidston shared Carruthers's fears and his desire to maintain the status of the States, but differed from him in placing the blame for the encroachments already made on the Colonial Office rather than the Commonwealth. The Federal Government had, unwisely, accepted opportunities for aggrandisement created in England. He believed that it might be necessary for the States to refuse to recognise communications from the Colonial Office unless they were sent through the State governor.[52]

Earlier in the year the Governor of Queensland, Lord Chelmsford, had drawn attention to the serious situation which existed. The Labor Party was, in his opinion, 'the backbone of the Federal spirit', yet Kidston, a Labor Premier, had told him that he could easily 'raise the whole of Queensland in a flame against Federation'.[53] Chelmsford now pointed to the serious consequences for relations between the Imperial Government and States should Kidston's new threat be carried out and suggested a meeting between the Premiers and a high imperial official to clear the air.

In January 1907, New South Wales launched another assault on he Colonial Office. But it was too late to go back. Deakin wanted o carry the battle a step further into the enemy camp. He would ıave had Elgin inform the States that no communication dealing vith external affairs would be considered unless it was sent through he Commonwealth. At the Colonial Office, this was recognised as ıeedlessly provocative and no one was prepared to issue the order. A. B. Keith made the sensible suggestion that New South Wales ;hould be told that action would not be taken in such cases until :he Commonwealth had been heard. By this means, the States would ɔe left with the option of adopting the procedure applying to other ɔommunications of federal interest and so preserve their right of direct communication, while the Commonwealth preserved the right to be consulted. Elgin, who did not share Keith's interpretation of the Constitution, decided to maintain the position already taken.[54]

Carruthers regretted that the States were to be cut off from direct access to the Imperial Government and forced to deal with the janitor. He thought it impolitic for the Imperial Authorities 'to stifle the British sentiment in its people who are citizens of the States of Australia. . .'.[55] But there was nothing he, or the other Premiers, could do about it.

In dealing with a misunderstanding which arose while he was Governor of New South Wales, Sir Gerald Strickland pointed out in 1914 that Chamberlain's ruling in the *Vondel* case had been greatly modified by subsequent events and with the acquiescence of the Colonial Office. The appointment of foreign consuls and the gazetting of their coming and going was clearly 'irreconcilable with the rule proposed by Mr Chamberlain'. He also pointed out that the High Court had made it clear that the Fugitive Offenders Act was a State matter, while the Federal Attorney-General had recognised in a press release that it was within the ambit of State functions to establish prize courts. Strickland claimed that the existing practice in correspondence was an 'understanding' rather than a rule and quoted A. B. Keith as saying (in the first edition of his book) that all that had been settled was that the Commonwealth must not be ignored. The only effective rule was that the Secretary of State would not reply to some communications until he had obtained the Governor-General's opinion. This was an effective limitation on the discretion of a governor and ensured that he would send copies

of everything likely to be useful to the Governor-General 'without recognising such habitual subjection to the Federal Authority as would not be reconcilable with the "sovereignty" of the State . . . or with a Governor's obligations under the State Constitution . . .'.[56]

There was much truth in what Strickland wrote. Chamberlain's ruling in the *Vondel* despatches of 25 November 1902 and 15 April 1903 was not officially altered. Indeed, it was specifically maintained. But, in practice, exceptions were made, as in the matter of foreign consuls and in a much later minor incident concerning Victoria. In cases like those of Benjamin and Weigall it was impossible, given Elgin's refusal to make the rule sought by Deakin in 1907, to prevent the States communicating directly, although the Colonial Office could refuse to act until it had consulted the Governor-General.

In 1969, it seems surprising that the channel of communication in matters of external affairs could ever have been in question. But the arguments of the participants, notably Gordon, Way, and Kidston, supported by Keith, showed that in the first decade of federal history it was reasonable to consider the matter as, at least, arguable. A recent writer has stated that 'As a matter of bare legal power, the conclusion is inescapable that the States continued [that is, after federation] to have some concurrent competence in external affairs'.[57] What was unreasonable was the extent of the claims sometimes made and the ferocity with which they were argued. These things are understandable only against the whole background of Commonwealth-State relations in the decade 1901–10.

Early in 1907, it became necessary to decide which government, Commonwealth or State, should grant or refuse permission to land to crew members of foreign warships calling at Australian ports. The key issue was whether the granting of permission to land was an exercise of the defence power, which obviously belonged to the Commonwealth, or of the power to maintain civil order which, equally clearly, belonged to the States, or both. The question of responsibility might have been decided without undue difficulty had not the need for either the Governor-General or a State governor, representing the Crown in Australia, to receive communications from a foreign power been involved. As it was, the argument dragged on until 1911.

Before federation, permission to land had been sought from the governor of the colony concerned and had normally been granted to unarmed parties, in numbers specified by the governor, for

recreation and drill, and for saluting parties at civil or military funerals.[58] In December 1905, the Commonwealth made a provisional statutory rule on the subject under the Defence Act 1903. It confirmed this in June 1906, notified its intention to repeal it in November 1906 and repealed it in January 1907. Until 1907 the conditions laid down for the landing of foreign crews were unaltered except that application had to be made to the Governor-General. From their silence, it appears that the States probably did not become aware of the action taken by the Commonwealth at this stage.*

The new regulation of 1907 was based on a revised memorandum from the Colonial Defence Committee, issued in July 1906, which liberalised the conditions on which foreign crews might land. Unarmed sailors were to be allowed to land without seeking permission. If large numbers were to be landed, the local civil authorities should be notified and unarmed pickets landed to assist in maintaining order. Permission still had to be sought before armed parties could be landed.

On 6 March 1907, Deakin sent each Premier a copy of the relevant part of the new memorandum and sought his co-operation in offering all possible facilities to foreign crews and his consent to the landing of unarmed pickets, when required, to assist local police.[59] A day later, all consular representatives were informed of the changes and told that, in the case of armed parties, applications should 'continue to be addressed to the Governor-General'.[60]

Carruthers asked the Premiers to delay action on the question until it could be discussed at a Premiers' Conference and requested Sir John Forrest, acting as Prime Minister while Deakin was at the Colonial Conference of 1907, to continue the 'former' practice until after the Premiers' Conference. The consent of the States was necessary before the proposed change could be made and it was desirable that the decisions of the States should be unanimous.[61] For reply, he received only a formal acknowledgment.

Plainly, the Commonwealth did not mean the States to comment on the proposed changes in practice, nor to do other than acquiesce in them. The consular representatives were informed of the changes before most of the Premiers would have received their notification.

*This is quite possible. Only the intent to make a rule was gazetted. The details of the rule would not be known unless a copy was sent by the Commonwealth or purchased from the Government Printing Office, Melbourne.

Probably Deakin did not foresee any objection. It was more than a year since the Commonwealth had made its first provisional regulation on the subject. From his point of view, the government was simply varying procedure in a matter over which it had exercised effective control for some time.

That the States did not see it in the same light is obvious from the nature of Carruthers's letter to Forrest. He believed that the consent of the States was necessary before the 'former' practice could be changed. This view was only possible if the subject were one over which the States exercised, or were believed to exercise, some control. This reinforces the view that it is probable that the States were not aware of the regulations made by the Commonwealth in 1905–6.

The issue was discussed at the Premiers' Conference (27 May to 3 June 1907). There was some disagreement over the central issue of responsibility for granting permission to land. The Attorney-General for Western Australia, Mr N. Keenan, held that the matter was essentially one of external affairs and defence and within the province of the Federal Government. Most members would have agreed with Kidston that it was not a matter of protecting the States against invasion but of making the necessary safeguards against domestic violence and social disorder, a matter reserved to the States. Kidston was intensely concerned with a number of practical issues raised by the new regulations: the possibility of trouble in smaller outports if local authorities were given no control over the number of unarmed men able to land at one time, and the fact that the civil authorities were only authorised to assent to the landing of unarmed pickets. Eventually, the Conference resolved that permission to land armed parties should be sought through the State governor. Unarmed parties, up to thirty in number, might be landed without permission but should it be desired to land a larger party, or should the local police seek the assistance of unarmed pickets, consent must be sought in the same way as for armed parties.[62]

By deliberately adopting a resolution so much at variance with the procedure laid down by the Commonwealth, the States had clearly determined to steer a collision course. They had, however, directed attention to a real problem, the need for local authorities to feel confident that they could cope with any breach of the peace which might arise from the landing of foreign sailors. Because of

this, it was at least arguable that the States had as much interest in the proper control of these landings as the Commonwealth had.

Much later, the Commonwealth Attorney-General, L. E. (afterwards Sir Littleton) Groom considered the resolution and set out the Commonwealth's case clearly. Deakin used his memorandum as the basis of his correspondence with the Premiers on the subject. Groom had no doubt that the Commonwealth had authority to deal with the question in dispute. This authority came from its naval and military defence power, given in section 51(vi) of the Constitution, under which Parliament had already passed legislation and the Government had exercised its executive power. It also came from its external affairs power, section 51(xxix). The *Vondel* case had settled that the Commonwealth's executive power was co-extensive with its legislative power. This matter fell within its legislative power so there could be no doubt of its executive power. Any regulation of a State government inconsistent with one made by the Commonwealth Government must give way to the latter (under section 109). Groom acknowledged that once foreign sailors had landed their conduct on shore might involve questions of civil order. State governments had both the right and the duty to maintain that. However, the conditions governing the landing of foreign crews and those imposed on them to maintain civil order after they had landed were quite separate. The fact that the State governments were responsible for the second aspect did not give them any control over the first. He recognised that the co-operation of the States was necessary if the recommendations of the Colonial Defence Committee were to be carried out in their entirety, otherwise the Commonwealth would have to act through its own officers rather than the local civil authorities. In Groom's opinion, the procedure outlined in the Premiers' resolution was likely to cause 'difficulties' — he did not specify what they were — and should not be adopted. The procedures outlined in the letters to the consuls and Premiers were a sufficient publication of the determination of the Commonwealth, though they could easily be embodied in regulations if necessary.[63]

The major weakness in Groom's argument was his attempt to make a division between responsibility for regulating the landing of foreign sailors and soldiers and responsibility for regulating their conduct once they had landed. No doubt the distinction could be justified theoretically, but in practice the line would be difficult to

draw. The attempt to make a rigid division along these lines might have led to trouble had it been tried. It would also be interesting to know what difficulties Groom anticipated if the Premiers' scheme were tried. There would not seem to have been any which had not existed in the pre-federal system, which had apparently worked satisfactorily.

C. G. Wade, who had succeeded Carruthers as Premier of New South Wales, exploited this weakness, pointed to the Commonwealth's complete lack of control over the sailors once they had landed and urged that, in promulgating its recommendations, the Colonial Defence Committee had rightly designated the governor of the State as the proper person to give consent when it was required. The Commonwealth's power to protect the country against attack could hardly be extended to include control of the conditions on which foreign troops might land on the shores of a State in time of peace. Kidston took up the same point and the Tasmanian Premier, Captain Evans, argued that the State governments determined the size of the police force and they should not be asked to accept more men on shore than they could cope with.[64]

That Queensland, at least, had no wish to be arbitrary in its behaviour was shown in February 1908. The German consul at Brisbane requested that the Governor-General should grant permission for an armed party to land to fire a funeral salute. When the Queensland Authorities were informed they accepted the situation without protest.[65]

Groom, rightly, refused to accept the use of the word 'governor' in the memorandum from the Colonial Defence Committee as significant because it was a general memorandum to all colonies. But Deakin was unwilling to carry the argument any further on his own account and had the correspondence sent to the Secretary of State with the request that he should make a decision on the points at issue between the Commonwealth and States.[66] No doubt he did this the more confidently because of the support he had received from that quarter in the *Vondel*, Benjamin, and Weigall incidents. If it seems strange that he was diffident about carrying on the fight himself in this case, when he had done it willingly enough in the Weigall affair, the explanation may well be that he realised the possibly unfortunate consequences for British sailors, as well as embarrassment for the Imperial Government, if the matter were decided in Australia in a spirit of rancour.

Within the Colonial Office, the view had already been expressed that the Commonwealth's case was 'very weak', because of its dependence on the division of responsibility, and that it would only be able to override State regulations 'by stretching the construction of the Constitution'.[67] The Secretary of State, Lord Crewe, was not prepared to discuss the 'complicated and difficult' constitutional questions involved. He recognised that the dual responsibility of the Federal and State governments for defence and internal security was the heart of the problem. Because of this, he believed that the matter was one which should be settled by compromise. Crewe proposed that in the case of the landing of armed men, application should be made to both the Governor-General, representing the Commonwealth control of defence, and the State Governor, representing the State control of police arrangements. When large numbers of unarmed men, or pickets to assist the police, were involved, it would be sufficient to apply to the local civil authorities. If this were not acceptable, the arrangements should be as for armed men. He hoped that if the States insisted that a limit on the number of unarmed men to be on shore at once was necessary, they would raise it from thirty to 100.[68]

It was a sensible compromise and the States accepted it without question. If the whole matter had not been left entirely to them, as they would have preferred, at least they retained the power of veto. Deakin, who had submitted the question to Crewe 'for decision', and who had, in the past, maintained the Secretary of State's right to settle such matters, would have had to accept the compromise. But his government fell a few days after Crewe's message arrived in Australia. His successor, Fisher, was not so bound. Before the new government got around to considering the theoretical aspects of the question, a concrete case arose which caused some embarrassment.

Just before Christmas 1908, Lord Dudley, relatively new to the post of Governor-General, received an urgent request from the Consul-General for Germany to allow 102 time-expired crew members of the German ship *Planet* to travel by train from Sydney to Adelaide to join a steamer bound for Germany. They were to bear arms but not to carry ammunition. The request was both urgent and unusual. Dudley communicated it to Fisher who approved it on certain conditions. The Governor-General sought the advice of the Secretary of State, both with regard to the carrying of arms and the

need to seek the approval of the governors of the three States through which the men would pass. The Secretary of State agreed that this permission should be sought. Before Dudley received his reply it had become necessary to inform the Consul-General that he should seek the approval of the States. All gave permission for the men to travel.[69]

Fisher, whose government had finally decided that it did not regard Crewe's compromise proposal as satisfactory, protested. He intended to deal with the whole question by Commonwealth regulations because he believed that it was undesirable that a foreign power should become aware that the matter was subject to divided control. The compromise was opposed to the doctrine laid down by Chamberlain in the *Vondel* despatch of 15 April 1903, that Australia was one political community as far as foreign nations were concerned and the Commonwealth alone could speak for it. Chamberlain had also insisted that no external country could take notice of the distribution of power within the Commonwealth. Both Dudley's action with regard to the crew of the ship *Planet* and Crewe's compromise proposal required such cognisance to be taken. If the request to the States were merely formal it was unnecessary; if they had real discretion, it was destructive of the independence and prestige of the Commonwealth.[70]

Fisher (more than likely acting on advice given by Garran to Hughes, the Attorney-General) was correct to point out that the compromise proposal was another retreat from the famous *Vondel* principles. But he had little cause for complaint about Dudley's behaviour in the *Planet* incident. Dudley had been faced with an urgent situation and had no precedent to guide him. His ministers had not expressed an opinion on Crewe's compromise. In the circumstances, he could hardly reject the guidance given by the Secretary of State, even though it had been offered as a suggestion and not a direction.

Dudley impressed upon Fisher the need for clear and unequivocal action to be taken. As the government rejected Crewe's compromise, the only document which could be taken as a guide to conduct was the letter sent to consular representatives on 7 March 1907. But the States had rejected those regulations. The question required early settlement if the prestige of the Commonwealth were not to be affected.[71] Crewe indicated that if the Commonwealth wished to go ahead on its own he would not object. However, in such a

matter, it was 'peculiarly undesirable' that difficulties should arise from friction between the Commonwealth and States. The Imperial Government was bound to deprecate any steps which might lead not only to justifiable complaints from foreign powers but to difficulties for British sailors at foreign ports. If any such problems did arise, the Commonwealth would be held responsible and expected to find a satisfactory way of overcoming the embarrassment of the situation.[72]

Fisher had already told the States that the Commonwealth would draw up provisional rules but that the States would be allowed to comment on them before they were adopted finally. He indicated what their general lines were likely to be. The question of unarmed parties would be left to be arranged between foreign officers commanding and local authorities. The Governor-General would grant permission for armed parties to land, though in the case of funeral parties State governors would act as his deputies.[73]

The Prime Minister had recognised the reasonableness of one of the compromise proposals, by giving local authorities control over unarmed parties, and the States could not see why he rejected the others. They were dubious about their governors acting as deputies for the Governor-General.

The Commonwealth did not even wait for replies to Fisher's letter before it issued statutory rule no. 31 of 1909 in the terms foreshadowed by the Prime Minister. A copy of the rule was not sent to the States until later. At the very least, in view of the correspondence which had taken place, it was discourteous of the Commonwealth to publish the rules without waiting for the comments which it had stated it would seek. In spite of the power given under section 126 of the Constitution, in the general context of the times and in relation to the specific issue under discussion, it was a piece of executive lunacy to name the State governors as deputies for the Governor-General without the clear consent of the States.

There was something to be said for the view that the States would be able to deal with urgent cases more quickly than the Commonwealth and that they were unlikely to act in an arbitrary fashion because of the risk of retaliation by foreign powers. While the State governors had been appointed Governor-General's deputies, it was unlikely that they would act in that capacity without the consent of their ministers.

The fusion of the Deakin-Cook-Forrest factions in mid-1909

saw them oust the Labor Government and assume office with Deakin as Prime Minister. Before long, he was approached by Kidston who pointed out that he had only discovered Fisher's rule by accident. He suggested Deakin should amend it to embody the Crewe compromise of 23 September 1908. In July, the Governor-General pointed out that the question was still unsettled. Rule 31 of 1909 named the governors as his deputies, but they had not been officially appointed and he understood that at least some would refuse to act. The rules were inoperative.

By early August, Deakin had approached Wade with proposals which seemed likely to form the basis of a satisfactory settlement. There was no need for a rule dealing with unarmed parties of less than 100. In the case of saluting parties at funerals, the interests of States and Commonwealth could be protected without foreigners being made aware of dual control if foreign commanders communicated with the Governor-General alone but he consulted the State concerned before granting permission. For unarmed parties of more than 100, application should be made to the appropriate State governor. Local authorities could request the assistance of unarmed pickets if they thought it necessary.[74] The terms of the compromise were apparently agreed to at the Premiers' Conference of August 1909, although the official minutes do not record the fact.[75] After some unimportant difficulties, the rule was duly published as no. 29 of 1910 on 8 April 1910. It was a compromise which gave all parties everything that was important to them.

Five days after the rule was published, the Fusion Government was heavily defeated at a general election and was succeeded by Fisher's second Labor Government. No further action was taken on the question until November 1910, when the Governor-General sent the governors a copy of new regulations about to come into force. From the States' point of view, they could not have been worse. When it was desired to land unarmed parties of more than 100 or unarmed pickets to assist police, foreign commanders had only to notify local civil authorities, not seek their permission. For the purpose of granting permission for saluting parties, the Military Commandant of each State was appointed the Governor-General's deputy.[76]

These proposals were so extreme, and there were such good reasons against them, that it is legitimate to wonder whether there was any serious intention to implement them. More likely, they

were intended to frighten the States into agreeing to the kind of regulation that the government really wanted. There was a howl of protest and, without great delay, the acting Prime Minister, W. M. Hughes, forwarded a greatly revised draft. Applications for large unarmed parties, pickets, and saluting parties were to be made to the State governor, as the Governor-General's deputy, and all other applications to the Governor-General. Pickets were only to be landed when requested by the local authorities. Later, it was agreed that when applications were directed to the Governor-General he should, if he authorised the landing, immediately inform the State governor.[77]

The States gradually acquiesced more or less graciously in the inevitable, though it was clear they were not really happy with the situation. The proposals were embodied in rule no. 29 of 1911 and each governor was formally appointed to act as the Governor-General's deputy.

