THE AUSTRALIAN JUDICIAL SYSTEM: THE PROPOSED NEW FEDERAL SUPERIOR COURT

By THE HONOURABLE SIR GARFIELD BARWICK*

Sir Garfield Barwick prepared this article some considerable time ago. It was in the hands of the publishers well before Sir Owen Dixon's retirement as Chief Justice of the High Court. The Review, including the article, was in course of printing when Sir Garfield's appointment as Chief Justice was announced on 23 April, 1964.

At the Thirteenth Australian Legal Convention,[1] during the discussion of a paper by Mr M. H. Byers Q.C. and Mr P. B. Toose Q.C. on ' The Necessity for a New Federal Court ', the Commonwealth Solicitor-General announced on my behalf that the Cabinet had authorised me to design a new federal superior court. Since then I have been engaged with my Department in systematic work on the project. By the time this *Review* is in circulation, however, I shall have handed over the portfolio of Attorney-General to my successor, Mr B. M. Snedden. The responsibility of submitting definitive proposals to Cabinet and of drafting and submitting a Bill to Parliament will therefore be his. Obviously, this circumstance must largely affect, and indeed control, the content of the present paper. I hope to write nothing which will in any way prejudge the matters which he will have to decide or foreclose his complete freedom of decision. Thus in matters of opinion I am to be understood as expressing merely personal views and not the views of the Attorney-General, still less of the Australian Government. Indeed, I shall for the most part be concerned to discuss the problems that arise rather than to recommend particular solutions to them.

The subject of addition to the existing federal structure of Courts has itself for some time been actively discussed by the Law Council of Australia and its constituent bodies. This has been a signal public service. The subject is highly technical, and it is healthy when lawyers themselves canvas so seriously the questions involved in proposed changes in the judicial structure. But it must be confessed that discussion by the profession has so far by no means solved the problems involved. A general consensus there, that a new federal court, if not actually necessary, would at least have real utility. But many of those who share this conclusion reach it for different, and to some extent conflicting, reasons, which lead to flatly divergent views as to the jurisdiction that the new court should exercise, and therefore as to its optimum size and the nature of its organisation.

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[1] Hobart, January 1963.

In the valuable paper presented by Mr Byers and Mr Toose at the Hobart Convention, the need for a new federal court was rested primarily on the need to relieve the growing congestion of the lists in State courts, at any rate in the superior courts of the State, by removing into a federal court the federal jurisdiction with which the State courts are now invested. The learned authors submitted in effect that the State courts were never intended, at the time of federation, to carry anything but an initial and light burden of federal jurisdiction during the early years of the Commonwealth, and that the time has now come to carry out what they regard as the original bargain and to take an important step towards the creation of a complete system of national courts, parallel with those of the States, as in the United States of America.[2]

For myself, I would approach the matter quite differently. My own basic objective in proposing a new federal superior court was to free the High Court of Australia, as of this time but particularly for the future, for the discharge of its fundamental duties as interpreter of the Constitution and as the national court of appeal untrammelled by some appellate and much original jursidiction with which it need not be concerned. The federal Parliament's power, by virtue of section 77 (iii) of the Constitution, to invest State courts with federal jurisdiction, as an alternative to conferring it on the High Court or creating new federal courts to exercise it, was an original Australian contribution to federation—an 'autochthonous expedient', as it has been called by the High Court.[3] No doubt the 'expedient' owed its origin at least in part to considerations of economy—a desire to avoid imposing on a population of only some three millions, in a country roughly the same size as continental United States, the burden of establishing a complete system of national courts to interpret and apply federal law in its entirety. But the 'expedient' was not, in my view, in any sense temporary. I would not myself regard the constitutional arrangements as in any sense subject to any implied promise that section 77 (iii) would be treated as a transitional provision, to operate only for a brief initial period. On the contrary, I would regard the investiture of State courts with federal jurisdiction as a potentially permanent, and, as such, desirable feature of the Australian judicial system. It is but an illustration, as Quick and Garran say,[4] of the national, as contrasted with the strictly and technically federal, features of the Australian judicial system.

I do not therefore regard the fact that cases arising under Commonwealth law now bulk sizeably in the lists of State courts as in itself requiring, or even as justifying, a reversal of the investitute of State courts with federal jurisdiction. Judicial work requires no fewer judges, and no

[2] (1963) 36 *Australian Law Journal* 308.

[3] *Boilermaker's Case* (1956) 94 C.L.R. 254, 268.

[4] *The Annotated Constitution of the Australian Commonwealth* (1901) 804.

less court space and staff, if it bears a federal rather than a State label, and is provided for separately. Indeed, to have parallel courts, State and federal, is more likely to require a greater number of judges, than a system of invested jurisdiction administered in State courts. There is nothing, in the case of the great majority of matters that arise under federal law, to distinguish them from matters of the same kind that arise under State law. Whether the matters that arise in federal jurisdiction are criminal prosecutions, or claims in contract or tort, or involve some statutory right or duty, there is ordinarily no reason in the nature of the matter itself why jurisdiction should not be exercised by a State court, along with other like matters arising in the State jurisdiction.