The dispute was long and difficult and was made more complex by the changes of government which brought to power in the Commonwealth men with different concepts of what was appropriate in the circumstances. At times, both Deakin and Fisher gave too little consideration to the needs of the States, which had to feel sure that they could effectively maintain internal order. They had to try to force recognition of their constitutional position and, more importantly, of the practical wisdom of leaving a measure of control with the body exercising the police power. Apart from their initial protest, they generally showed greater moderation and understanding than the Commonwealth. To some extent, they were able to protect their vital interests, although not so far as they would have liked, nor so far as Crewe's realistic proposals of September 1908 would have permitted. Under Fisher, the Commonwealth showed itself far more eager to maintain the *Vondel* principles than did the Colonial Office. The final solution was heavily weighted in favour of the Commonwealth, but it did not entirely disregard real State interests. They had at least asserted their right not to be overlooked in such matters.

There was a third class of affairs about which communications had to pass between the State governments and the Colonial Office. These may be conveniently classed as 'imperial affairs', since they concerned the State in relation to the Crown, or the rest of the Empire. The most enduring of these was the practice of recom-

mending citizens for honorary distinctions (honours) to be conferred by His Majesty for services to the State. This was really a question of political patronage, and the preservation of the right of direct communication was important to the States because of its influence on the prestige of the State and the governor. The question also arose of the right of the States to participate directly in the deliberations of the Colonial Conference of 1907. To some extent, or so it appeared to them, the real power of the States was at stake in this, since some of the subjects discussed were within either their concurrent or sole legislative competence. But, in the main, it was their status which was being questioned, their right to maintain relations outside their own confines, and their position as quasi-sovereign bodies.

The dispute over the channel of communication for the recommendation of honours began strangely, and, it would seem, mainly at the instigation of Lord Hopetoun. In October 1901, he expressed his satisfaction with a cable Chamberlain had sent to the Lieutenant-Governor of New South Wales pointing out that such recommendations should be sent through the Governor-General. Hopetoun felt that it would prevent future embarrassment if a similar instruction were issued to the other State governors.[78] Chamberlain apparently responded to this by urging on the governors the desirability of 'adhering to the understanding' that recommendations for the bestowal of honours in the States should be made through the Governor-General.

Lord Tennyson, in South Australia, had never heard of the 'understanding' referred to by Chamberlain and was of the opinion that any attempt to give effect to it would give 'great offence' to the State governments. It would mean a Commonwealth monopoly of honours, which would probably go to supporters of the Federal Government. The general attitude of the States was 'jealous watchfulness on behalf of Imperial interests and on behalf of their own State rights', and the federal power should be allowed to grow only slowly to avoid undue friction. Recommendations for honours for purely State services should go directly to the Crown from the State governors who might simultaneously send a copy to the Governor-General for his information. Queensland supported his view.[79]

Tennyson had shown up honours for what they were: political patronage. His proposal for preventing difficulties was really

identical with that for general communications relating to federal interests. In the face of the June compromise on general communications, discussed earlier in the chapter, it is surprising that Chamberlain was prepared to suggest that communications concerning honours should be sent through the Governor-General.

The South Australian ministers (the Jenkins Government) arranged for a united protest to be sent through the Governor of the senior State, New South Wales, against what they saw as an unconstitutional proposal.[80] Some other States sent individual protests to the Secretary of State. The Governor of Tasmania, Sir Arthur Havelock, argued that, by long and uninterrupted usage, the power exercised by the States of making recommendations for honours had grown into a constitutional privilege. There was nothing in the Constitution which affected the privilege. It would be both expedient and good policy to retain the old system: expedient because the State governor, having a better knowledge of the value of services given by the public men of the State, would be a better channel of communication than the Governor-General, and good policy because additional subordination of the States would cause irritation and opposition to a Commonwealth administration which was already 'beset with difficulties'.[81]

Havelock's arguments from policy and expediency were indisputable. That from constitutional privilege also carried considerable weight, though it had to be remembered that the new conditions created by federation might require changes in old procedures. Of course, the real fear of the States was that the Governor-General might turn to his ministers for advice concerning their honours lists. This would, in their eyes, have constituted a real interference.

Chamberlain willingly accepted Tennyson's compromise proposal, a fact which greatly pleased the somewhat vain governor. At the same time, he asked the Governor-General to continue to forward his personal observations on the State recommendations.[82] He was anxious to have the recommendations considered from the standpoint of the whole country as well as that of the individual State. In theory, this was a sound idea. In practice, it was likely to be of little value because of the Governor-General's lack of knowledge of the men recommended.

An untoward incident occurred late in 1902 when New South Wales requested, through the State governor, that the Mayor of

Sydney should be granted the title 'Lord Mayor'.[83] The Colonial Office sought the views of the Commonwealth, which concurred, provided only that the distinction was conferred on Melbourne at the same time. The Colonial Office took this as a formal request and granted the title to each city without consulting the State Government of Victoria. Both the Premier, W. H. (later Sir William) Irvine, and the Governor protested vigorously at this further manifestation of a growing tendency to belittle State authorities. Tennyson, the Acting Governor-General, claimed that he had 'informed' the State governor of his intentions. What the State authorities wanted was not to be 'informed' but to be allowed to recommend the granting of the honour. Although the action was unquestionably well-intended, the incident was one of those unnecessary slights which did much to aggravate the unpopularity of the Commonwealth.

Sir Samuel Way had the last, and best, word on the incident. In a private letter to Sir John Forrest, he chuckled over the 'delicious' Victorian protest and wondered what their attitude would have been had the honour been given to Sydney alone. He had suggested to the Sydney people that they should seek the title.

It appears that in April 1904 Lord Northcote submitted at least a Queensland honours list to Deakin for advice. The Secretary of State, Alfred Lyttleton, pointed out to him that it was the comments of the Governor-General alone that were wanted to help decide between the claims of the various States. He should be guided by confidential communications with the State governors rather than by the Prime Minister. Northcote, whose mistake was of a piece with his desire to have all State communications sent through him, found the situation absurd. He presumed that the State governors listed their recommendations in order of merit. He did not know the men. If he did not go to the Prime Minister his advice must be worthless. Thereafter, he obeyed the ruling and in 1906 he was able to assure the Governor of New South Wales, Sir Harry Rawson, that any comments he offered were made on his 'sole personal responsibility'.[84]

In June 1908, Deakin told the Governor-General elect that the prestige of his office would be seriously diminished by the honours list about to be issued. The Imperial authorities had violated an undertaking given by Elgin to Northcote, in a private letter, that they would accept no State recommendations against which the Governor-General advised. The whole of the Commonwealth recommendations,

which for two years had been 'practically put aside', were, on this occasion, 'absolutely ignored'. Several State recommendations expressly opposed by the Governor-General had been accepted.[85] Atlee Hunt, Secretary of the Department of External Affairs, complained to Sir Francis Hopwood of the Colonial Office that the list had caused consternation in federal circles. More specifically, he pointed to the K.C.M.G. to J. H. Carruthers as a 'blow to federal prestige'. That a man who, a year before, out of jealousy of the Commonwealth, had removed a load of wirenetting from the wharves without paying duty should be honoured by the King was 'a thing that ordinary reasonable men [failed] to understand'.[86]

On 4 March 1903, Deakin, writing as 'Australian Correspondent' of the *Morning Post*, had claimed triumphantly that the success of the States in persuading Chamberlain to let them send recommendations direct and only to submit copies to the Governor-General was 'illusory'. Awards would be conferred only with the Governor-General's approval. Something had gone wrong. Deakin had evidently misunderstood imperial intentions and it was no wonder he complained so bitterly to Dudley.

Crewe insisted on maintaining the established practice. If the Governor-General objected to a man recommended by one of the States, his reasons would be considered, but the responsibility for the final decision remained with the Secretary of State. To grant the Governor-General an absolute veto would be close to an infringement of State rights and the prerogatives of the King who was the 'fountain of honour'. His predecessor, Lord Elgin, was unable to understand how Northcote had got the idea that he was to be given such a veto.[87]

From a general consideration of Northcote's part in the whole channels of communication debate, it is clear that he would have needed no great encouragement to formulate such an idea. It was one which both he and Deakin would have adopted on slender evidence, because it seemed to them a proper course.

The only other modification made to procedure within the period 1901–10 came as the result of a Queensland suggestion. It was decided that when the Federal Government recommended an honour for a person unconnected with the Commonwealth, for services not confined to one State, the governor of the State in which he resided should have the opportunity to comment for the Secretary of State.

The States had the best of the debate over the channel for communications recommending honours. The solution was just. A. B. Keith was clearly right when he claimed that it was 'straining the imagination excessively' to maintain that the Federal Government, or even the Governor-General, had any *locus standi* as far as honours for services to a State were concerned.[88] It is doubtful whether it was even justifiable to send copies of the State lists to the Governor-General. Certainly, the value of his comments on the relative merits of the persons recommended was likely to be negligible. The best solution to the whole problem was one which would perhaps have appealed to Deakin, the abolition of this form of patronage.

The question of the participation of the States in the Colonial Conference of 1907 was fought out between June 1906 and March 1907, but its roots went back almost to the beginning of federation. In conjunction with the Coronation of Edward VII, a meeting of colonial Prime Ministers was held. The Premiers of the Australian States were not invited to this. Indeed, their invitation to the Coronation was only half-hearted. They were not to be official guests of the Imperial Government, but if they happened to be in England at the time, they were welcome to take part in the ceremonies. The invitation was issued through the Governor-General. All Premiers refused to attend.[89] When it became clear that they would not be invited to attend the 1907 Conference, this, along with their other experiences in the channel of communication debate, made the Premiers the more willing to protest with the utmost vigour.

The Premier of New South Wales, J. H. Carruthers, based his protest on the statement of the Under-Secretary for Colonies that no subject would be barred from the discussions. If this were so, matters within the sole control of the States would be considered. There were grave objections to allowing a Commonwealth representative to speak for the States on such matters.[90]

Although the other Premiers supported Carruthers strongly, the Imperial Government was not to be moved. The 1907 Conference must be constituted in the same way as the 1902 Conference, and any question of change was for the Conference itself to determine. Carruthers felt that if the States were excluded from the Conference no subject which was solely within their jurisdiction should be discussed at it. Later, he took the Imperial Government severely to task for wanting 'to relegate the States to a position of entire

subordination to the Federal authorities . . .'. He expressed the view that it was forcing the States more and more into the arms of the Federation and loosening 'the bonds of Empire'.[91]

This was an argument much in Carruthers's mind at the time. It was repeated a little later in the general debate on channels of communication in external affairs. Carruthers seems to have thought that it was well calculated to appeal to the Imperial authorities, but there is no evidence that it did. Of course, to stress the greater importance of the bonds of Empire to those of federation was also a way of indicating independence of the Commonwealth Government.

In replying to the objections of the States, Deakin broached a scheme of his own. He viewed the Conference not as one between Great Britain and all the colonies, but as one in which 'representatives of the chief constituent Governments' of the Empire met to discuss matters of common interest. It was to be an 'Imperial Council'. If his concept of the Conference were right, then the matters discussed could not possibly be within the province of the States. The States could always consult the Imperial Government through their Agents-General, but to discuss matters of State concern at the Conference would imply 'a derogation from its status and confusion in its methods'.[92]

Carruthers's case against the exclusion of the States at least had a practical basis. In December 1906 the South Australian Premier, Thomas Price, tried to argue from a constitutional point of view and largely lost touch with reality. Federation had not in any way altered the status of the States, which remained independent of the Commonwealth and in no way subordinate to it. The Commonwealth Government was, in reality, only the agent of the States for the management of the Customs, Postal, and Defence Departments. To admit the agent to the Conference while excluding the principals was utterly indefensible. To exclude the States would arouse the antagonism of the people and the politicians.[93]

He spoke truly of the antagonism of the politicians, but the attitude of the people must be doubted. It is hard to imagine that most were in any way concerned with the Conference, let alone worried about who represented them. Price's claim concerning the status of the States *vis-à-vis* the Commonwealth was the most extreme advanced during the first decade. It was unlikely to find much favour in Commonwealth or Colonial Office circles.

Deakin was quick to point out that federation had established

an entirely new government with the right to act on behalf of Australia as a whole in matters that concerned the interests of Australians as a united community. The claim that the Federal Government was merely the agent of the States overlooked the direct relationship between it and the people from whom it derived its authority without the intervention of a third party. Crewe accepted this argument and developed the point that the States were not fully self-governing in the way that Natal and Newfoundland were, as the latter continued to exercise full control over many important subjects (for example, immigration, overseas trade, customs) which the States had surrendered to the Commonwealth.[94]

This was the first time since Chamberlain's despatch of 15 April 1903 that the Colonial Office had re-argued its case against State participation in matters which concerned other communities, either within the Empire or foreign communities. The reasoning showed a marked advance.

The States continued to feel so bitterly about their exclusion that they refused to allow their Agents-General to supply Deakin with the information which would have helped him, while he was at the Conference, to answer questions about immigration to Australia. Thomas (later Sir Thomas) Bent, Premier of Victoria, arranged to be in London during the Conference and, while he was officially concerned with financial business, he made it appear before he left that at least part of his purpose in going was to keep an eye on Deakin. Not that the slow witted Premier was likely to be any match for the nimble-tongued Prime Minister.

At the Conference, there was some discussion concerning its future composition. Deakin tried to persuade the members to allow for subsidiary conferences at which subjects concerning the Australian States and Canadian Provinces might be discussed. He was entirely overborne by Sir Wilfrid Laurier, Prime Minister of Canada, who wished that any such conference should be entirely separate.

It was true that some of the matters discussed at the Conference were of interest to the States: judicial appeals, double income tax and reciprocity in the admission of barristers and surveyors to practice were clearly within their ambit. But, once Deakin's suggestion at the Conference had been put aside, it is difficult to see how they could have been admitted without creating more difficulties than were solved. The only solution was for the States to remain disconsolate until time had allowed national sentiment to mature

sufficiently for them to accept the Commonwealth as the representative of the whole country.*

Just before the 1911 Conference, Sir Gerald Strickland, Governor of Western Australia at the time, tried to raise the question again. The Secretary of State, Lewis Harcourt, moved quickly to avert trouble. He told all governors that if they thought that their Premiers were under the misapprehension that their presence in England for the Coronation of George V would mean that they would be asked to participate in the Conference, they should be warned that this was not so.[95] There was no trouble.

In March 1911, Lewis Harcourt summed up, for Lord Denman, the position with regard to the channels of communication debate. It had, he said, originally been considered desirable for all State despatches to be sent in copy to the Governor-General. This had been changed because the State Governments had objected 'more or less strongly' to anything which seemed to make them subordinate to the Commonwealth. Copies should be sent of anything which affected federal interests. This was 'absolutely essential' with communications concerning recommendations for honours, the use of the title 'Royal', any difficulty with a foreign consular representative or any matter in dispute with the Commonwealth. If the Governor-General thought it did affect Commonwealth interests, he should forward the despatch to the appropriate minister for comment, though confidential and secret despatches should be discussed only with the Prime Minister.[96]

The long and complex debate had lasted for a little more than a decade. In a sense it had come to an end from exhaustion rather than because either side had been convinced of the rightness of the other's arguments. It was still possible for disagreements to arise in the future with regard to practice, though the underlying principles could scarcely be questioned.

Extravagant claims had been raised on all sides. The maximum claims advanced for the Commonwealth, in the Anderson-Chamber-

*Immediately after, and partly as a result of, the Colonial Conference of 1907, certain changes were made in the organisation of the Colonial Office. When the States were informed of these changes, C. G. Wade, Premier of New South Wales, chose to regard them as an underhand attempt to cut off direct communications between the States and the Colonial Office. However, the Office had no such evil intention and, in replying, made it clear that, unless the Australian Constitution were changed, the Commonwealth could never hope to become the sole channel of communication between the Imperial and State Governments. See *N.S.W.P.P.*, 1908, first session, vol. 1, pp. 21–4, 28.

lain despatches of 25 November 1902 and 15 April 1903, involved a degree of unification in all relations with Great Britain and the rest of the Empire, as well as foreign countries, which had been deliberately rejected in the drafting of the Constitution and could not have been justified from the text of that document. The maximum claim of the States, in Price's memorandum of 12 December 1906, that the Commonwealth was merely an agent of the States, was equally untenable. In between these extremes, the debate had covered much significant ground and had reached some worthwhile conclusions.

The States had tried to establish that they were not subordinate to the Commonwealth and that, within their own spheres, they were independent and equal, exercising a quasi-sovereignty similar to that exercised by the Commonwealth in its field. They had had only partial success. There was a field in which they were not subordinate, but it had been strictly limited, in a way not anticipated when the Constitution was accepted, to matters which had no implications for any government or community outside the confines of the State. From their point of view, this amounted to an unjustified derogation from their political status. In effect, this appeared to them as a practical subordination of their position.

On its side, the Commonwealth had established, with limited exceptions, its right to speak for Australia in matters of external affairs and foreign trade. There was a third field where authority seemed to overlap, in matters like the appointment of consuls. Here, each side had to be content with a compromise which preserved the real interests of both parties.

That was the positive achievement of the debate. Counterbalancing it was the vast amount of ill-will engendered in an encounter which had been argued always keenly and often bitterly. This ill-will, coupled with the genuine fears of encroachment which existed on both sides, rendered more difficult the development of executive co-operation.

The first impulse of the Colonial Office, on most occasions, was to favour the Commonwealth. Above all, Sir John Anderson and Chamberlain seem to have been responsible for this. The influence of Chamberlain was such that there appears to have been no real reconsideration of his views until 1907. There were men who favoured the position taken by the States: of these, H. E. Dale and A. B. Keith were the most important. These were also the men

who had the deepest understanding of the Constitution, but they had less influence in the Office. However, while the Colonial Office played a decisive part in determining Australian practice on this question, it was at times deflected from its course by the States.

The debate has not continued to trouble the relations of Commonwealth and States, but, in its time, it was considered to be of the utmost importance and was fought with great vigour. The questions of status and power involved were important and arose naturally out of the understandable inclination of Commonwealth and State politicians and governors to place on the Constitution the construction most favourable to their own parliament and government and to their personal interests.

2 New South Wales and the Federal Capital

ON 1 January 1901, the only land within Australia which was under the sole control of the Commonwealth Government was that which had been transferred automatically with the Customs Departments of the States. As further departments were transferred, more land passed to the Commonwealth. By 1 January 1911, it was not only this transferred real estate which the Commonwealth governed unaided (or unhindered) by the States, but Papua, the Northern Territory and the Federal Capital Territory.

This situation had been foreseen. Constitutional provision had been made for a federal capital situated in territory vested in the Commonwealth to avoid exacerbating the rivalry between the colonies, and especially between Sydney and Melbourne. Some sense of national responsibility, however small and undeveloped, was responsible for the view that South Australia should be relieved of the task of developing the Northern Territory, an impossible burden which misdirected self-interest had led the colony to assume eagerly almost forty years before. The British Government, which had reluctantly annexed British New Guinea in response to Australian demands, was anxious to hand over responsibility for the territory as soon as there was an Australian Government able to administer it.

Although the administration of its affairs caused ample trouble for the Commonwealth, New Guinea raised no serious problems between the State and Commonwealth Governments and it therefore lies beyond the scope of the present discussion. The arguments over the transfer to the Commonwealth of the Federal Capital Territory and the Northern Territory began early in 1901 and were not finally settled until the two territories passed under Commonwealth control on 1 January 1911. Only the question of the capital territory will be discussed here.

The transfer provided ample scope for political lobbying and debate and the exercise of local pressures. But these facets, interesting

as they are, are largely outside the purpose of this study and will be discussed only when they seem to affect executive administration in a vital way.

The location of the seat of government was discussed at the Federal Conventions[1] and the final decision in 1898 was that it must be 'within territory vested in the Commonwealth' at a site selected by the Commonwealth Parliament. Until the site had been chosen, Parliament would meet at a place selected by a majority of the State governors or, if they could not agree, where the Governor-General directed. The Constitution as adopted at the Convention failed to obtain the statutory minimum vote at the 1898 referendum in New South Wales. One reason for this was the desire of the 'mother' colony to have the capital within its borders. The Premiers' Conference, which met in 1899 to consider changes desired by New South Wales, agreed that the capital should be in that State but not less than 100 miles from Sydney. The federal territory was to be not less than 100 square miles and that part of it which was Crown land was to be granted free by the State. Until it could meet at the seat of government, Parliament was to sit in Melbourne.[2]

In their discussion of section 125 in 1900, Quick and Garran indicated that it was uncertain whether the determination of the seat of government rested entirely with the Commonwealth Parliament or whether its choice was limited to sites offered by the Parliament of New South Wales. It was desirable that the selection of territory should be the result of an agreement between the Commonwealth and the State, but, if the need arose, the Commonwealth had a reserve power to acquire a territory of about the constitutional minimum area without the concurrence of the State.

It was this uncertainty in the Constitution, along with the traditional and virulent jealousy between Sydney and Melbourne, which was to cause so much delay and so much animosity between the Commonwealth and New South Wales over the selection of the seat of government.

In the beginning, the governments of both New South Wales and the Commonwealth had good intentions and took prompt action. In November 1899, Sir William Lyne's Government in New South Wales appointed Mr A. Oliver, President of the State Land Appeal Court, a royal commissioner to inquire into the suitability of sites for the seat of government and invited the public to suggest sites and submit information concerning them.

On 13 April 1901, the Prime Minister, Barton, inquired whether the New South Wales (See) Government was prepared to offer any sites for consideration, indicated that his Government wished to consider areas larger than the constitutional minimum, and suggested that Crown lands within any areas offered should be reserved from alienation until a decision had been reached. The Premier, Mr (later Sir John) See, submitted sites at Bombala, Yass, and Canobolas (Orange) along with a copy of Oliver's report on those and other sites. He informed Barton that he had reserved Crown lands in the areas named but if the Commonwealth preferred other sites his Government would endeavour to meet it. Barton urged that similar reservations should be made in other areas which the State Government felt deserved consideration, but refused to suggest any areas himself as both he and his Minister for Home Affairs, Sir William Lyne, held that it was the State's responsibility to do that in the first instance. See was prepared to forward any further recommendations made by Oliver but would not reserve lands which might be required for *bona fide* settlement purposes.[3]

On 19 July 1901, in the House of Representatives, King O'Malley (Tasmania) moved that it was desirable to secure as federal territory not less than 1,000 square miles of suitable land, the freehold of which should remain forever with the Commonwealth. Barton agreed with O'Malley's main contentions but sought to remove the reference to a specific area so that the Commonwealth could choose a site containing less than 1,000 square miles should such a site suit its purposes. The members who spoke agreed generally with the motion but, because of the consideration of the tariff and important machinery measures, the debate was adjourned until 10 September 1902 when the motion was passed as amended by Barton.[4]

The motion, and Barton's statement to See in his letter of 13 April 1901 on the question of area, indicated an important trend in Commonwealth thinking which was to be significant later in the quarrel with New South Wales.

As See's Government was opposed to the unnecessary reservation of land, Barton inquired, on 29 August 1901, whether any further sites would be submitted and if See were prepared to name an area or areas which his Government favoured. For reply, an official sent a copy of a report by Commissioner Oliver indicating that a site at Godara, near Tumut, might be added but arguing that it was for the Commonwealth to indicate its preference as this would

save the expense of further inquiry. Oliver doubted whether there was a site in New South Wales more suitable than those already recommended.[5]

On 10 September, See stated in Parliament that it was not for his government to do more than it had done. It had provided information for the Commonwealth and promised to assist it to acquire any site desired. The Federal Government must take the responsibility for choosing the site, but he was confident that the State Parliament would agree to whatever site was chosen.[6] He never replied officially to Barton's request for an expression of preference although the request was repeated several times.

There was no real difference between the views of Barton and See as to which government was to choose the territory in which the seat of government was to be situated. Barton was considerately anxious to give the State as much voice as he could in the matter, since it had to surrender the territory, but See seemed afraid to make a suggestion, possibly because he thought that to do so might arouse local prejudice against his Government.

J. H. Carruthers, Leader of the Opposition in the New South Wales Parliament, sought a debate on the capital site question and got it on 19 December 1901, the last day of the session, when See introduced a motion recognising the exclusive right of the Commonwealth to make the final selection of a site and undertaking to accelerate cession of the territory when the Federal Government had made its wishes known. The motion was eventually ruled out of order but, before it was, Carruthers had an opportunity to show the attitude that he was likely to take should he become Premier before the matter was settled.

Carruthers argued that while the Federal Parliament alone could decide the exact location of the seat of government, it had no voice in deciding where the federal territory was to be. Section 125 stated that the seat of government must be within territory which 'shall have been granted to or acquired by the Commonwealth'. It was the right of the State to grant a territory of, say, 400 square miles to the Commonwealth which would then exercise its right to fix the exact location of the federal city within that area. If the Federal Parliament were invited to come to New South Wales and choose its own site, the State would be virtually bound to accept the decision however unpalatable. It might select a site near the Victorian border which would make Melbourne and not Sydney the port for

the Commonwealth. That would be unacceptable. The Parliament of the State alone, and not the executive Government, could surrender land to the Commonwealth and it must make clear what sites it would offer. If they were rejected, others could be offered later. In the meantime, the temporary seat of government must, like the permanent one, be within New South Wales, but not less than 100 miles from Sydney. It was unconstitutional for the headquarters of every Commonwealth department to be in Melbourne as was then the case.[7]

Carruthers had shown himself a vigorous champion of State rights in the debate on the Murray waters question at the 1897–8 Convention. He was noted for his anti-Victorian attitude and was likely to regard a Melbourne-based Commonwealth Government as seeking to enrich Victoria at the expense of New South Wales. He was a lawyer-politician, well grounded in the nonconformist tradition, and his natural instinct was to treat every issue as a brief to argue as strongly as he could. He represented the Sydney electorate of St George and so shared the aspirations and fears of that city to the full. Every one of these characteristics is clearly shown in his conduct of the capital site negotiations and foreshadowed in his first speech in Parliament on the subject.

The Commonwealth's desire to settle the question slackened as a result of See's unhelpful attitude and nothing was done during 1902. Early in 1903, J. C. Watson, the Federal Labor leader, urged Barton to settle the question during the forthcoming session as the Sydney newspapers were complaining that the Commonwealth Government was neglecting the State and would make the most of any failure over the capital site. In October of that year, Federal Parliament made its first attempt to choose a site. Barton had tried to have a joint sitting of the Houses to consider the question but the Senate had refused to participate.* The Deakin Government, which succeeded Barton's when the latter joined the High Court bench, introduced a Seat of Government Bill on 6 October, but it came to nothing. As the result of an exhaustive ballot on 8 October, the House of Representatives selected Tumut as the site, while on 15 October the Senate substituted Bombala. As there was no hope of compromise, the matter was left for a new Parliament to settle.

*The Senate wished to avoid having its views 'swamped' by the larger House of Representatives.

The ministry had not made itself responsible for the selection of any particular site, partly because its members were divided over the issue and partly because this was an obvious case for freedom of individual action. The voting revealed rivalry between Victoria and New South Wales. All Victorian members of the House of Representatives voted for Tumut and all Victorian senators for Bombala. Members and senators from New South Wales were not unanimous but generally preferred a western site such as Lyndhurst.[8] The Victorian strategy ensured that the question would not be settled and that Parliament would continue to meet in Melbourne. It also ensured the maintenance of a privileged position for Victorian interests.*

Carruthers had foreseen such a result and, on 9 October, had introduced a motion in the State Legislative Assembly which asserted that the procedure adopted by the Commonwealth Government was unconstitutional and inimical to the rights of the State, and that the Commonwealth Parliament should have indicated by resolution the locality in which the territory was desired so that the State Parliament could consider its attitude. State territory could be ceded to the Commonwealth by the State Parliament only under section 111, or under section 123 with the consent of the Parliament and people expressed by referendum. The power under section 51 (xxxi) to acquire property on just terms was distinct from the acquisition of territory and applied only when land was required for a railway or public building. However, had the Commonwealth Parliament settled definitely on a site, he would have had the State Government take prompt action to surrender it so that the proceeding would be legal and the machinations of the Victorians defeated. Later in the debate, which was never brought to an issue, Wade (Carruthers's future Attorney-General) foreshadowed other points of dispute when he opposed the desire of the House of Representatives for an area of 1,000 square miles and a site touching the Victorian border. See indicated that he also would refuse a demand for 1,000 square miles.[9] However, both See and his immediate successor, Waddell, continued to behave amicably towards the

*P. McM. Glynn, a South Australian member of the House, held that the Victorian voting was a 'strategy' (diary entry, 23 Oct. 1903, Glynn Papers, N.L.A., MS. 558). The other States do not appear to have combined in the same way.

Commonwealth and, during 1904, reserved, at the Commonwealth's request, Crown lands around Lyndhurst and Dalgety so that those sites might be readily available should the Commonwealth desire them.[10]

Whatever the attitude of the Government of New South Wales, the leading members of the Opposition had shown a degree of anti-Victorian sentiment and of hostility to the selection of a large area of territory which was significant for the future. While Carruthers's speech had been free from the extreme postures which too often marred his later statements about the Federal Government, it did reveal the determination of a narrowly legalistic mind to squeeze the last drop of value for the State from the wording of the Constitution.

Watson succeeded Deakin in office in April 1904 and his Government introduced and passed a Seat of Government Act which named Dalgety as the site of the capital. Its successor, the Reid-McLean Government, approached New South Wales in September 1904 with the intention of opening negotiations on the basis of the Act, but Carruthers, newly become Premier of the State, refused to negotiate until he had obtained the opinion of both Houses of the State Parliament.[11] This was fully consistent with his earlier attitude that it was the prerogative of the Parliament, not the executive government, to offer territory; it also gave ample opportunity for local pressures and prejudices to exert their influence.

Carruthers obtained legal opinions from his Attorney-General, Wade, and the prominent Sydney legal firm of J. E. Salomons and C. B. Stephen on the question whether the Seat of Government Act 1904 was binding on New South Wales. The lawyers were able to provide the opinions they knew their client wanted. It was Wade's view that section 125 of the Constitution required the seat of government to be within an area already vested in the Commonwealth. As no territory had been granted to or acquired by the Commonwealth, this condition had not been fulfilled and the Act did not bind the State. Salomons and Stephen agreed but argued that as the Act purported to fix a general and not a specific area it was merely declaratory. That part of section 125 which stipulated that the area of the territory should be 'not less than' 100 square miles should not be taken too literally but should be interpreted to mean 100 square miles or an area a little larger.[12]

On 9 December 1904, in the Legislative Assembly, Carruthers moved resolutions to the effect that the State would offer an area of

between 100 and 200 square miles, instead of the 900 square miles requested, at or near Tumut, Lyndhurst, Dalgety, or Yass and would make additional reservations for a water catchment area outside the federal territory, but that the State Government would not be justified in undertaking heavy expenditure to improve an old or lay a new railway line to the capital and that such expenditure must be the subject of a prior arrangement with the Commonwealth.

Carruthers argued, as Salomons and Stephen had, that the Commonwealth Act was only declaratory and that it was an attempt to get New South Wales to face its responsibilities. His view of the correct procedure remained unaltered and he urged the Parliament to make its wishes known in a spirit of conciliation. He referred to a letter from Reid in which the Prime Minister had urged the advantages of Dalgety from the State's point of view, but expressed his own disapproval of the site because of the high cost of linking it satisfactorily with the existing railway system. In spite of this, Carruthers was prepared to offer the site in an attempt to be helpful. He would not grant a port because the whole of the Monaro traffic would be diverted through it and the customs duties payable on the goods lost to the State during the currency of the bookkeeping system. Neither would he grant access to the sea by a narrow strip of land, as the Commonwealth seemed to wish, but he would allow a railway to be built on land which remained under State control. If the Commonwealth wanted large areas of land for 'socialistic experiments', it must get it by proper methods. Later, in concluding the debate, he showed that other matters, such as the inability of the States to tax Commonwealth servants, and the fear that the Commonwealth Parliament would continue to sit in Melbourne, were influencing his attitude on this question.

The House showed its attitude clearly when it adopted the resolutions but omitted Dalgety, the site already chosen by the Commonwealth, from those to be offered. This meant that the 'State right' characteristics of the motion introduced by Carruthers had been considerably strengthened. A debate in the Legislative Council had a similar result.[13] By this means, a situation of complete deadlock was created: the Commonwealth Parliament had fixed the seat of government at or near Dalgety and stipulated that the area acquired must be not less than 900 square miles and must have access to the sea; the State Parliament had expressly refused to offer Dalgety, an area larger than 200 square miles, or access to the sea.

The outlook for early settlement of the matter was not promising.

Local feeling had had its effect. For four years the Sydney papers had consistently demanded the early selection of the seat of government in a place which would confer real advantages on New South Wales, and especially on Sydney, and which would get Parliament away from the pernicious influence of the Victorian protectionists. They had blamed both the Commonwealth and See Governments for the delay. On 30 September 1904, the *Sydney Morning Herald* promised Carruthers the support of the whole State should he try to reverse the injustice perpetrated by the selection of Dalgety. On the other hand, the Melbourne *Age* (27 July 1904) insisted on the absolute freedom of action of the Commonwealth and the need for suspicion of the Sydney politicians who were out to capture the capital.

The debate in the State Parliament caused some anger in the Commonwealth Parliament and Reid, although a Sydney representative, declared that his government would abide by the 1904 Act unless Parliament repealed it.[14] Carruthers tried to negotiate on the basis of the resolutions[15] and reinforced this action by cancelling the Crown land reservations at Bombala and Orange, sites not offered in the resolutions. Reid's Minister for Home Affairs, Dugald Thomson, another New South Welshman, tried to persuade him to change his attitude by pointing out that the Dalgety site had been investigated under the name of 'Buckley's Crossing' by Commissioner Oliver, who had recommended its inclusion in a Southern Monaro site, and that the State Government had reserved Crown lands there.

However, both governments were bound by parliamentary decisions and Carruthers, who had probably included Dalgety in his original resolutions only because he believed that the Parliament, and not the government, should decide whether to offer it, argued that it had never been offered under the terms of section 125 (that is, by Parliament) and that it was unsuitable because it was inaccessible and too far from Sydney, straining unduly the 100-mile embargo placed on that city by the Constitution. He repeated the other arguments he had used in Parliament and drew special attention to the State's offer to reserve a water catchment as compensation for granting an area smaller than that sought by the Commonwealth.[16]

The fact that Carruthers's letter was published in the Press before it could reach the Commonwealth caused some bitterness. Thomson at first replied through the Press and only answered officially much

later when Carruthers refused to accept the press interview as a reply. He pointed out that for New South Wales to demand that its selection should be put aside, when the Commonwealth had, after years of investigation, selected a site, meant that the Commonwealth must either do nothing or go ahead unilaterally. No harm was done to New South Wales by the selection of Dalgety, which had been included in the Bombala site when the first choice had been made in 1903. If the decision in favour of Dalgety were reversed, it would prove even more difficult to get unanimity on a new site.[17]

In July 1905, there was another debate in the State Parliament which further embittered feelings. The originator declared that New South Wales had been defrauded of the right to have the capital within its boundaries because members of the Commonwealth Parliament had preferred to remain in Melbourne. Carruthers deplored the fact that even Reid had denied New South Wales justice and was continuing to move federal departments to Melbourne.[18]

In fact, New South Wales had little just cause for complaint by this time. The whole of its contribution since the Commonwealth had passed its Seat of Government Act in 1904 had been of a nature to hinder settlement. Indeed, the most kindly disposed Federal Government could scarcely have made conciliatory moves without appearing to have given in to the prejudices and threats of the Sydney politicians.

There was a brief glimmer of hope when Deakin succeeded Reid in office in July 1905. Carruthers inquired whether his government accepted the policy of its predecessor in the matter and, if it did, whether Deakin would agree to submit the questions at issue to the High Court for decision. Deakin did endorse Reid's policy and asked Carruthers to submit a list of the questions which he wished to refer to the Court and to indicate the manner in which they were to be submitted.

Carruthers wished to know whether the Commonwealth regarded its 1904 Act as binding on New South Wales and insisted on all its terms and on the right of the Commonwealth Parliament to fix the site in a mandatory way although New South Wales had refused to grant the territory sought but had offered other sites. Assuming that the answer would be in the affirmative, he listed fourteen questions to be put to the High Court as a special case. They were designed to elucidate six main principles: the right of the Commonwealth

Parliament under the Constitution to determine the seat of government before territory had been granted to or acquired by it; its power to acquire territory without the consent of the State and, if it had such power, the circumstances in which it might be exercised; the extent of territory which might be so acquired; whether the territory had to be close to the 100-mile limit and whether access to the sea could be demanded; whether the temporary seat of government might be located outside New South Wales. Even more important than keeping the letter of the Constitution was the need to keep faith with the State. Until this had been done the loyalty of the people of New South Wales to the Commonwealth would be severely strained.

Deakin was confident that the Commonwealth had power to determine both the seat of government and the territory in which it should be. He indicated that, while his Government regarded the selection of Dalgety as mandatory, it would seriously consider modifications which New South Wales might wish regarding the area of the site and the condition of access to the sea, although Parliament had expressed a clear opinion on these matters. While there would be no seat of government within the meaning of section 125 of the Constitution until the capital had been established, it was both desirable and constitutional for the Governor-General to be in Melbourne while Parliament was in session, and there had been no breach of faith with New South Wales, especially as he spent much of the recess in Sydney. The High Court would not consider questions of law framed to elicit an opinion but a writ must be issued in a form to show cause of action by one party to the suit against the other. He was prepared to help state a special case before the Court if New South Wales would take action to initiate one.

Carruthers thought that Deakin was evading the question. He was probably confirmed in this suspicion when, in reply to his suggestion that the Commonwealth should furnish cause for a test case by some overt act, such as driving in a survey peg, and then agree to raise only the issues affecting the broad question to be determined,[19] he was informed that the Commonwealth Attorney-General, I. A. Isaacs, believed that such an act would not raise the questions which it was desired to settle. The 1904 Act did not purport to define an exact site for the territory or to give the Commonwealth right of entry for the purposes of survey. Deakin forwarded a confidential draft of a bill which Isaacs felt the Common-

wealth should pass if such an act were to raise the desired issues. Carruthers, who had never disputed the right of the Commonwealth to make a preliminary survey, rejected this as he felt that it might validate the very point in dispute. He urged further consideration of his own proposal. Each leader maintained his position and the *Daily Telegraph* laughed at their 'tame little comedy' and expressed the view that the Commonwealth Parliament would have the site it wanted or remain in Melbourne. The blame for this, it believed, lay with New South Wales for having accepted the Constitution as it stood.

To meet Carruthers's objection that the proposed survey act might be valid even if it had been passed before the Seat of Government Act, Deakin had an extra clause drafted stipulating that no action performed under it should be deemed valid if the 1904 Act were held to be invalid or not binding on New South Wales. Carruthers was still not satisfied and suggested that the Attorneys-General of the governments should meet to discuss the points at issue and that each Parliament should then pass an act agreeing to submit certain matters, to be defined in a schedule to the act, to the High Court.[20]

Wade and Isaacs met in Melbourne on 16 October 1905 and agreed that the questions between the governments could not be brought to issue merely by driving in a survey peg and that an action for trespass might not lie under the proposed survey act. Wade believed that the 1904 Act was merely declaratory, but Isaacs thought that it amounted at least to a quasi-determination of the seat of government, as it restricted consideration to land within 17 miles of Dalgety. Both agreed that further definition of the territory was necessary before the Commonwealth's power to determine the site, without the prior grant of territory by the State, could be tested. Isaacs thought that the Commonwealth should press on with its Survey Bill, including a waiver clause preserving the rights of New South Wales, survey the land and request that the State grant it. The main and dependent issues would then be raised.[21]

Carruthers noted with satisfaction that the Commonwealth Government had apparently withdrawn from its earlier contention that the 1904 Act was mandatory on the State. He commented that, if this were so, it could consider the three sites offered by New South Wales in December 1904 and there would be neither need

nor cause to approach the High Court. It was simply a question of whether the Commonwealth Parliament would consider the reply of the State Parliament to its own suggestions in the Seat of Government Act 1904 and there was no need for further legislation. Carruthers had already written that he had revoked the reservation (from lease and sale) of Crown lands in the neighbourhood of Dalgety. If he had consulted with Wade before sending the letter, and it is possible although not certain that he did, the action fitted in with his view of the 'new' Commonwealth position. From the Commonwealth viewpoint, it bore a different appearance. When Deakin asked him to stay his hand, Carruthers agreed to do so for a month, but insisted that the State would never grant the Dalgety site.

A heated exchange followed. Deakin was determined to proceed as Isaacs had suggested and to ask Parliament to fix the exact site of the capital. Carruthers saw this as an attempt by the Commonwealth to legislate New South Wales out of a voice in a matter of intimate concern to it. He threatened that, if Deakin persisted in this course, he would invite the Legislature and people of the State to consider the unsatisfactory position which the action would create with a view to taking 'definite action' for the maintenance of 'our unquestionable rights'.[22]

This was probably the letter which led Deakin to give his departmental Secretary, Atlee Hunt, his opinion of Carruthers in the most vigorous terms. When he had finished, Hunt asked, 'Yes, but what shall I reply?' Deakin gave the unique instruction: 'Tell him to go to hell — three pages'.[23]

Hunt carried out the instruction admirably. The reply pointed out that the fact that reports had been made on the Dalgety site and Crown lands reserved there showed that the New South Wales Government recognised the propriety of its being considered along with the other sites. Carruthers's attitude, and the threatened withdrawal of the reservation at Dalgety, was an attempt to control the actions of the Commonwealth Parliament but it could not give way before such dictation. If they could get a majority against it, the New South Wales representatives in the Federal Parliament could reverse the 1904 decision when the Survey Bill was introduced.[24]

Debates in the Commonwealth Parliament during November–December 1905 showed that the opinion of New South Wales members was swinging behind their State Government, while a rift

was growing between them and the members from the other States. It is doubtful whether the government acted wisely in introducing its Seat of Government Bill 1905 in the dying moments of the session when there was no hope of its being passed. It did redeem a promise, but it made the charge of insincerity easy, and added to the ill-will already aroused by Carruthers. The whole failure of the scheme to obtain a ruling on the capital site question from the High Court sprang from Carruthers's unwillingness to co-operate in the procedure proposed by Isaacs for the benefit of New South Wales, but it was regrettable that the Commonwealth should do anything to add to the difficulties.

On the last day of the session of the New South Wales Parliament (8 December 1905), Carruthers carried out the threat he had made on 8 November. He asked the Assembly to express its 'profound dissatisfaction' with the treatment given the State by the Commonwealth Parliament with regard to 'many matters of serious concern', and especially the selection of the federal territory, and to instruct the Government to devise a simple means to allow the electors to express their opinion on the matter. A move to omit the provocative clause concerning reference to the electors failed by forty-four votes to seventeen in the ninety-member House. The motion finally passed by forty-two votes to two after Labor members had walked out in protest against the use of the gag. The Legislative Council passed a similar motion without division and after only perfunctory discussion.[25]

The debate on the resolutions was bitter and opened a new phase in the negotiations with the Commonwealth. In terms of arguments, it added nothing new to the discussion, but it did reveal the extent to which Carruthers had the Parliament behind him in the matter and so strengthened his hand as he tried to put pressure on Deakin. Not that it was the kind of pressure to which Deakin was likely to (or, indeed, could) yield. The situation was similar to that in 1901 when Philp had tried to control Barton's actions over the expulsion of the Kanakas.* If federation was to mean anything, Deakin had to maintain the right of the Commonwealth Parliament

*Philp had argued that the Commonwealth Government should determine policy affecting a particular State in consultation with that State. Barton rejected this position completely. See D. I. Wright, 'The Expulsion of the Kanakas from Queensland: an early issue in Commonwealth–State relations', *Queensland Heritage*, vol. 1, no. 10, p. 11.

to deal, without interference from the States, with matters specifically committed to it by the Constitution.

These bald resolutions were forwarded to the Commonwealth Government which sought some explanation of them. Three months later, Carruthers set out the whole position. He rehearsed the old arguments against Dalgety and against the constitutionality of the 1904 Act, although he did admit that the State was partly to blame as it had delayed so long in offering a site for the capital. He directed attention to the question of the distance of the site from Sydney and claimed that the 1899 Premiers' Conference, which he had not attended and which had issued only a series of resolutions by way of report, had intended the site to be as near as possible to the 100-mile limit. In this faith, the New South Wales electors had accepted the Constitution.[26]

It is true that the phrase used by the Premiers in their resolution, 'at a reasonable distance from Sydney', was understood in New South Wales during the referendum campaign of 1899 as a qualification of the 100-mile limit, but that was still a far cry from Carruthers's claim.

Deakin refused to be bound by an unofficial agreement only brought to light seven years after it was alleged to have been made. Parliament had to act according to the written Constitution and had done so when it had selected Dalgety. Before that site had been chosen on 15 August 1904, three years had been spent in seeking the best site and, not only had New South Wales not objected to Dalgety, but it had expressly acquiesced in its consideration as it had been included in the extended Southern Monaro or Bombala sites as offered. The State Parliament could have assisted in settling the question in December 1904, but had acted inconsistently and embarrassingly by refusing the site which the Commonwealth had chosen. However, the Federal Government and Parliament could not surrender their duty to select the site which they thought best.[27]

Carruthers placed the blame for the dispute squarely on the See Government which had neglected its duty in not asking the State Parliament to offer a site. The resolutions of December 1904 were the first valid offer made. When the State offered Tumut (322 miles from Sydney), Lyndhurst (195 miles) and Yass (192 miles), while claiming that the site should be near the 100-mile limit, it was not being inconsistent but merely showing an 'earnest desire' to have

the best site selected even if it had to forgo some of the advantages which should accrue to it.[28]

On the other hand, on 16 July 1906, the Adelaide *Advertiser*, a reasonably disinterested spectator in this matter, attributed the whole trouble to the fear within New South Wales that the interests of Sydney would be compromised by a site as far away from it as Dalgety. There is little doubt that the *Advertiser* was correct, though the stricture implied in its judgment might be qualified by the remark that the attitude of the Victorian Press and politicians did nothing to allay that fear.

Carruthers argued consistently that the Commonwealth's only independent power was to fix the exact site of the 'seat of government' (the federal city) within territory already granted to it by the State. It was for the State to make a formal offer of territory by parliamentary resolution and only if the State declined to make such an offer could the Commonwealth exercise an independent power of acquisition. Under this interpretation of the Constitution, it was consistent to claim that the resolutions of December 1904 constituted the first valid offer made by the State, to cancel reservations of Crown lands in areas not thus offered, to blame the See Government for the early delays and even to claim that the 1904 resolutions were 'conciliatory'.

Carruthers's whole case was based on a strained and untenable interpretation of section 125, as R. R. Garran showed in a memorandum written in January 1905. Grammatically and logically it was clear that the first paragraph of section 125 required the federal territory to be granted or acquired before the seat of government was established, not before it was determined. There was nothing in the section to justify the assumption that the 'seat of government' was a smaller area within the larger 'territory', a view necessitated by Carruthers's interpretation. It was clear that the Commonwealth Parliament was given power to determine the seat of government. Garran pointed out that when the Legislative Assembly of New South Wales had asked (in 1899) that the capital should be established within that State, it had not sought to fetter the freedom of the Federal Parliament to determine its own territory. The only constitutional limitations were that the site must be within New South Wales but not within 100 miles of Sydney. If the words of section 125 were not sufficient in themselves to give the Commonwealth power to acquire the territory, it was given under section 51

(xxxix), which empowered it to make laws with respect to matters incidental to the exercise of powers given under the Constitution. Only on one point did Garran agree with Carruthers: the Commonwealth's power of independent acquisition was limited and only extended to such an area as was 'reasonably necessary for the purposes of the seat of Government'.[29]

On all points Garran's logic was unanswerable. Because Deakin adopted this interpretation, it was consistent for him to assume, as See had done, in contrast with Carruthers, that when the State reserved Crown land in an area or furnished information about its potential as a site it was offering the area for consideration and had done all that was expected of it. In this difference lay the seeds of trouble, especially as Carruthers, who was playing the part of an advocate and putting his client's case as strongly as possible, was not subject to the persuasion of reason.

Official negotiations died for a time, but efforts were made behind the scenes to find a solution. J. C. Watson was publicly critical of Carruthers but received his private thanks for working with him in the matter and was assured by Carruthers that the latter would follow Watson's lead with regard to Canberra, a new site which was occupying public attention for the first time.

In September 1906, Carruthers demanded that the matter should be settled before the end of the session, but this was impossible because of the invitation issued by New South Wales to visit several new sites and because certain details about Canberra, a site which had excited much interest, had just become available.[30] Carruthers might have drawn hope from the fact that the Commonwealth had agreed to inspect and receive reports on new sites, but he preferred to think that Deakin was trying to blame his government for further delays and attempted to pinpoint the refusal of the Commonwealth to consider 'the respectfully expressed views of the [State] Parliament' (the 1904 resolutions) as the root cause.

Deakin listed the stages in the dispute, with dates, and it was clear that most of the delays had been due to New South Wales. When the Commonwealth Government invited negotiation in September 1904, the State had not replied until 15 December and by that time the Commonwealth Parliament had prorogued; between July and December 1905 there had been correspondence about submitting the question to the High Court as suggested by New South Wales but the State had finally refused to agree to the

method proposed; in the early part of 1906, the State Government had had new sites examined but had submitted the reports too late for the question to be dealt with that session. In addition, when the Commonwealth had introduced a bill authorising the acceptance of a grant of territory to be made by New South Wales, several prominent members from that State, no doubt working with Carruthers, had suggested that it should not then be proceeded with.

On 7 August 1907, Crown land reservations at Dalgety, Yass, Lyndhurst, and Tumut were revoked — it was no longer in the interests of the State to have the capital at any of these places although three of them had been offered as sites in 1904.[31] This was Carruthers's last action in the matter as he retired on 30 September and his Attorney-General, C. G. Wade, became Premier and carried on the fight for the State.

By his rigid insistence on the 'rights' of New South Wales, and his failure to recognise the rights of the Commonwealth, Carruthers had made a friendly solution of the capital site question almost impossible. His three years in office were a period of constant strife and in that time it appears never to have occurred to him that he had a poor bargaining position and that all his threats were largely bluster.

The capital site question was of some interest in New South Wales in the Commonwealth election of 1906. It was again prominent in the 1907 State election. Candidates were questioned frequently about their choice of site. This prompted Wade, soon after he had assumed office, to press for a definite assurance that the matter would be settled that session or first thing the following session. Deakin pointed out that there was already a statute on the books and that the tariff would take up most of Parliament's time in the 1907 session but he hoped, rather vaguely, to 'submit' the matter to Parliament before the prorogation. Deakin's use of 'submit' rather than 'settle' was taken by Wade to indicate that he was begging the question and he charged Deakin with bad faith. Deakin repudiated this angrily and there was a sharp personal exchange between the two men which ended with Deakin re-asserting the entire responsibility of the Commonwealth for dealing with the question. Wade's first attempt to settle the issue had been no less clumsy than those of his predecessor.[32]

On 25 February 1908, Wade inquired whether it would help the Commonwealth Parliament if the State Parliament made a definite

offer of the site it preferred. Deakin was not prepared to speak for such a divided body as the Parliament and stated that, while his Government would interpret such an action as favourably as possible, the State Government alone must bear the responsibility for it. Wade took this to mean that the help would not be acceptable and contrasted Deakin's attitude with the way Barton had earlier sought the views of the State. He pointed out that Lyne had indicated that settlement was being hampered by lack of knowledge of the wishes of the Government and people of New South Wales. Wade had been trying to remedy this but had no wish to force the views of the State on the Commonwealth Parliament.

When Deakin reminded Wade that it had been consistently forgotten in New South Wales that the Commonwealth had already selected a site, and that its attitude to new information must necessarily be different from what it had been before the 1904 Act had been passed, he was correct. But it did appear that he was refusing to notice the moves to alter the site, moves which he had recognised in his correspondence with Carruthers in the winter of 1907. While he had to be guarded in his comments, he was unduly hard on Wade, whose tone was now more conciliatory than it had been before Christmas, and who was at last genuinely trying to help. Eventually Deakin did modify his attitude and when Wade requested that the bill should be introduced in a form which would allow the insertion of any name which Parliament might choose, Deakin informed him that not only would it be possible to alter the site by amending the bill but that any information which Wade might supply would be laid before the Parliament.[33]

On 8 April 1908, a Seat of Government Bill was introduced in the House of Representatives, but the debate was adjourned at the end of the day and was not resumed before the end of the long and wearisome tariff session which had extended from 3 July 1907 to 5 June 1908. When the next session opened, on 16 September 1908, a new Seat of Government Bill was introduced almost immediately, and, on 1 October, an amendment was passed requiring that, before the Bill was further proceeded with, an opportunity should be given to consider sites other than Dalgety.

A ballot was held in the House of Representatives on 8 October. From the outset the real contest was between Dalgety and Yass-Canberra. The latter site won in the ninth ballot by thirty-nine votes to thirty-three. As in 1903–4, there was a split between New

South Wales and Victorian members, with all except two of the former voting for Yass-Canberra and sixteen out of twenty-three Victorians supporting Dalgety. The Senate ballot took place on 6 November, and, of the six sites listed, only Tumut and Yass-Canberra were supported, each receiving eighteen votes. All New South Wales Senators supported Yass-Canberra and five Victorians voted for Tumut. In a second ballot, Senator McColl, a Victorian, switched his vote to give Yass-Canberra a narrow victory.[34]

The Victorians had voted less solidly than before and it was this which allowed a settlement which was acceptable to New South Wales to be reached. The *Sydney Morning Herald* (9 October 1908) thought that an insult had been wiped out and the first real steps towards union taken. The statement illustrates the importance which was put upon the question in New South Wales. Some time later (5 July 1909) the *Age* expressed the view that the selection was a 'national crime' and it severely castigated the few 'unpatriotic' Victorians who had supported 'the Sydney contingent' and so ensured that the capital would forever exist unimpressively in the shadow of Sydney. The thought of losing their grip on the Commonwealth Parliament was apparently not pleasing to Victorians. The biggest step towards settlement of the dispute had been taken and relations, with regard to this question, improved markedly once the aspirations of New South Wales had been at least partly satisfied.

When the Fisher Government assumed office in November 1908, one of its first tasks was to pass a Seat of Government Act naming the Yass-Canberra area as the federal territory. In spite of last ditch efforts to change the site, the bill was pushed through all stages in a few days. During the rest of its brief period in office, the Government arranged, with the co-operation of the State Government, for the selection of the most suitable site for the seat of government within the general Yass-Canberra area.[35]

When the Fusion Government took office in July 1909, Deakin asked Wade to pass a State act for the surrender of territory in accord with section 111 of the Constitution.[36] He wanted to see the bill before it was submitted to the Parliament and asked that the Commonwealth should be given the right to draw on the resources of the Snowy River for power, if needed, and to construct harbour works at Jervis Bay in connection with the establishment of a federal port there. Wade was unwilling to pass a surrender act because of the vagueness of the Seat of Government Act 1908 which simply

placed the seat of government 'in the district of Yass-Canberra in the State of New South Wales'. If the State surrendered the Crown lands indicated in the map accompanying Deakin's letter and the Commonwealth Parliament did not adopt that area, the State would be in an anomalous position. The precise locality should first be declared by metes and bounds. The expeditious passage of the bill through the New South Wales Parliament would depend on the availability of this information. He pointed to the South Australian Act concerning the Northern Territory as the kind of formal ratification of an agreement already reached between two parties which seemed desirable to him. Deakin merely advised that his government adhered to the terms of the 1908 Act concerning the area required and that it accepted Scrivener's plan, as shown on an accompanying map, as satisfactory. A meeting of the parties was arranged early in September. As a result, on 16 September, Wade introduced resolutions dealing with the matter into the New South Wales Legislative Assembly. These resolutions contained certain modifications of the original plan.[37]

The area offered was reduced to about 800 square miles and the catchment area of the Gudgenby, Naas, and Paddy Rivers was substituted for the Queanbeyan area (which Wade had been unwilling to surrender because of the high percentage of freehold land there and because it included a section of the Goulburn to Queanbeyan railway).* Commonwealth interests in the Queanbeyan and Molonglo catchment areas were preserved. Two square miles of land were offered at Jervis Bay and the right given to link this by rail to the capital site. The right to conduct power across State territory from any place agreed upon to the capital was granted. The Commonwealth was not to have a right to interfere with the use of the waters of the Murrumbidgee by the State or citizens of New South Wales.

The resolutions were passed without amendment. Wade forwarded them to the Prime Minister with the suggestion that they should be submitted to the Commonwealth Parliament. He assured Deakin that any modification desired by the Parliament would be considered by the State with every desire to secure agreement. The Commonwealth Advisory Board recommended acceptance of most of the

*By the time the alteration was actually made, the people of Queanbeyan had become worth twenty-five shillings a head a year to N.S.W. (under the Financial Agreement of August 1909)—another good reason for not transferring the town!

resolutions. Later, Wade offered an additional 100 square miles of territory. He had understood from a meeting he had had with the Ministers for Home Affairs and Defence that the offer of only 800 square miles might cause difficulty as it would necessitate amendment of the 1908 Act.[38] After this there was nothing to prevent the resolutions being drafted as a formal agreement and the submission of surrender and acceptance bills to the respective parliaments.[39]

One last occasion for friction remained. Under the terms of the Seat of Government Acceptance Act 1909, two proclamations were necessary. The first took effect on 22 January 1910 and brought the Act itself into operation and gave the Governor-General authority to issue another proclamation which would finally vest the territory in the Commonwealth. The second was long delayed so that certain machinery of government could be provided before it was issued. By July, Wade was impatient and critical of the Fisher Government's inactivity,[40] but delay continued until 5 December when everything was in order and the proclamation was issued to take effect from 1 January 1911. By that time the Wade Government had fallen and the control of affairs in New South Wales had passed to others who had had no part in the now completed struggle.

It was a bitter irony that New South Wales, which had struggled hard and successfully before 1901 to ensure that the federal capital would be within its territory, should have been deprived of the fruits of its struggle for so long after federation. It was inevitable that interstate jealousies should have some play in the selection of a capital site and, possibly, the constitutional provisions that it must be within New South Wales but not less than 100 miles from Sydney limited their scope to some extent. But their importance was, on the other hand, magnified by the fact that New South Wales placed so much emphasis on the early selection of a site of which it could approve. Indeed, it is hardly too much to say that Carruthers and Wade, often backed by the Parliament and newspapers, made the question the touchstone by which they judged the working of federation. The failure to settle it satisfactorily poisoned relations between the Commonwealth and New South Wales during the first decade. The attitude of Victorian members of the Federal Parliament and of the *Age* did nothing to help.

The opposing interpretations of section 125 of the Constitution, already discussed, were fruitful of much strife, as were the inconsistencies of Carruthers. Always far more concerned to maintain

the power and prestige of New South Wales than to reach a solution on strictly constitutional lines, he was consistent in his basic interpretation of section 125 but not in other matters. In 1904 he criticised Dalgety as a site because it was too far from Sydney, but offered other sites also very distant from it; he asked Parliament to offer Lyndhurst, Tumut, and Yass as suitable sites in 1904 but in 1907 revoked the Crown lands reservations there as not being in the interests of New South Wales; he fought the request for 900 square miles of territory 'on principle', yet in 1901 he had thought that an area of 400 square miles might be offered and in 1904 was prepared to offer 200 square miles, or double the constitutional minimum, an area which breached 'principle' as clearly as did 900 square miles. In fact, it was not 'principle' but the interests of New South Wales, and especially of Sydney, which guided his actions. It is highly probable that his strained interpretation of section 125 was adopted and maintained simply to bolster those interests.

The Commonwealth had sometimes been the cause of delay. In the main, this had been unavoidable, as in 1901–2 and 1907–8 when Parliament was engaged for long periods with the tariff to the exclusion of much ordinary business. The complication introduced by the desire of the Federal Parliament to acquire an area much larger than the constitutional minimum, and with access to the sea, was its main contribution to the strife. This was a matter on which it might have been preferable for negotiations to precede the parliamentary demand. Even in this the Commonwealth had some excuse. In his first letter to See in April 1901, Barton had referred to his Government's desire to consider larger areas. See did not comment officially on this, though he did remark in Parliament later that he would not grant 1,000 square miles. He reserved substantial areas of Crown lands at various suggested sites.

Compromise became possible only after Carruthers had gone from the political scene. But the final solution was a compromise. Indeed, it was an anti-climax after the bitter discussions which had gone before. While the Canberra site was well outside the 100-mile limit, it was far more dependent on Sydney than Dalgety had been. The Commonwealth got the 900 square miles and the port which it desired, but they were separated by a large tract of State territory and have yet to be linked by railway. There was even compromise in the method finally adopted to transfer the territory: the Commonwealth Parliament indicated by balloting which site it wanted, the

State Parliament passed resolutions offering its transfer under certain conditions and then the respective Parliaments passed Acts of surrender and acceptance. Commonsense had finally triumphed over the absurd posturing of earlier years.

3 'Co-operating' with the Commonwealth

THE problems discussed earlier in this book are concerned with extraordinary aspects of the relations of the Commonwealth and State Governments. The argument about channels of communication was unexpected, highly specialised, and unusual in that it involved a third party as prominently as it did the various Australian Governments. A capital site is chosen once only in the life of a nation, but the governments in a federal system must go on living and working together harmoniously, or with growing resentment, for as long as the system lasts. The way in which they deal with the ordinary day to day difficulties, and the measure of co-operation that they offer each other in meeting them, is not exciting but it is vital to the political life of the nation and may well be of more lasting significance than their handling of extraordinary problems. This aspect of intergovernmental relations cannot be neglected by the student who hopes to understand something of the way the federal system began to work and has continued to work in Australia.

It was part of the very purpose of federation in Australia that the control of those aspects of administration which could be handled more efficiently as one than under the divided control of six governments should be brought under the control of the Commonwealth. No one questioned the need for the customs, postal, and defence departments to be transferred as speedily as possible and there were no arguments over the transfers. In part this was the result of the general accord which existed, in part it sprang from the very speed of transfer which gave no time for opposing interests to be expressed. The transfer of the control of customs was simultaneous with the inauguration of the Commonwealth. The postal and defence departments came under Commonwealth control on 1 March 1901.

The Constitution also provided that control of lighthouses and quarantine should pass to the Commonwealth by proclamation

and it gave the Federal Parliament power to make laws on the subjects of astronomical and meteorological observations and census and statistics. At the Conventions, no one had seriously questioned that it was desirable to give the Commonwealth power to deal with these matters[1] but while the value of unified control of quarantine, lighthouses, and the census was clear there was no urgency to act quickly to achieve it. Because action was slower, there was time for such diversity of interests as existed to gain prominence and to cause disagreement and further delay. Sometimes, as in the case of statistics, it was clear that control by the Commonwealth alone would be no more satisfactory than control by the six State Governments alone and that a new Commonwealth department would have to be created to work closely with the existing State departments and utilise some of their machinery. Such co-operation, though vital, was not easy to initiate.

Unless the new system was to involve unnecessary duplication of departments and great cost, there had to be co-operation between many branches of the State and Commonwealth services. These reciprocal services were especially valuable to the Commonwealth during the first decade because of its limited financial resources and the small number of its officers. But the States had always used their postal departments for more than merely postal services and it was an advantage to them to be able to continue to do so. Although there were problems in arranging the widespread co-operation that was desirable if the new system of government was to be made to give satisfaction at a fair price, it was usually possible to agree on specific individual acts. The real trouble began when the Commonwealth tried to organise something approaching administrative integration of departments where the Constitution did not contemplate unified control.

Two problems associated with the transfer of departments demand special attention. When transfer occurred, the property which the department used (varying from real estate to pencils) went with it if it was used exclusively by the transferred department. If use was shared with a non-transferred department, the property could be transferred at the discretion of the Commonwealth. Sometimes it was difficult to decide which government should own a specific piece of property. Always the question of compensation had to be settled and it proved so thorny that it took more than ten years to reach even an interim settlement.

Modern government could not be carried on satisfactorily without an adequate supply of statistics whether of population, of production, or the interchange of goods. The Federal Conventions recognised this by giving the Commonwealth power to make laws with regard to census and statistics. In making the power concurrent, the Australian Constitution recognised that the States, in the exercise of their many independent powers of government, would continue to need their own statistics. Intelligent contemporary opinion thought it likely that the Commonwealth would take over the existing State Statistical Bureaux,[2] but failed to recognise that the needs of the State Governments might not be identical with those of the Commonwealth and that some decentralisation of statistical work might continue to be both necessary and desirable.

Even in pre-federal days, the brilliant Government Statistician of New South Wales, T. A. Coghlan, had produced a book, *The Seven Colonies of Australasia*, which provided comparative statistics for Australia and New Zealand, in so far as they were available. There were weaknesses, which Coghlan could do nothing to correct, arising from the fact that the various governments did not all collect the same figures nor did they all collect them with equal determination and skill.

It was clear that it would be impossible for the Commonwealth Parliament to legislate on the question of census and statistics early in its life, because of the other more urgent matters it had to deal with, and Coghlan determined to continue production of his book. Because it was of federal interest and relevance, he suggested that the Commonwealth should bear the cost of publishing it rather than leave it to New South Wales alone. While the Minister for Home Affairs, Sir William Lyne, was not prepared to rush into the establishment of a statistical department, he was willing to recommend that the Commonwealth should bear the cost of the book, but the Government eventually decided to pay only the cost of compilation, leaving the cost of publication to the State. The arrangement, a useful act of co-operation, remained unaltered until 1906. The unwillingness of the Commonwealth to bear the full cost looks ungenerous and is probably attributable to the acute consciousness of the first Treasurer, Sir George Turner, of the need for economy.[3]

A conference of statisticians met in Hobart in January 1902 and discussed the future relationship of their bureaux with the Common-

wealth Bureau. They agreed that the work of collecting statistics for both States and Commonwealth should be left in the hands of the State bureaux which could also prepare, in more concentrated form, those which the Commonwealth desired to publish.[4] At the end of 1902, the Commonwealth asked Coghlan to draw up a scheme for a Federal Bureau of Statistics and he agreed that, provided all State bureaux were brought up to a uniformly high standard of efficiency, it would be desirable to act as the conference had suggested because much of the collection of statistics was done by the police who were under State control.[5]

There was much in this argument, as it was likely to be easier to get co-operation between various State departments than between Commonwealth and State departments. A knowledge of local conditions and circumstances was likely to be valuable both in organising the collection of statistics and in interpreting them. The view of the State statisticians did tend to limit the function of the Commonwealth Bureau severely and to keep the maximum amount of control in their own hands.

On the basis of Coghlan's report, a fairly general Act was passed during the 1905 session of the Federal Parliament. It provided for the establishment of a central bureau and the appointment of a Commonwealth Statistician and gave power to make arrangements with the States for the use of officers and the exchange of statistics. The Act sought to make use of State machinery and so minimise the cost of the service. It made no attempt to take over the existing State bureaux, a move which would have met strong opposition from the States.

The appointment of the first Commonwealth Statistician caused much unpleasantness and showed the New South Wales Premier, J. H. Carruthers, in a bad light. The obvious choice for the position was T. A. Coghlan, the country's foremost statistician. Although it had been known at the beginning of 1905 that the Commonwealth wished to appoint Coghlan to the position when it was created,[6] he was sent to London with an appointment as Acting Agent-General to re-organise the office there and to negotiate a series of loan renewals for the State.

In December 1905, Deakin sought permission to approach Coghlan about the post and Carruthers granted this.[7] When Coghlan was approached he asked Carruthers to clarify his position. This was to all intents and purposes a request to be allowed to

accept the invitation. Carruthers told him that his withdrawal at that juncture would prejudice the State's financial interests in London. At the same time, he asked Deakin to let Coghlan delay his reply for six months. All Deakin wanted was to know whether Coghlan would accept the job and whether he would provide the information necessary before the office could be organised. There was no need for him to take up the appointment until 1 July 1906. Carruthers would not allow Coghlan to do even this and the latter had to inform Deakin that he had been virtually commanded to remain in London.

Later, in a private letter, Coghlan revealed that Carruthers had reinforced his command with the threat that, if Coghlan left the State service without permission, he would lose all his accumulated pension rights.[8] It appears that Carruthers's jealousy of the Commonwealth and his desire to beat it with any stick on which he could lay his hand deprived Coghlan of a post for which he was eminently suited and deprived the country of the services of its ablest statistician. The Commonwealth showed its opinion of Coghlan's worth by reducing the salary for the position from £1,200 a year to £1,000 a year before it appointed G. H. Knibbs to it.

Despite Tasmania's protests that conferences were becoming too frequent and their cost a burden, the Commonwealth called a conference of statisticians for November–December 1906 to discuss the collection and exchange of statistics. Apart from their many technical resolutions, the statisticians agreed that all statistical material, except that collected in confidence, should be made available to other States and the Commonwealth. In a special resolution, each statistician pledged his 'prompt and complete' assistance to the Commonwealth Statistician in the conduct of his duties.[9] This resolution was not acted upon very effectively in the early years. New South Wales was slow in supplying the Commonwealth with copies of its past statistical publications for its library and New South Wales, Tasmania, and Western Australia were often unduly slow in supplying statistics that were urgently needed for comparative purposes and for publication. The lack of urgent requests for information to the other States seems to indicate that they co-operated adequately with the Commonwealth in this regard.[10]

Among the delegates to the Federal Conventions, only G. H. Reid seems to have doubted the necessity for the Commonwealth to have power to legislate on the subjects of astronomical and meteoro-

logical observations. The value of having the matters under unified control was so obvious to the other delegates that they did not bother to state their reasons for giving the power. It is true that unified control makes the exchange of information a little easier, but there was so little urgency about the matter that the Commonwealth made no attempt to use its power until 1906, when it passed an Act transferring the meteorological functions of the States to itself. A meteorologist was appointed early in 1907 and the actual transfer took place on 1 January 1908. It is not surprising that action was so long delayed. Indeed, it probably implies that the Commonwealth Government felt that it was getting a grip of things when at that stage it bothered to exercise a power which could have been left to the States for much longer without any serious disadvantage. A number of interesting exchanges occurred with the States, especially Queensland, before the transfer occurred and there were some difficulties in organising the department, partly the result of the attitudes of the experts concerned, which merit discussion.

In pre-federal days, the Queensland Weather Bureau had occupied a unique position in Australia in that it had issued forecasts for the whole continent. The meteorologist in charge was Clement L. Wragge, known to his contemporaries as 'Inclement' Wragge because of his tempestuous nature. Wragge was the forerunner and teacher of Inigo Jones, the long-range forecaster of recent years. He had begun a chequered career by studying law and navigation and had tried his hand at surveying before he turned to meteorology, at first in England, then in Adelaide and later in Brisbane. Arrogant by nature, he edited a journal which he called simply *Wragge* and he showed his contempt for politicians by naming cyclones after them.[11]

His bureau had functioned as part of the Queensland Post and Telegraph Department and, as soon as that department was transferred, Wragge foresaw trouble for the bureau because of its reliance on the free use of the telegraph system to obtain reports from outstations.[12] It was almost a year later before the Premier, Philp, at Wragge's instigation, made an official approach to the Prime Minister and pointed out the inconvenience caused by the fact that the bureau had not been taken over by the Commonwealth along with the Post and Telegraph Department of which it was an integral part. The heavy telegraph costs which were chargeable since the separation of the services might make it necessary to abandon the bureau unless it could be re-absorbed into the postal department,

and given free communications until that could be arranged. By the middle of 1902, Philp had determined that Wragge must go unless the Commonwealth took over the bureau as a national institution and Wragge himself was modestly urging Barton to 'SAVE the Weather Bureau to the Australian Nation'. A surprising number of people, including the French Consul-General, believed that his forecasts were necessary for the well-being of either the agriculture of the country or the shipping in neighbouring seas and added their voices to the appeal.

The Commonwealth recognised that the bureau was endangered, ironically enough, by financial difficulties forced on Queensland by the severe drought which gripped that State along with other parts of the Commonwealth. Deakin, acting as Prime Minister, could see no likelihood of taking over meteorology quickly and could only suggest that Queensland should try to obtain assistance from the other States until the necessary legislation could be introduced. But all States had their own meteorological services and many of the meteorologists resented Wragge's national forecasts.[13] Only New South Wales was prepared to assist Queensland. Even this arrangement did not last long, and, on 30 June 1903, Wragge's bureau became simply a government office for recording rainfall and Wragge himself took to touring to deliver 'scientific lectures' and later turned to occult philosophy. The demise of the bureau could not fairly be blamed on the Commonwealth, which would have given financial assistance had all States been prepared to do the same.[14] It could hardly act alone as its expenditure would necessarily have been deducted from the surplus revenue returnable to the States.

The Commonwealth gave valuable assistance to all State meteorological services in the Post and Telegraph Rates Act 1902. It provided that, on certain conditions, all meteorological services should enjoy free telegraphic communications until the Commonwealth service had been established. The conditions were less favourable than those that the States had allowed before federation but the assistance was of great benefit to them and did something to ensure economy at a time when that was a popular cry throughout the country and when several of the States were hard pressed by the drought.

Discussion lapsed until 1905, when talk of the proposed establishment of a Central Meteorological Bureau by the Commonwealth

caused the Government of South Australia to organise an Interstate Astronomical and Meteorological Conference in Adelaide during May. The merits of the establishment of the proposed bureau were discussed along with the advantages of transferring astronomical work to the Commonwealth. The experts could see advantage and some disadvantage in the latter suggestion but approved of the proposed bureau, provided it was established along lines laid down by themselves. They were almost unanimously opposed to having forecasts issued from a central bureau for the entire continent, believing that such forecasts would be less accurate than those issued locally, but thought that it could do useful work in the field of theoretical and scientific meteorology and in collating and publishing data for the entire continent.[15]

In calling the conference, the South Australian government was probably hoping to be able to do something to determine the course that the Commonwealth would follow. Since meteorology was still under State control, and the Commonwealth's power over it was merely a concurrent power, there was no reason why the State should not call such a conference, but the action was liable to be interpreted as an attempt to dictate to the Commonwealth. The conclusions reached by the experts were predictable. They were anxious to encourage any move which might lead to the development of their science and to resist any action which might lessen their own power and prestige. Above all, they did not want to fall under the control of another Wragge.

Deakin inquired in August 1905 what part of their astronomical and meteorological services the State governments were prepared to transfer to the Commonwealth, but there was little unanimity in their proposals. South Australia and Victoria were unwilling to transfer any part, Western Australia wanted to transfer everything, Queensland and Tasmania would transfer meteorology (they were not involved in astronomy) and New South Wales did not reply. By the time they met at their annual conference in April 1906, the Premiers had altered their views sufficiently to be able to agree to a resolution proposed by Carruthers of New South Wales that both astronomy and meteorology should be transferred. They had missed their chance. In the absence of any helpful guidance from the States, the Commonwealth had decided that it would take over meteorology alone.[16] An Act was passed during the 1906 session empowering the Governor-General to establish observatories, to appoint a

meteorologist, and to arrange for the transfer of observatories from the States and for the interchange of meteorological information.

South Australia could see that the division of the work of meteorology and astronomy would duplicate costs to some extent. In an attempt to prevent this (or, perhaps, in an attempt to get the Commonwealth to pay for the State's own astronomical work) the Premier, Price, suggested that the meteorological work should be done by the State's astronomical staff who would work in accord with any uniform system established by the Commonwealth. The proposal was not acceptable to the Commonwealth. Nothing further was done until December 1907, just prior to the transfer of the meteorological section, when Price made a last minute attempt to persuade the Commonwealth to take over both sections or neither. The move had to fail. The Commonwealth's Act did not give it power to take over astronomy. For a year, the Commonwealth meteorological staff in Adelaide carried on the astronomical work for the State but towards the middle of 1909 South Australia decided to re-establish its own astronomical branch. It appointed the Divisional Officer for Meteorology as its Government Astronomer and again invited the Commonwealth to allow the State to do its meteorological work for it. The Commonwealth had had enough of co-operation with South Australia and refused, though later the two governments did agree to share the office accommodation at the observatory. The State had shown the Commonwealth little consideration but had tried to do only that which would bring itself maximum benefit at minimum cost.[17]

In spite of these and other differences of opinion as to what should be taken over by the Commonwealth and the way in which the service should be organised, the work seems to have been carried on smoothly under the Commonwealth Meteorologist, Hunt; and the States, most of which were never hostile to the Commonwealth's intentions, gave substantial assistance by undertaking to inspect outstations and to help maintain equipment.

The first stimulus towards co-operation in quarantine arrangements in Australia was given by the outbreak of a smallpox epidemic in New South Wales, Victoria, and South Australia in 1881. A joint bill was prepared but it failed to pass the colonial parliaments and further action had to await the birth of the Commonwealth.[18]

The Constitution gives the Commonwealth full (but concurrent) power over the whole range of quarantine matters. At the Con-

vention, only R. E. O'Connor of New South Wales questioned the wisdom of this. He thought its power should be limited to dealing with infections from outside. This view was to be expressed again by the States at a later stage. While the Commonwealth could and did take full power to itself, it has in practice left most internal quarantine matters to the States. The traveller who crosses today from New South Wales into Victoria or South Australia will find that it is a State officer who insists that he must surrender his last apple.

The first Minister for Trade and Customs, C. C. Kingston, moved swiftly to obtain information from the States which would allow the Commonwealth to draw up legislation on a subject which it was obviously desirable to bring under unified control. In January 1901 he foreshadowed an early transfer of the work but this was not to be. The State quarantine systems had given the country reasonable protection for many years and a government confronted with the amount of important work which faced the first Federal Government must have found it easy to decide that they could manage for a little longer while more immediately urgent matters were dealt with. Possibly the exclusion of coloured immigrants seemed a more popular catchcry than the exclusion of disease.

In 1904, Tasmania tried to get the Commonwealth to act. The Chief Health Officer of that State sought the opinion of the health authorities in the other States on the desirability of unifying the nation's quarantine regulations. All States (except Queensland, which did not reply) favoured the transfer of the department, although New South Wales expressed some fear that the Commonwealth might require control of certain quarantine stations which the State would continue to need for the isolation of infectious diseases occurring on land. The Premier of Tasmania, Sir Neil Lewis, urged that the necessary legislation should be prepared at once to deal with maritime quarantine but that land quarantine should be left under State control. The Commonwealth indicated that it was preparing a bill to deal with the matter.[19] Since the transfer of quarantine work would bring no financial advantage to the States (the cost of transferred departments was charged directly back while the bookkeeping clauses were in force) it is probable that they were actuated by a genuine desire to see the terms of the Constitution carried out and a realisation that unified control was desirable in a matter so important to the nation's well-being.

The Watson Government called a conference of experts to advise on the kind of legislation that was necessary and the best way in which to effect the transfer. The conference was valuable and made practical suggestions. It agreed unanimously that the Commonwealth should take over quarantine administration without delay, that the department should be controlled by two full-time Commonwealth medical officers and that the permanent head of each State Public Health Department should be 'deputy medical officer' for his State without payment from the Commonwealth. To prevent duplication of quarantine stations, it was suggested that, when infectious diseases broke out on land, cases should be admitted to the Commonwealth stations, subject to the refunding of the costs by the States. Other detailed suggestions for the bill and regulations were also made. The only point on which the officers could not agree was whether the Commonwealth should have power to act to prevent the spread of an infectious disease which had broken out on land and which threatened to spread from one State to another. The representatives of New South Wales and Western Australia thought that the Commonwealth should not exercise any power whatsoever over internal sanitation. The language in which they argued went beyond that normally employed by medical men and made it appear that the governments of those States had passed on their views to the delegates beforehand.[20]

In spite of the essentially practical nature of the suggestions and the continued willingness of the States to transfer the work of quarantine, nothing was done until 1907. When the Deakin Government introduced its Quarantine Bill in the 1907 session it purported to give the Commonwealth control over animal and plant quarantine and interstate quarantine as well as maritime quarantine. The States were alarmed by its scope. When Lyne, the acting Prime Minister, refused to delay the Bill to discuss it with the Premiers, they asked their senators, still thought to be the protectors of State rights, to try to have the scope of the Bill limited to maritime quarantine. Some did try, but they did not push the attempt far and there was never any likelihood of success. The disagreement over the scope of the Quarantine Act, as it became, was not resolved until 1909. The States then accepted the fact that the Commonwealth had the constitutional power to deal with internal quarantine and the Federal Government stated clearly that the section would only be used if proper precautions to prevent the spread of a disease

were not taken by the State in which it originated. The States had, without doubt, objected to the scope of the Act because Commonwealth control of internal quarantine seemed to threaten the States' control of the general field of health legislation. The Commonwealth promise in 1909 effectively removed this fear because it limited federal action to matters threatening to affect a second State.[21]

Any division of control is likely to create administrative difficulties. In 1912, an immigrant ship arrived at Melbourne and reported that it had had many cases of measles (an infectious but non-quarantinable disease) on board during the voyage. The Commonwealth had no authority to act in such cases but notified the State which, having no facilities of its own, promptly ordered the ship to the quarantine station where the passengers were detained until they could be released safely. The Commonwealth lacked the authority to act and the State could only act by using the Commonwealth facilities and overtaxing their capacity. Eventually the Commonwealth had to pass an amending Act to enable it to deal with such cases without bringing the ship within the full quarantine program.[22]

In 1913, another dispute grew out of this division of control. There was an outbreak of smallpox in Sydney during the winter. On 5 July, the Director of Quarantine, on the advice of the Chief Health Officer, declared the metropolitan area of Sydney a quarantine area. No one was allowed to leave it unless he had been vaccinated against the disease recently. At first, control was left in the hands of the State Health Department, the Sydney Quarantine Station put at its disposal and all officers of the Health Departments of all States proclaimed as quarantine officers. Administrative problems caused the Commonwealth to assume full control of the matter, but further difficulties began to arise with the New South Wales authorities. In September, the State asked that the quarantine restrictions on Sydney should be lifted and when the Prime Minister, Joseph Cook, refused to lift what he regarded as the only means of preventing the spread of the disease to other States the Premier, W. A. Holman, used the incident to make political capital. The proclamation was lifted in November 1913 when New South Wales agreed to adopt certain stringent precautions to prevent the spread of the disease. The restrictions must have been extremely inconvenient to the citizens of Sydney and to all having commercial interests there. Much bad feeling grew up between the State and Federal Governments over the matter.[23]

However, these disputes over divided control were still in the future when the Commonwealth system was instituted in 1909. The States co-operated readily with the actual establishment of the Federal Quarantine Department. Permission was willingly given for State quarantine officials to confer with the Comptroller-General of Customs, Dr Wollaston, on the control of quarantine stations. In February 1909, a conference of quarantine officers met, as had been suggested in the report of the 1904 conference, to draft a comprehensive set of regulations to be adopted for the whole country. This conference also advised that it could see no objection to State quarantine officers working under the Commonwealth Act and taking the necessary instructions direct from the Federal Government.[24]

When the Quarantine Act 1907 came into operation on 1 July 1909, all State officers performing overseas quarantine work were appointed, with the approval of the States, as federal quarantine officers. The system did not work well. Victoria withdrew in 1910 and New South Wales and Queensland in 1912. The Commonwealth terminated the arrangement with Western Australia and South Australia in 1916 while that with Tasmania lasted until 1929.[25] The official explanation of the failure was that the administration of federal laws took the officials away from their State work too much, but a recent writer has suggested that the real reasons were largely personal. The more experienced State officials were unwilling to take directions from Commonwealth supervisors in Melbourne who, in turn, felt that the State officers were preventing the establishment of a truly national quarantine system.[26] The two explanations are not mutually exclusive and it must be recognised that, even when both parties desire to co-operate fully, there are real problems associated with arranging for two governments, whose interests do not always coincide, to share permanently the services of the same officials. The attempt had to be made, since federation was intended to achieve economy in administration, but the failure of the scheme does not necessarily imply faults on either side.

No government ever disputed that Commonwealth control of quarantine was desirable, though all States did question how far that control should extend. The valuable assistance which the States gave in establishing the department reflects the seriousness with which they approached the subject and is one of the happiest examples of co-operation between the Commonwealth and State Governments in the first decade.

At the 1891 Convention, it was decided to divide the control of lighthouses, beacons, and buoys, giving the Commonwealth power over those along the coastline ('ocean' lighthouses) and leaving to the control of the States those in harbours and rivers. The division was logical enough, but the 1897–8 Convention thought the difficulties of demarcation too great and extended the Commonwealth's power to cover the whole field of 'internal' and 'external' lights.[27] In effect, when the Commonwealth acted, it acted in accord with the 1891 decision and so avoided further dispute with the States.

For a long time the Commonwealth did not act. The story of the transfer of the lighthouse service is essentially one of interminable and pointless delay on the part of the Commonwealth Government. Kingston hoped to take the service over on 1 March 1901 and, as early as 31 January 1901, he asked the States to advise him on the legislation which they thought was necessary to deal effectively with the matter. It was more than fourteen years before the transfer was completed.

As time passed, the States became restive because of the delays. They had avoided making various appointments and reforms in the expectation that the service would be transferred immediately and were placed in an invidious position when this did not happen. Queensland began to complain late in 1901 that it still had to bear the cost of the many lights on its long coastline, although this was in fact a truly federal work and done as much for the benefit of the other States as for Queensland itself.[28] Philp was displaying his ignorance of the Constitution. The Commonwealth could not have taken over Queensland's lights without taking over those of the other States. In any case, the cost of a transferred department was debited back to the transferring State under the bookkeeping provisions. Queensland would not have gained anything financially by the transfer.

The matter died for the time. Nothing was done until February 1907 when Deakin informed the Premiers that in view of the probable 'early' transfer of the lighthouse service £1,500 had been put on the estimates for 1906–7 to pay for inquiries about and plans for additional lights. He wanted the States to supply details of necessary new lighthouses so that they could be built as soon as the transfer had been effected.

The Commonwealth did not act on the information it had sought

and, as a result of the urgent request of the Premiers at their 1908 Conference, Wade of New South Wales undertook negotiations with it. He finally persuaded the Prime Minister to agree that, pending Commonwealth action, the States might construct any new lights they considered necessary, provided they first submitted the proposed site and plans for approval, and might include the cost of them in the amount of compensation claimed for the transferred properties. Further desultory correspondence, and another urgent resolution by the Premiers in 1909, moved the Commonwealth Government to introduce a bill for the transfer. It passed through the Senate and had a first reading in the House of Representatives but was taken no further.[29] The lengthy debates on the Financial Agreement, and the stonewalling of the Labor Opposition, provided a sufficient excuse for this further extension of a shameless piece of procrastination.

In mid-1910, the Fisher Government brought another transfer bill before Parliament but it got no further than Deakin's had before the session ended. However, in the 1911 session, the Senate requested that the House take the bill up again at the point reached in 1910. It eventually received assent on 22 December 1911.[30] The delay had not been because of any strong opposition to the move to take over lighthouses but simply because very few members had any interest in the matter at all.

It might have appeared that all cause for delay was at an end, but this was not so. The Fisher Government did act sensibly when it appointed a retired Royal Navy Officer, Commander Brewis, to investigate and advise on the whole question of lighthouses and the States readily provided the facilities which enabled him to make his inspection. However, it is difficult to see why the transfer of the existing lights had to wait for the completion of an investigation which, by its nature, had to occupy much time. When the inspection was complete, South Australia at least regarded some of the recommendations as extravagant and refused to implement them while the service was administered at the cost of the State. This outburst of self-assertion was probably the result of almost fourteen years of waiting and frustration and should be seen as an attempt to compel the Commonwealth to act rather than as a refusal by the State to act. In fact, the service was taken over on 1 July 1915, although arrangements for the valuation of the lights transferred were not completed until the end of the year.[31]

The delay in the transfer of the lighthouse service was entirely the fault of the Commonwealth. The States were always prepared to give whatever assistance was necessary and did not at any stage resist the transfer of the service to the Commonwealth. Until 1910, there was no financial advantage either way in the matter but after the Surplus Revenue Act 1910 came into force it was unreasonable to expect the States to pay for the service, which the Constitution stipulated should be transferred to the Commonwealth, out of the annual grant of twenty-five shillings *per capita* which they received. The Commonwealth's right to adjust the financial relations as it saw fit implied a complementary duty to assume the full burden of expenditure imposed upon it by the Constitution. The trouble was that the question interested no one, except the visiting masters of ships, who, for the most part, were not enrolled as Australian electors. It did not seem urgent. It could be put out of mind while other more pressing matters were dealt with and it could easily be kept out of mind.

Co-operation over the actual transfer of departments from the States to the Commonwealth was not perfect but, on the whole, there was no real reason to complain. Much help had been given and trouble had been incidental rather than endemic. But co-operation was more fundamental and widespread than this. On 1 January 1901, apart from the officers of the Customs Department, the Commonwealth had only the most rudimentary public service, including three permanent heads and one acting head of a department.[32] The service grew rapidly with the transfer of the postal and defence departments and the proper organisation of others, but for a long time the co-operation of the States was essential if many of the functions of government were to be carried out satisfactorily.

The States had experienced officers, buildings, and equipment, the Commonwealth did not. It could not hold its own elections without borrowing schools as polling booths, teachers as officials and ballot boxes in which votes might be placed. The States lent the Commonwealth office space and their officials did much of the work associated with the introduction of the old age pension scheme in 1909. When the Commonwealth instituted its Commerce Act 1905 it relied almost entirely on State officials to work it. Without these and other small but vital services the Commonwealth could not have survived its infancy. Co-operation was reciprocal. There was less that the

Commonwealth could do for the States, but its post offices continued to sell their duty stamps, distribute their official forms and carry on the work of the State Savings Banks. There were many other services of a more important nature which merit fuller discussion. At the conference between the Premiers and Prime Minister in November 1901, and again when the Premiers met alone in May 1902, it was made clear that all governments desired to extend the reciprocal use of services as far as possible in the interests of economy.[33]

Even at that stage the States realised that, while it would make no difference during the bookkeeping period, it would be wise to establish the practice of charging for all State services as the Commonwealth was inclined to charge for everything that it did for the States. At the suggestion of the Commonwealth, a formal system was introduced by which one government might obtain the permission of another for the use of one of its officers. By this means a check could be kept on what was happening.[34]

On these general issues there was accord but there were disagreements over aspects of the question of payment for services. These matters must be examined along with some of the more important areas of co-operation and the instances in which co-operation was sought but not attained.

When Sir George Turner organised the Treasury immediately after federation, he needed to have competent and reliable officers in each State to co-ordinate the Commonwealth's financial transactions. He could have placed highly paid federal officers there to do the work but they would not have been fully occupied and the Commonwealth could ill afford the expenditure while section 87 operated. The alternative was to obtain, part-time, the services of senior State Treasury officials whose own work-load had been reduced to some extent by federation. There was no difficulty in making such an arrangement with each State. The co-operation seems to have continued until the work in any State was sufficient to justify the formation of a separate Commonwealth Sub-Treasury there. Similarly, action was taken to have the State Auditors-General appointed deputies to the Commonwealth Auditor-General. That arrangement lasted until 1906 when it was discontinued because some States, notably Queensland, were giving undue preference to their own work and allowing that of the Commonwealth to fall behind.

With the Department of Trade and Customs, co-operation was

reciprocal. The State government analysts undertook all analytical work for the Department to save the Commonwealth the need to equip expensive laboratories. The largest amount of work was done in Victoria and the arrangement with that State lasted until 1 August 1908, by which time the bulk of work justified a Commonwealth laboratory, and the State, whose own work was being 'thoroughly disorganised' by that done for the Commonwealth, was happy to see the change made.[35] A threat by Deakin in 1903–4 to set up a Commonwealth laboratory in Western Australia to do the work of analysis because that State was asking far too much remuneration brought an angry jibe from the usually friendly Premier, Walter James, about 'the keen desire' of the Commonwealth 'to make billets for (no doubt) deserving Easterners'.[36] In Western Australia, as elsewhere, the arrangement minimised cost and ensured full use of the State facilities which must often have been idle without the Commonwealth work. They had been designed to meet the needs of the States when the customs work was a part of their responsibility.

In return, Customs Department officials in Queensland assisted the State Health Department and acted as paymasters for certain State officials in the outports. An arrangement was made with New South Wales whereby they would withhold a customs clearance from any ship which had not complied with the State navigation laws.[37]

One of the spheres in which co-operation was least effective was public works. The States often undertook the construction and repair of buildings for the Commonwealth but difficulties arose when they gave their own works priority and money voted for Commonwealth works was not spent in the year for which it had been voted. Some States exceeded the estimates which they themselves had made for doing the work without bothering to obtain permission to do so.[38] In spite of the unsatisfactory nature of the arrangement, it continued at least until 1910, probably because the establishment of a full department of public works would have been ridiculously expensive for the amount of work to be done, especially in the smaller States.

The Commonwealth had no office of any kind in London until 1906 and the first High Commissioner did not commence duty until 1910. In the interim, the State Agents-General ordered materials, paid accounts, represented the Commonwealth at various international conferences and tried to counter any slanders on the country

in the English press. At the same time, the States resolutely maintained that the appointment of a High Commissioner would not obviate the need to maintain separate Agents-General[39] and there is evidence that when Sir George Reid took up his position in London he had trouble in getting them to co-operate in any significant way. Indeed, the first reaction of several of the States to his appointment was to remind their Agents-General that Reid was not their superior and had no authority over them. Later, it became clear that the Agents-General themselves were more interested in maintaining the prestige of their own positions than in working with Reid. A member of the High Commissioner's staff, H. C. Smart, complained that 'They oppose us at every turn and put every obstacle in our way'.[40]

The biggest single service performed for the States by the Commonwealth was the conduct of the savings bank business in the post offices. At federation, all States had State or semi-State savings banks operating through the post offices so that they could provide a means of saving which would be readily available to ordinary people. The work continued uninterrupted after the transfer of the postal service, although it took four years to settle finally the terms on which it would be done, Western Australia being the last State to acquiesce in the high charges which the Commonwealth proposed for the work. In spite of the bookkeeping clauses, these charges did affect the banks as they were paid directly by those institutions rather than by the State governments as such.[41]

This arrangement worked smoothly until the Fisher Government introduced its Commonwealth Bank Bill late in 1911. The States had no objection to the Commonwealth entering the field of general banking but strongly opposed its undertaking savings bank work, not only because they were already providing an adequate service, but because the funds of the banks were of great assistance in developing the lands of the States and in saving the governments from the necessity of borrowing on the London market at inopportune times.[42]

There is no doubt that the Commonwealth action was constitutionally justifiable, but it was a regrettable incursion into a field already adequately occupied by the States. It may well have been that the main object of the Commonwealth was to use the savings bank side of its activities to provide capital for its general banking functions. The Government was bound by Labor Party policy and could not

be turned from its plans. One by one the States transferred their savings bank work to the Commonwealth Savings Bank. Tasmania was the first to do so in 1913, Queensland followed in 1920, and Western Australia and New South Wales in 1931. The only State savings banks remaining are those in Victoria and South Australia, where they still continue to be the major savings banks.

Payment for reciprocal services had been mentioned early in relation to specific acts but was not raised strongly as a general question until the Premiers' Conference of February 1905. Nothing was settled at that Conference and it was clear that there was a division of opinion whether such services should be given free or charged for. At their 1906 Conference, the Premiers made it quite clear that they believed that these services should always be paid for and that the payments should be made to the Treasury of the government concerned and not to the individual officer who performed the service.[43] However, most States continued to allow direct payments to individuals in certain special cases, usually where the work was done outside normal office hours or where the payment was necessary to bring the officers concerned under the discipline of the relevant Commonwealth Department for some purpose. This was a touchy question because such payments tended to divide the officer's loyalty and weaken the control of the government in whose full-time employ he was. In general, the Commonwealth took a much tougher attitude than did the States and insisted on payment for even the most minor services.[44]

At Deakin's suggestion, a conference of the permanent heads of the Commonwealth and State departments most concerned was held in April 1907 to thrash out the matter. The results of the conference represented a considerable theoretical advance. It was agreed that, since a major purpose of the reciprocal exchange of services was to achieve economy in administration, no profit should be sought in charging for the services but only reimbursement for actual expense incurred. Extension of the principle of individual payments for work done in normal office hours was deprecated. In fact, little was settled by the conference and returns compiled by the Commonwealth show that all governments continued to make some payments direct to officers. As late as August 1912 and November 1914, the Prime Minister, Andrew Fisher, found it necessary to draw the attention of his ministers to the fact that all Commonwealth departments should follow a uniform procedure in making payments

and that the States generally preferred payment to be made to the Treasury.[45]

In 1910, as in 1901, reciprocal services continued to be rendered by the State and Commonwealth governments and continued to be important in maintaining an economical and efficient administration, but no general agreement on payment existed, or was likely to exist, between the governments. The whole business of co-operation, important though it was, continued very much on an *ad hoc* basis.

The day to day co-operation between the governments might lack co-ordination and have its unsatisfactory aspects but at least it did work. It was almost impossible to go beyond this *ad hoc* co-operation and achieve a measure of administrative integration no matter how desirable it might seem to be. The most genuine attempt was made in the field of electoral legislation and administration.

Throughout the whole period 1901–10, the States willingly allowed their police to collect names for Commonwealth electoral rolls while they were doing it for the State and the costs were shared, but it was desirable to co-operate to a much greater extent than that. As early as 1905, the Commonwealth and State ministers agreed to try to get some kind of uniformity in the qualifications and disqualifications for the franchise, methods of enrolment, revision of rolls and the other machinery of the electoral acts.[46] No one doubted the value of the idea. The Commonwealth undertook to obtain the information necessary for action and used this as the basis for a conference of electoral officers in April 1906. The conference was not able to do much because the extent to which uniformity could be achieved depended, in the main, on the policies of the governments concerned and interference with these was not within the province of permanent officials. The officers did point out the convenience and savings which would result from administrative integration and suggested that electoral boundaries should be so arranged that Commonwealth electoral divisions and State electorates would consist of a combination of units giving a common basis for the preparation of rolls and that, as far as practicable, the same set of officials should be employed to conduct the Commonwealth and State elections.[47]

When the Commonwealth subdivided its own electoral divisions it did pay some attention to the State electoral boundaries so that registration areas suitable for both Commonwealth and State purposes might be adopted and joint rolls might be established.

It arranged conferences with individual States to work out the legislative action necessary to achieve as much co-operation as was possible. The problem lay in the fact that basically it was up to the States to take action. The Commonwealth could do no more than make its own leglislation broad and its administrative provisions elastic and then invite the States to bring their Acts and regulations within that scope. It could not force them. The situation was bad enough when Victoria, which did not adopt adult suffrage until 1908, did not co-operate, probably because the discrepancies between the Acts were so great. It was infinitely worse that South Australia, which would have had to make only minor legislative adjustments, would do nothing. Tasmania alone was willing to co-operate. An agreement was made to use the same officials at elections, have a common roll, joint regulations and to assimilate the State electoral legislation with that of the Commonwealth.[48] Some difficulty was experienced in obtaining this high degree of integration, which may have been in part a response to the State's poor financial position and its need to economise at every opportunity, but it was a model which might have been followed with advantage by the other States.

A further attempt was made by the Commonwealth at the Premiers' Conference of 1914 to achieve integration but it was without avail. There was jealousy between the permanent officials of the electoral departments in some States, notably Victoria, and that impeded progress. The States would not co-operate, though they might have if the Commonwealth had been prepared to allow them to control its work, but that was scarcely a practicable suggestion.[49] Joint rolls were not instituted until 1920 in South Australia, 1924 in Victoria, 1930 in New South Wales, and still do not exist in Queensland and Western Australia.

At the moment of its inauguration, the Commonwealth became the possessor of a number of customs houses. The amount of property vested in it increased rapidly as it took over the postal and defence departments with their attendant post offices, telegraph lines, barracks, forts, and technical equipment.

This property was not a free gift from the States. The framers of the Constitution had foreseen the need for all property used by a transferred department to be transferred with it and, both in 1891 and 1897–8, had made provision for this to occur. As accepted, the Constitution provided that all property used exclusively for the work

of a transferred department vested automatically in the Commonwealth at the time of transfer. Where the use of property was shared (as it often was) between transferred and non-transferred departments it could be acquired by the Commonwealth at its own discretion. In either case, fair compensation was to be paid to the States for all property transferred. The manner in which the compensation was to be paid was again left to the discretion of the Commonwealth Parliament if no agreement could be reached with the States.[50]

Compensation could not be arranged until a mass of details concerning the properties transferred had been obtained from the States. The Commonwealth acted quickly to do this, taking the first step on 24 January 1901. The response was poor and some of the information was not provided for years.[51] Real trouble began later in 1901 when the Property for Public Purposes Acquisition Bill was before the Parliament. It dealt primarily with the acquisition of land from private persons but there were clauses relating to the transferred properties.

The root cause of the difficulty was the close interdependence of Commonwealth and State finances during the first decade of Commonwealth history. Not only did section 87 require that the Commonwealth should return to the States at least three-fourths of the net customs and excise revenue but the apportionment of this surplus revenue was determined by the bookkeeping clauses (sections 89 and 93) which provided that expenditure for the maintenance of transferred departments should be debited directly back to the transferring State, while all 'new' (or 'federal') expenditure should be debited in proportion to the population of the States (that is, *per capita*). Revenue was credited to the State in which it was collected.

The clause in the Bill which caused offence to the States had been drafted on the assumption that this compensation was not really a payment to the States by the Commonwealth but an adjustment among themselves to allow for the fact that the value of property transferred by each State was not necessarily the same as the *per capita* share of the compensation which the State was liable to contribute. This assumption was quite correct provided that the compensation was paid, as it was expected it would be, during the operation of the bookkeeping provisions. The adjustment could have been made by paying to each State the value of the buildings

it had transferred and then debiting it with its full *per capita* share of the total compensation. This would have involved the Commonwealth in borrowing a large sum of money and it was simpler to debit or credit each State with the difference between the value of the buildings it transferred and its *per capita* share of the compensation. The bookkeeping clauses prevented the operation from being arranged quite so simply and the Commonwealth had to evolve a complex method to achieve the same end.[52] The Premiers could not understand the scheme. Their view of the proposal was made clear by Philp: the Commonwealth proposed to pay Queensland £235,000 for buildings provisionally valued at almost £1,600,000. Worse still, it was attempting to determine unilaterally the mode of compensation instead of first trying to come to an agreement with the States.[53] The complaint was justified only in regard to the second point.

The matter was discussed at a conference in Melbourne in Cup Week, 1901. It was clear from a memorandum which See of New South Wales read to the conference why the Premiers wanted full compensation paid at once. If the Commonwealth had paid even interest on the full amount it would have come from the Commonwealth quarter of the customs revenue thus ensuring that a large proportion of the quarter would go to the States. If interest were paid on the reduced value (or if no immediate payment were made) a larger amount would be available for the Commonwealth to spend on its own purposes.[54]

Only the Tasmanian Treasurer, B. S. Bird, who had probably been primed by his statistician, R. M. Johnston, realised that it was better to leave the whole question until the end of the bookkeeping period as, in the meantime, the revenue earned by the properties was credited to the States and made up for the non-payment of interest. His advice was taken, though by accident and not design. The Commonwealth did not persevere with its scheme.

At their 1902 Conference, the Premiers urged the immediate payment of compensation and suggested that it should be paid by the Commonwealth assuming liability for an equivalent part of the public debt of each State. Again and again at the Conferences of 1903–4–5, they passed similar resolutions calling for action and going into more and more detail as to the mode of compensation and the method of valuing the properties. Always there were some differences in the proposals made. Meanwhile, some of the States

were effectively preventing action by the Commonwealth. As late as November 1904 not all the information requested in the letter of 24 January 1901 had been provided.

The States were trying to dictate to the Commonwealth in a matter in which they had no right even to negotiate. The Constitution left the whole matter in the hands of the Commonwealth Government and Parliament and there was simply nothing the States could do about it except talk, and that they did at immense length. No doubt a solution arrived at by agreement rather than one imposed by the Commonwealth had advantages, but the inexcusable dilatoriness of the States in providing the Commonwealth with basic information did much to prevent this from being achieved.

The Premiers' Conference of April 1906, instead of passing useless resolutions, agreed to the calling of a full conference of Commonwealth and State officials to determine details of the procedure for valuation so that a uniform method could be followed throughout the Commonwealth and equities could be fairly adjusted between the States. The officials met in August 1906 and drew up a sensible, practical report outlining methods of dealing with property, buildings, and technical stores and suggesting, as a solution to another problem associated with the transfer of property, that where a building was occupied jointly by Commonwealth and State departments the occupier of the main portion should become the owner unless otherwise agreed.[55] By January 1907, the decisions of the conference had been accepted by all States and valuers were being appointed. A major step forward had been taken.

The quiet work of valuation took time. There were many problems. In Queensland, for example, the telegraph lines between certain towns had been constructed at the joint expense of the Railway and Post and Telegraph Departments and the relative shares had to be determined. It was not until February 1909 that Colonel Miller, Commonwealth valuer and Secretary to the Home Affairs Department, could state that the work had been completed and the properties valued at almost £9,650,000. Miller suggested that an attempt should be made to get the States to accept the more than £6,000,000 which they had received over and above their three-fourths of the net customs and excise revenue as a 'set-off' against the sum.[56] There was nothing unfair in the suggestion, indeed it had much to commend it, but the States would never have accepted it willingly and it was not proposed publicly.

When the financial settlement of 1910 brought the operation of section 87 to an end, nothing had been settled with regard to compensation for the transferred properties. The changed procedure for the return of revenue meant that the whole matter was of far greater significance to the States, both because of the reduced amount being paid to them and because any payment made would not come from their own money. In November 1910, McGowen, the Premier of New South Wales, pointed out that his State continued to pay interest on properties worth almost £4,000,000 which were in the possession of the Commonwealth and that, pending settlement of the main question, he proposed to ask the Prime Minister to pay interest from 1 July 1910. He suggested that uniform action by the States would greatly strengthen their position. The necessary approaches were made. In June 1911, there was a conference between the Acting Treasurers of the Commonwealth and New South Wales while Fisher and McGowen were both away at the Coronation of George V. The former was 'induced to admit' (the phrase is Holman's) that a fair settlement must recognise the Commonwealth's responsibility for the whole amount represented by the value of the transferred properties and not treat the revenue in excess of three-fourths of the net customs and excise revenue paid to the States, before July 1910, as a 'set-off' against the capital debt. Interest must be paid on the properties from 1 July 1910. Holman regarded that as an important step forward but one further difficulty remained: the Commonwealth wished to pay interest at only 3 per cent, whereas the State wanted at least $3\frac{1}{2}$ per cent.[57]

What the Commonwealth really wanted to do was to use the odd half per cent to establish a sinking fund to liquidate the principal of the debt, but the States felt that this was just another scheme for paying them for the properties with their own money and, in effect, getting them for nothing. Since the scheme had been proposed by the acting Prime Minister, W. M. Hughes, they may well have been justified in their suspicions. Two other factors made the proposal seem unfair. The States had always had to pay more than 3 per cent (and usually more than $3\frac{1}{2}$ per cent) interest on the money they had borrowed to erect the buildings and the Commonwealth had undertaken a policy of small loans to the States for which it charged $3\frac{3}{4}$ per cent.[58] It looked very much as if the rich were grinding the faces of the poor.

Queensland was dissatisfied because it had sometimes received less than three-fourths of the customs revenue collected in the State during the operation of section 87 and it felt that it should receive interest on its properties from the time of transfer.[59] Its case was poor. Had interest been paid to the State during the first decade, the amount received back must have been reduced commensurately.

For a time, the States accepted the payment of 3 per cent 'without prejudice' to their claims for a higher rate, but the Commonwealth was eventually persuaded to pay the extra half per cent.[60] The States would have preferred to have had the question of the capital debt settled, but at least the Commonwealth had relieved them of the interest burden for the properties and the matter ceased to be important. The settlement was only interim but it meant that the matter could be left to be dealt with along with the question of State debts in the general financial settlement of 1927.

In every State except Tasmania, there were disputes about whether buildings and property were used exclusively for the work of a transferred department and if they were used, but not exclusively used, whether they should be transferred to the Commonwealth.[61] Two cases only will be discussed here: the case of the Dawes Point Reserve in Sydney, which was eventually settled relatively harmoniously, and that of the General Post Office building, Adelaide, which dragged on uneasily for many years.

The Dawes Point Reserve, now situated almost under the Sydney Harbour Bridge, had once been the site of a military battery, but, after negotiation, the Imperial Government had exchanged it for other property on Garden Island, though the residence of the Commandant of the defence forces in New South Wales remained at Dawes Point. The exchange was made formal by Order in Council about the year 1900 although it had existed *de facto* for some time before that. The reserve had been vested in the Harbour Trust by Act of the Colonial Parliament and, it was believed, must remain so vested until the position was changed by further legislative action. Dawes Point had never been used exclusively as a defence property as it had always been available for public recreation and there was no reason why it should be regarded as a transferred property under section 85 (i) of the Constitution.[62] The Commonwealth chose to regard it as having been transferred automatically with all other defence properties on 1 March 1901, and, when See of

New South Wales indicated that the State wanted the buildings on the property for State use, it decided to retain the area and informed the State accordingly.[63]

Each government had staked a claim and battle had to be joined as no politician could give way on such an issue once it had become public, unless he could show himself beaten only by the inherent strength or cunning of his opponent. Publicly, New South Wales demanded that the property should be handed over within two months. Privately, B. R. Wise, State Attorney-General and a close personal friend of Deakin, wrote to Deakin, the acting Prime Minister, and urged him to recognise that New South Wales occupied the reserve and to pay rent for the military residence there pending settlement of the question in the High Court. He indicated that See wished to avoid a quarrel but that certain local pressures being brought to bear on him were making his position difficult. Wise urged Deakin to resume control of the negotiations from Lyne at the Commonwealth end as See felt that to put Lyne in charge of them was to attempt to bully him into abandoning the legal rights of the State. Lyne had upset See just before this by threatening, perhaps with heavy-handed humour, to send the military to enforce the Commonwealth's claim; See had retorted that he would send the police to arrest the military! As a negotiator, Lyne lacked a measure of finesse.

The matter remained unsettled until 1905 when Carruthers and Reid arranged for certain of their ministers to confer over this and a number of other issues, mainly relating to property, which were outstanding between the Governments. At the conference it was proposed that the State should retain Dawes Point and give in exchange for it a water frontage on Darling Island. Carruthers agreed, and, although there was a brief dispute, which the State won, over the price to be paid for the Darling Island land, the matter was settled on that basis. The correspondence negotiating the exchange illustrated amusingly the attitudes of the two governments to the whole affair. The Commonwealth insisted on regarding the transaction as an exchange of territory, while the State wrote consistently of the Commonwealth 'relinquishing its claim' to Dawes Point and being granted territory at Darling Island. The double talk made little difference since each party was satisfied with its side of the bargain and each felt that it had gained its 'Point'. Common sense had allowed a small but unfortunate dispute to be settled satis-

factorily. It was one of a very few such settlements made while Carruthers was Premier of New South Wales.

In 1903, the Commonwealth decided to establish a Public Service inspector at Adelaide and to locate his office in the General Post Office building. A number of rooms were still occupied by State departments and Jenkins was asked to free one for the use of the inspector. He replied that the Commonwealth could rent one from the State for ten shillings a week. This angered the Minister for Home Affairs, Sir William Lyne, who issued to the Press a wildly exaggerated statement that the South Australian Government had locked the Commonwealth out of fourteen empty rooms in its own building.[64]

The State Government had turned the key in two doors. Jenkins believed that the building was one which was used, but not exclusively used, by a transferred department and that, in the absence of any agreement to the contrary, it remained under the control of the State. He was unwilling to grant the Commonwealth the use of any larger portion of it without rent because of the failure of the Federal Government to settle the question of compensation for transferred properties. Indeed, he refused to consider the surrender of any further State property until the compensation question had been settled. At the Premiers' Conference in 1903, the South Australian Attorney-General, J. H. Gordon, made it clear that the State wanted to test the Commonwealth's contention that when a building was used principally by a transferred department the whole building passed to the Commonwealth. Again, as in the matter of channels of communication, it appeared that it was Gordon rather than Jenkins who was at the bottom of the Government's determination to fight for the legal rights of South Australia. Later it was agreed by both parties that the question might be settled by the High Court, but they could not agree on what to do in the interim. Barton thought that the Commonwealth should be allowed the use of the room free provided that it promised to pay back rent if the decision were adverse to it, but Jenkins, advised by Gordon, refused to allow the Commonwealth in unless it agreed to pay at once. He was clearly trying to force the Commonwealth into initiating any Court action so that it would appear to be the aggressor.

South Australia's general position was clearly untenable. There was no justification for an attempt by the State to retain property until a just mode of compensation was determined, the more so as

South Australia was one of the most dilatory of the States in supplying the information which was required before the Commonwealth could settle the question. If a property were exclusively used by a transferred department it vested in the Commonwealth automatically at the date of transfer; if it were used, but not exclusively used, by such a department, it was for the Commonwealth and not the State to say whether it should be transferred. The State did have some voice in determining the mode of compensation but it was clear from section 85 (iii) that the discussion was to take place after the transfer and not before. Even then, if agreement could not be reached, the Commonwealth had the right to impose a settlement. All the options lay with the Commonwealth and the State had no firm ground on which to take its stand. That, however, did not prevent it from taking such a stand.

This was the kind of argument which gave some justification for Deakin's view, expressed at the beginning of 1903, that 'the attitude of the Jenkins-Gordon Ministry [had] been aggressively Anti-Federal from the first'.[65] Jenkins and Gordon certainly saw the matter differently. They believed that they were merely protecting the interests of the State against unwarranted assaults on its status and power and would probably have argued that it was only by this means that a sure foundation for a strong federation could be laid.

The case was never taken to the High Court (where it must have been swiftly settled in favour of the Commonwealth) but dragged on endlessly. In 1904, the State exchanged a few rooms in the Post Office occupied by its law officers for some occupied by Commonwealth customs officers in the State Treasury building, but Price, the Labor Premier, refused a similar request in 1906 and even tried, unsuccessfully, to get a room back. As a result of the conference of officials in August 1906 and the consequent negotiations, Price eventually agreed to the building being considered as vested in the Commonwealth as one exclusively used by a transferred department. This was a surprising concession in view of the fact that non-transferred departments had occupied parts of the building since its completion and still did so. It may be that he thought that a conciliatory attitude in this small matter would help him achieve a more important purpose in the Northern Territory negotiations.[66]

In spite of this, the Commonwealth continued to have trouble in obtaining the use of further rooms when it wanted them, and, in 1911, so that it could have more space itself, it had to offer to pay

the rental for rooms for the State Education Department until the new Education Building in Flinders Street had been completed. In doing this, the Commonwealth made a bad bargain. It had expected that the new building would be ready within two years, but it was not finished until June 1916 and the State refused to let the Commonwealth out of an agreement which that Government had sought for its own convenience.

The Commonwealth won the constitutional point, as it had to, but in a very real sense the State had its own way and used the building as long as it needed it. The South Australians must have taken great pleasure in keeping the Commonwealth to its bargain. It was incredibly naive of the Federal authorities to make such a bargain without any reference to duration, considering South Australia's general record in its relations with the Commonwealth.

* * * * * *

DAY by day the life of the Federation wore on. Opportunities for co-operation were sometimes accepted willingly and at other times rejected out of hand or accepted with reluctance. The motive for acceptance or rejection may have been the fancied rights of a government (State or Commonwealth), economic necessity, misunderstanding, or even personal ambition or animosity. Whatever the motive, the strange contrast between ready assistance on the one hand and reluctance or hostility on the other illustrated an aspect of the dilemma facing those who have the unenviable task of making a federal system of government work.

The immensity of the Australian continent, the smallness of the population of each of the six colonies, their separate histories and the problems of communication made unification impossible emotionally and empirically in 1901. Complete disunity had also become intolerable. It was dangerous and inefficient from the point of view of practical politics and it was emotionally shameful since all six colonies sprang from a common origin and owed allegiance to the same Sovereign. The only way out of the dilemma was to federate, the way of compromise. Yet, simply because federation is a compromise between unity and disunity, disputes were made inevitable. Where the limits of power were clear, there were no disputes—the States staked no claims to the defence power and the Commonwealth did not intervene in education. Until national

desires and policies, the fulfilment of which required the resources of the national government, began to emerge, most of the life of Australia under the federal system went on without awareness of disputes, which existed on the uncertain boundaries of power. The States were proud of having federated and there was no likelihood that they would have braved the jeers of a scornful world by breaking up the arrangement, uneasy though they might have felt at times about its working. The constant tension between willingness to co-operate and unyielding maintenance of Commonwealth or State rights reflected the forces which led to the adoption of the federal system. It was only with the passing of the years that it could be hoped that the sense of strangeness and dissatisfaction which accompanied it would pass into acquiescence and sympathy.

Notes

INTRODUCTION

[1]See his anonymous article in the *Morning Post*, 8 Jan. 1901. For Deakin's authorship of these articles see Alfred Deakin (Ed. J. A. La Nauze), *Federated Australia*, Melbourne, 1968.

[2]Diary entry, 1 Jan. 1902, Glynn papers, N.L.A., MS. 558.

[3]Sir Samuel Way to Lord Tennyson, 9 Jan. 1906, Tennyson papers, N.L.A., MS. 479/5/181.

[4]Minute, P.M. for G.G., 3 Apr. 1902, on A2150, C.O. 418/18, no. 18503.

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[1]J. Quick and R. R. Garran, *The Annotated Constitution of the Australian Commonwealth*, Sydney and Melbourne, 1901, pp. 931–2.

[2]S. of S. to Gov. N.S.W., 2 Nov. 1900, C.A.O., C.R.S. A8, 02/403/1.

[3]The exchange is in A2141, C.O. 418/12, nos. 1285 and 14737 (these microfilms are held in the National Library of Australia).

[4]G.G. to S. of S. (and minutes), 1 Jan. 1901, A2138, C.O. 418/9, no. 54.

[5]G.G. to Govs. S.A. and Qld, 9 Feb. 1901, C.A.O., C.P. 78/11, vol. 1, pp. 185–6.

[6]Gov. S.A. to G.G., 19 Feb. 1901, A2138, C.O. 418/9, no. 12336.

[7]G.G. to S. of S., 4 March 1901, C.A.O., C.P. 78/8, vol. 1, p. 60.

[8]See S.A.A., G.R.G. 24/28, vol. 20, p. 66 and 24/6, 01/327.

[9]Minute, Sir John Anderson, in A2142, C.O. 418/13, no. 7849.

[10]S. of S. to Gov. S.A., 11 March 1901, A2142, C.O. 418/13, no. 7849.

[11]P.M. to G.G. (for S. of S.), 1 Apr. 1901, C.A.O., C.R.S. A8, 02/403/1.

[12]S. of S. to G.G., 21 June 1901, A2138, C.O. 418/9, no. 16706.

[13]Tennyson to Griffith, 12 Aug. 1901, Griffith papers, Dixson Library, Add 453.

[14]Lt-Gov. Qld, to S. of S., 21 March 1902, A2152, C.O. 418/21, no. 16463.

[15]Hopetoun resigned as Governor-General in mid-1902. He was succeeded by Tennyson.

[16]G.G. to S. of S., 8 Feb. 1904, A2164, C.O. 418/31, no. 9044.

[17]S. of S. to G.G., 31 March 1904, A2164, C.O. 418/31, no. 9044.

[18]G.G. to S. of S., 30 June 1905, A2169, C.O. 418/36, no. 28154.

[19]S. of S. to G.G. and all Govs., 31 Aug. 1905, A2169, C.O. 418/36, no. 28154.

[20]See S.A.A., G.R.G. 24/6, 05/937, and A2172, C.O. 418/39, no. 42156.

[21]G.G. to S. of S., 24 Oct. 1905, A2170, C.O. 418/37, no. 42154.

[22]S. of S. to G.G. and all Govs., 11 Jan. 1906, A2173, C.O. 418/40, no. 44464.

[23]Northcote to Deakin, 19 Feb. 1904, D.P., N.L.A., MS. 1540, 3895.

[24]P.M. to G.G., 7 March 1906, A2176, C.O. 418/44, no. 12371.

[25]P.M. to G.G., 23 Oct. 1906, A2177, C.O. 418/45, no. 43464.

[26]See minutes by H. E. Dale, H. B. Cox, and Elgin on A2177, C.O. 418/45, no. 43464.

[27]Quick and Garran, pp. 631–2. W. H. Moore, *The Constitution of the Commonwealth of Australia*, 1st ed., London, 1902, pp. 142–3.

[28]Short accounts of the incident may be found in J. A. La Nauze, *Alfred Deakin*, 2 vols., Melbourne, 1965, vol. 1, pp. 266–70; G. Sawer, *Australian Federal Politics and Law 1901–1929*, Melbourne, 1956, pp. 31–2; A. B. Keith *Responsible Government in the Dominions*, 2 vols., 2nd ed., Oxford, 1928, vol. 2, pp. 611–15. Much correspondence about the incident appears in *C.P.P.*, 1903, vol. 2, no. 18, and no further references will be given to this source.

[29]Minute, Attorney-General S.A. to Prem. S.A., 5 Aug. 1902, A2153, C.O. 418/21, no. 43427.

[30]See S.A.A., G.R.G. 24/6, 02/651.

[31]Lt-Gov. S.A. to S. of S., 18 Sept. 1902, A2153, C.O. 418/21, no. 43427.

[32]Acting G.G. to S. of S., 22 Sept. 1902, C.A.O., CP. 78/10, p. 5.

[33]Minute, Anderson to Chamberlain, 23 Sept. 1902, and S. of S. to Acting G.G., 25 Sept. 1902, on A2151, C.O. 418/19, no. 39484.

[34]Under Secretary Foreign Office to Under Secretary Colonial Office, 21 Oct. 1902, A2155, C.O. 418/23, no. 43595.

[35]This view has been supported more recently by G. Doeker, *The Treaty-Making Power in the Commonwealth of Australia*, The Hague, 1966, p. 212.

[36]Minutes on A2153, C.O. 418/21, no. 44120.

[37]Anderson to Barton, 21 Nov. 1902, Barton Papers, N.L.A., MS. 51/1/548.

[38]Lt-Gov. S.A. to S. of S., 18 June 1903, S.A.A., G.R.G. 24/6, 02/651.

[39]Professor Sawer also supports this point of view, Sawer, p. 32.

[40]Keith, vol. 2, p. 614; Sawer, pp. 31–2; Doeker, pp. 88, 212; Moore, 2nd ed., Melbourne, 1910, pp. 347–8.

[41]G.G. to S. of S., 19 July 1903, C.A.O., C.P. 78/8, vol. 3, pp. 217–18.

[42]See A2160, C.O. 418/27, no. 28822.

[43]A2164, C.O. 418/31, no. 27165.

[44]Much of the documentary evidence of the Benjamin case is in Q.S.A., Pre/A246, 07/01652. Only references to documents found elsewhere will be given in detail.

[45]See A2171–2, C.O. 418/39, no. 24923.

[46]P.M. to G.G. (for S. of S.), 7 Feb. 1906, A2176, C.O. 418/44, no. 8660.

[47]See enclosures with G.G. to S. of S., 23 Oct. 1906, A2177, C.O. 418/45, no. 43463.

[48]Opinion of C. G. Wade on above, A2184, C.O. 418/53, no. 6164.

[49]An account of the incident, and of Weigall's first attempt to obtain redress, is on A2177, C.O. 418/46, no. 28955.

[50]See C.A.O., C.R.S. A33, vol. 16, pp. 195–195a, 304–5, 408–9.

[51]See A2177, C.O. 418/45, no. 47452.

[52]See A2178, C.O. 418/47, no. 1590.

[53]Gov. Qld to S. of S., 3 July 1906, copy in C.A.O., C.P. 78/21, B38.

[54]See A2183, C.O. 418/52, no. 9740.

[55]Prem. N.S.W. to Gov. N.S.W., 18 March 1907, A2184, C.O. 418/53, no. 15101.

[56]Gov. N.S.W. to S. of S., 3 Sept. 1914, copy in C.A.O., C.P. 78/21, B50.

[57]Doeker, p. 212.

[58]Colonial Defence Committee 1885–1901, memo. of 19 July 1899, no. 186M, C.A.O., C.P. 601/2.

[59]See S.A.A., G.R.G. 24/6, 07/284.

[60]Official Secretary to G.G. to all Consular Representatives, 7 March 1907, copy in T.S.A., G.O. 4/2.

[61]Prem. N.S.W. to Acting P.M., 8 Apr. 1907, copy in T.S.A., G.O. 4/2.

[62]See the discussion at the 1907 Premiers' Conference, *S.A.P.P.*, 1907, vol. 3, no. 75, pp. 271–6.

[63]Memo., L. E. Groom, 27 Nov. 1907, copy in T.S.A., G.O. 4/2. See also P.M. to Prem. S.A., 18 Dec. 1907, S.A.A., G.R.G. 24/6, 07/284.

[64]Various letters in both the above files.

[65]See C.A.O., C.P. 78/2, 1907–8, folder 1, misc. 253.

[66]P.M. to G.G., 15 July 1908, copy in T.S.A., G.O. 4/2.

[67]Minute, 25 Feb. 1908, A2193, C.O. 418/64, no. 6324.

[68]S. of S. to Gov. Tas., 23 Sept. 1908, T.S.A., G.O. 4/2.

[69]Memo. by Official Secretary to G.G., 11 Jan. 1909, P.R.O., C.O. 532/11, no. 5549.

[70]P.M. to G.G., 8 Jan. 1909, P.R.O., C.O. 532/11, no. 5548.

[71]G.G. to P.M., 26 Jan. 1909, C.A.O., C.P. 78/14, vol. 4, pp. 598–601.

[72]S. of S. to G.G., 19 March 1909, P.R.O., C.O. 532/11, no. 5549.

[73]P.M. to Prem. S.A., 6 Feb. 1909, S.A.A., G.R.G. 24/6, 07/284.

[74]The correspondence is in above file.

[75]Minute, Prem. Tas., 18 Oct. 1909, T.S.A., P.D. 1/209/1.

[76]G.G. to Gov. Tas., 8 Nov. 1910, T.S.A., G.O. 20/3.

[77]See S.A.A., G.R.G. 24/6, 07/284.

[78]G.G. to S. of S., 24 Oct. 1901 (extract only), C.A.O., C.P. 78/4, vol. 1. Much of the correspondence is in this file—no further reference will be made to it.

[79]See Q.S.A., Gov./48, and Gov./49, p. 182.

[80]See S.A.A., G.R.G. 24/28, vol. 20, pp. 328, 339.

[81]Gov. Tas. to S. of S., 21 Dec. 1901, T.S.A., G.O. 27/1, pp. 427–8.

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[83]The main references are: A2151, C.O. 418/19, nos. 45665 and 519; A2152, C.O. 418/20, no. 44406; A2154, C.O. 418/22, no. 53258; A2161, C.O. 418/28, no. 17187.

[84]See C.A.O., C.P. 78/4, vol. 1; D.P., N.L.A., MS. 1540/3900, 3928–30.

[85]Deakin to Dudley, 22 June 1908, D.P., N.L.A., MS. 1540/6605.

[86]A. Hunt to Sir F. Hopwood, 1 July 1908, A. Hunt papers, N.L.A., MS. 52/782.

[87]C.A.O., C.P. 78/4, vol. 1; also Crewe to Deakin, 21 Aug. 1908, D.P., N.L.A., MS. 1540/1339.

[88]Keith, vol. 2, pp. 617–18.

[89]Ibid., p. 615.

[90]See S.A.A., G.R.G. 24/6, 06/519.

[91]See V.S.A., P.D.V.I.L., PO7/2086.

[92]Ibid.

[93]Prem. S.A. to Gov. S.A. (for S. of S.), 12 Dec. 1906, S.A.A., G.R.G. 24/6, 06/519.

[94]See V.S.A., P.D.V.I.L., PO7/2086.

[95]See P.R.O., C.O. 532/25, no. 6575 and T.S.A., P.D. 1/239/163.

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[2]Quick and Garran, pp. 978–9; Report of Premiers' Conference, 3 Feb. 1899, C.A.O., C.R.S. A18.

[3]N.S.W., *Votes and Proceedings*, 1901, vol. 1, pp. 879–83.
[4]*C.P.D.*, 1901, vol. 3, p. 2807; 1902, vol. 12, p. 15898.
[5]C.A.O., C.R.S. A18, printed Senate paper, 1901.
[6]*N.S.W.P.D.*, 2 Ser., 1901, vol. 2, p. 1174.
[7]Ibid., vol. 4, pp. 4613, 4616–25, 4632.
[8]*C.P.D.*, 1903, vol. 17, pp. 5558–74, 5673, 5936, 6188–9, 6401–4.
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[10]See C.A.O., C.R.S. A322, file 13, 04/A5428.
[11]Prem. N.S.W. to P.M., 10 Oct. 1904, C.A.O., C.R.S. A100, A04/8335.
[12]Opinion of C. G. Wade, and by J. E. Salomons and C. B. Stephen, Nov. 1904, *N.S.W.P.P.*, 1904, second session, vol. 1, pp. 178–9.
[13]See especially *N.S.W.P.D.*, 2 Ser., 1904, vol. 17, pp. 2253–4, 2265–70, 2449–54, 2467, 2499.
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[15]Prem. N.S.W. to P.M., 22 Dec. 1904, C.A.O., C.R.S. A100, 06/3744.
[16]Ibid., 11 Apr. 1905, *N.S.W.P.P.*, 1905, vol. 1, pp. 242–6.
[17]See C.A.O., C.R.S. A100, A05/2710, 4191, 4572.
[18]*N.S.W.P.D.*, 2 Ser., 1905, vol. 18, pp. 640–1, 644–8.
[19]*N.S.W.P.P.*, 1905, vol. 1, pp. 241, 247–9, 251.
[20]*C.P.P.*, 1905, vol. 2, pp. 455–8. See also Isaacs minute on C.A.O., C.R.S. A100, 06/3744.
[21]See *N.S.W.P.P.*, 1905, vol. 1, pp. 255–6.
[22]Ibid., pp. 264–5 and *C.P.P.*, 1905, vol. 2, pp. 460–8.
[23]La Nauze, vol. 1, p. 273 and note.
[24]P.M. to Prem. N.S.W., 15 Nov. 1905, *C.P.P.*, 1905, vol. 2, pp. 469–70.
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[26]*C.P.P.*, 1906, vol. 2, pp. 401–4.
[27]P.M. to G.G., 5 May 1906, C.A.O., C.R.S. A100, 06/3744.
[28]Gov. N.S.W. to G.G., 1 June 1906 (enclosing memo. by Prem. N.S.W. dated 30 May), *C.P.P.*, 1906, vol. 2, pp. 408–10.
[29]'Notes on the provisions of the Constitution relating to the Seat of Government', R. R. Garran, 19 Jan. 1905, C.A.O., C.R.S. A100, A06/3774.
[30]*C.P.P.*, 1906, vol. 2, pp. 411–12.
[31]C.A.O., C.R.S. A100, A08/9793. Carruthers had not previously carried out his threat of October 1905 to revoke the Dalgety reservation.
[32]The public correspondence is in *C.P.P.*, 1907–8, vol. 2, pp. 213–14, 216–18 and C.A.O., C.R.S. A33, vol. 21, pp. 466–7; the private correspondence is in D.P., N.L.A., MS. 1540/4920–1.
[33]*C.P.P.*, 1907–8, vol. 2, pp. 221–4.
[34]*C.P.D.*, 1908, vol. 47, pp. 663–75, 936–9; vol. 48, pp. 2101, 2108. Again there is no evidence of bloc voting by the other States.
[35]The debate is in *C.P.D.*, 1908, vol. 48 *passim*; the correspondence is in N.S.W.A., P.D., S.B. 4/6257, 09/4607 and in C.A.O., C.R.S. A322, bundle 11.
[36]See *C.P.P.*, 1909, vol. 2, pp. 553–5, 561–2.
[37]*N.S.W.P.D.*, 2 Ser., 1909, vol. 34, pp. 2075–6.
[38]*C.P.P.*, 1909, vol. 2, pp. 571–5.
[39]See debates in *C.P.D.*, 1909, vols. 52–4, and *N.S.W.P.D.*, 2 Ser., 1909, vols. 35–6.
[40]*C.P.P.*, 1910, vol. 2, pp. 473–5.

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[1]See historical notes to sections 51 (viii), (xi) and 69 of the Constitution in Quick and Garran.

[2]Ibid., p. 572.

[3]C.A.O., C.R.S. A100, A05/4461, 'Publication of Australia and New Zealand', and C.A.O., C.R.S. A33, vol. 15, p. 698.

[4]Conference Report, *S.A.P.P.*, 1902, vol. 2, no. 25A, pp. 7–8.

[5]'Report on the proposed establishment of a Central Bureau of Statistics', T. A. Coghlan, 21 Apr. 1903, Barton papers, N.L.A., MS. 51/1/591.

[6]*Daily Telegraph*, 7 and 25 Jan. 1905.

[7]See C.A.O., C.R.S. A100, A06/1258.

[8]T. A. Coghlan to Deakin, 15 Feb. 1906, D.P., N.L.A., MS. 1540/1248.

[9]'Unification of Australian Statistical Methods and Co-ordination of the Work of the Commonwealth and State Bureaux', *S.A.P.P.*, 1907, vol. 2, no. 25, Appendix A.

[10]There was some trouble with W.A. in the matter of statistics. This is discussed in my article ' "The Tyranny of Distance". A note on Western Australia and federation, the first decade', in *University Studies in W.A. History*, 1969.

[11]*Australian Encyclopaedia*, Sydney, 1965, article on C. L. Wragge.

[12]C. L. Wragge to P.M., 3 March 1901, C.A.O., C.R.S. A6, 01/558.

[13]C.A.O., C.R.S. A100, A05/7206.

[14]Prem. Qld to Prem. Tas., 18 Aug. and 2 Sept. 1902, T.S.A., P.D.1/153/109.

[15]Report of the Interstate Astronomical and Meteorological Conference, May 1905, *S.A.P.P.*, vol. 2, no. 25, pp. 7–8.

[16]Conference report, *S.A.P.P.*, 1906, vol. 2, no. 23, pp. 67–8, 150.

[17]See C.A.O., C.R.S. A100, A09/6003; ibid., A33, vol. 27, pp. 740–1; vol. 2), p. 519; S.A.A., G.R.G. 24/6, 06/756. A dispute involving W.A. is discussed in my article ' "The Tyranny of Distance" ', referred to above.

[18]D. H. Provost, 'Intergovernmental Co-operation in Australia', unpublished Ph.D. thesis, University of Queensland, 1954, p. 135.

[19]See W.A. 527, C.S.O. 2929/03.

[20]'Report of the Commonwealth of Australia Quarantine Conference, 1904', W.A. 752, C.S.O. 6097/06.

[21]See S.A.A., G.R.G. 24/6, 07/683 and 09/456; W.A. 752, C.S.O. 4533/09 and 2320/09. Key sections of the Senate debate are in *C.P.D.*, 1907, vol. 41, pp. 5395–7, 5473–93, 5666–70.

[22]J. H. L. Cumpston, 'The Health of the People. A Study in Federalism', typescript, n.d., N.L.A., MS. 613, series 2/4, pp. 48–9.

[23]*C.P.P.*, 1913, vol. 3, pp. 1237–44; Cumpston, pp. 49–50.

[24]Cumpston, p. 42.

[25]Ibid., p. 43.

[26]Provost, p. 144.

[27]Quick and Garran, p. 565.

[28]Prem. Qld to P.M., 24 Sept. 1901, C.A.O., C.R.S. A8, 01/153/1.

[29]For the correspondence see V.S.A., P.D.V.I.L., P12/1857; S.A.A., G.R.G. 24/6, 09/1116 and C.A.O., C.R.S. A33, vol. 25, pp. 129–30. The debate is in *C.P.D.*, 1909, vols. 50–1 *passim*.

[30]Ibid., 1910, 1911, vols. 55, 60–3 *passim*.

[31]See especially S.A.A., G.R.G. 24/6, 11/676.

[32]G. E. Caiden, *Career Service*, Melbourne, 1965, Appendixes V and XIII.

[33]Reports of the conferences are in S.A.A., G.R.G. 24/6, 05/519 and 02/737 respectively.

[34]Minute, Prem. Tas. to Minister for Lands and Works, 23 Dec. 1901, T.S.A., P.D. 1/142/117; Acting P.M. to Prem. N.S.W., 14 July 1902, N.S.W.A., C.S.I.L., 6687, 02/11974.

[35]V.S.A., P.D.V.O.L., vol. 133, p. 140, and vol. 169, p. 666; C.A.O., C.R.S. A33, vol. 20, p. 101; vol. 23, pp. 472–3, 720.

[36]W.A. 527, C.S.O. 1661/03.

[37]C.A.O., C.R.S. A33, vol. 8, p. 402; vol. 17, pp. 303, 699; vol. 32, pp. 562–4.

[38]See letter to all States, C.A.O., C.R.S. A33, vol. 32, p. 286 and to S.A., vol. 27, pp. 43–4.

[39]Premiers' Conference report, Apr. 1903, *S.A.P.P.*, 1903, vol. 3, no. 66, p. 54.

[40]See S.A.A., G.R.G. 24/6, 10/186 and H. C. Smart's correspondence with Atlee Hunt, June–July 1912, A. Hunt papers, N.L.A., MS. 52/16/892, 895.

[41]The most important items are in N.S.W.A., C.S.I.L., 6730, 03/5213, and C.A.O., C.R.S. A33, vol. 3, pp. 200–5.

[42]Joint protest by N.S.W. and Vic., quoted in Prem. N.S.W. to Prem. Tas., 29 Nov. 1911, T.S.A., P.D. 1/239/169.

[43]The relevant sections of the reports are in *S.A.P.P.*, 1905, vol. 2, no. 22, pp. 129–36, and 1906, vol. 2, no. 23, p. 18, respectively.

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[46]Conference report, Feb. 1905, *S.A.P.P.*, 1905, vol. 2, no. 22, p. 84.

[47]Report of Conference between Commonwealth and State Electoral Officers, 24–7 Apr. 1906, *S.A.P.P.*, 1906, vol. 2, no. 56.

[48]See T.S.A., P.D. 1/206/111 and C.A.O., C.R.S. A33, vol. 24, pp. 640–1.

[49]See reports of 1914, 1916 Premiers' Conferences in *S.A.P.P.*, 1914, vol. 3, no. 49, pp. 73–5, 166–8, and 1916, vol. 2, no. 28, Appendix A, pp. 104–5.

[50]Constitution, section 85.

[51]C.A.O., C.R.S. A100, A05/4978.

[52]See new clause to follow clause 44 as introduced by Senator R. E. O'Connor, government leader in the Senate, *C.P.D.*, 1901, vol. 4, pp. 4861–5; Barton's speech at the Nov. 1901 Conference, S.A.A., G.R.G. 24/6, 02/519, p. 7.

[53]See N.S.W.A., C.S.I.L., 6631, 01/18563.

[54]Report of Conference of Federal and State ministers, 1–4 Nov. 1901, S.A.A., G.R.G. 24/6, 02/519, p. 9.

[55]The report is in C.A.O., C.R.S. A1, 06/6605.

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[57]See S.A.A., G.R.G. 24/6, 10/1305 and 11/657.

[58]Prem. Tas. to P.M., 21 July 1911, T.S.A., P.D. 1/229/3.

[59]Report of 1912 Premiers' Conference, *S.A.P.P.*, 1912 (first session), no. 21, pp. v and 16. The Commonwealth had only to return three-fourths overall, not to each individual State.

[60]Prem. N.S.W. to Acting Prem. S.A., 30 June 1913, S.A.A., G.R.G. 24/6, 09/118.

[61]Memo., by G. T. A[llen], 14 Nov. 1901, C.A.O., C.R.S. A571, 01/1059.

[62]Article by 'Civis' in *Sydney Morning Herald*, 20 Sept. 1902. B. R. Wise thought it was written by A. Oliver, President of the N.S.W. Land Court; see Wise to Deakin, 20 Sept. 1902, D.P., N.L.A., MS. 1540/5155–6.

[63]Most of the correspondence is in C.A.O., C.R.S. A10, vol. 2, 01/365/1; A101, B05/7308; D.P., N.L.A., MS. 1540/5155–7.

[64]See particularly, C.A.O., C.R.S. A100, A05/4426; S.A.A., G.R.G. 24/6, 03/300, 08/1299; Report of 1903 Premiers' Conference, *S.A.P.P.*, 1903, vol. 3, no. 66, pp. 13–15, 17 (statements by J. H. Gordon), 17–18 (correspondence).

[65]*Morning Post*, 4 March 1903 (Sydney, 19 Jan.), D.P., N.L.A., MS. 1540.

[66]See D. I. Wright, 'Surrendering the Northern Territory', *South Australian*, vol. V111, no. 1, March 1969, pp 1-10.

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85 gsm Burnie English Finish by J. C. Stephens & Company.

Designed by Arthur Stokes.

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Jacket designed by Arthur Stokes

Printed in Australia