It follows from what I have said that in my own thinking it would as a rule be something ' special ' about a class of matters that would call for the jurisdiction of a federal rather than a State court. This element of the special may be found in the distinctive and separate character of the body of law concerned. Bankruptcy and the industrial law of the Commonwealth, in respect of which federal courts have in fact been created, suggest themselves as obvious examples. Alternatively, the ' special ' element might consist merely in the fact that uniformity in the interpretation and application of a Commonwealth law is desired, without the necessity of frequent resort to the ultimate court of appeal in Australia, the High Court. Appeals under the Commonwealth Employees' Compensation Act (1930-1962) might be thought to supply an illustration of this kind of ' special ' element. Yet again, the ' special ' element may possibly in some, though clearly not in all, circumstances lie rather in the party concerned (the Commonwealth or a State, for instance), as in a number of the matters of federal jurisdiction created by the Constitution itself.

Basically, then, my own reason for supporting the creation of a new federal superior court is not to relieve State courts of their federal jurisdiction, but to relieve the *federal* supreme court, the High Court of Australia, of some of its present work. I say this because the jurisdiction, appellate and original, vested in the High Court partly by the Constitution itself and partly by the action of the Parliament under section 76, appears now to be too great. Its exercise requires judicial time and energy which would serve Australia better if they could be added to what is now available for the performance of the two fundamental responsibilities of the Court, as I understand them—the interpretation of the Constitution and the determination of appeals from other superior courts, where questions of legal principle are involved.

I would wish to repeat here what I said in the House of Representatives in 1959 in proposing to leave to the State courts the divorce jurisdiction that became federal by virtue of the passing by the Commonwealth Parliament of the Matrimonial Causes Act 1959:—

> The High Court, Mr. Speaker, as I see it, was devised in our Constitution to interpret and enforce the Constitution, and to secure uniformity in the interpretation and in the administration of the general and statutory law throughout Australia. In less populous and less complex days it had the time, while discharging these great functions, also to examine particular issues between parties in an endeavour to resolve finally their individual differences. But, Mr. Speaker, with the increase of our population and with the great complexity of our life and, if I may say so, with a greater awareness of the subtleties of our Constitution, I can see the day not far distant when the High Court will not be able to discharge these great functions with expedition and with satisfaction if, at the same time, it is to be burdened also with the resolution of the particular quarrels of citizens.
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> Mr. Speaker, the Supreme Courts of the States are great courts. They were devised as arbiters of these quarrels, to do right and justice between man and man in their particular differences. It seems to me that, rather than set up a Federal Divorce Court system, we should simply invest the Supreme Courts of the States with federal jurisdiction to hear and to determine matrimonial causes under this Act. The bill does this. The State courts would thus hear divorce cases as they do now, but all would administer the same federal law. The State systems provide for appeals from the courts of first instance to the Supreme Court in banc, or sitting as a full court. These appellate courts are able to examine the facts and to sit in complete review of the court of first instance.
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> The bill also provides that the High Court can give leave to appeal from a Supreme Court to itself. Consequently, cases which involve matters of law of general significance, cases which involve demonstrable denial of justice or departure from principle or from regularity in practice, can be taken on appeal from the Supreme Courts. The High Court will thus be enabled to secure uniformity of interpretation of the federal law, and uniformity of practice and procedure in matrimonial causes throughout Australia. But on the other hand it will not have its functions jeopardized by having a spate of appeals, all turning to a greater or lesser degree on the minutiae of particular facts . . . .[5]

It will be useful to recall, at any rate summarily, both what the High Court's present jurisdiction is and what powers the Parliament has in relation to it. What Parliament has itself added Parliament can, of course, withdraw, and relegate to some other tribunal, federal or State. But except insofar as expressly authorised by the Constitution, Parliament plainly cannot withdraw jurisdiction conferred by the Constitution itself. Over the original jurisdiction conferred by the Constitution, Parliament is given no control. *Appellate* jurisdiction, however, is conferred by section 73 of the Constitution ' with such exceptions and subject to such regulations as the Parliament prescribes '. This is not an appropriate occasion to examine in depth the nature and extent of the limiting powers thus conferred on the Parliament. For present purposes it is perhaps

[5] Vol. H. of R. 23, 2235-2236.

sufficient to observe firstly that the power to create 'exceptions' is a limited one, the precise extent of which has not hitherto been determined,[6] and secondly that it is made clear by the second paragraph of section 73 that a federal court, to which resort must necessarily be made before an approach is made to the High Court, cannot be interposed between the Supreme Court of a State and the High Court. But section 73 plainly enables the Parliament to exercise a considerable measure of control over the right to appeal to the High Court from a State inferior court exercising federal jurisdiction or a federal court.[7]

The only appellate jurisdiction that has been vested in the High Court by the Parliament is that to hear and determine appeals from the Supreme Courts of the Territories of the Commonwealth both mainland and external.[8] The validity of this investiture of jurisdiction has been upheld both by the High Court and by the Privy Council.[9] As the Territories grow in population, and in some cases in sophistication also, the volume of appeals may be expected to grow considerably and their nature to proliferate. This could rapidly become a serious burden on the High Court. Yet in the absence of some other and intermediate federal superior court, there is nowhere else for such appeals to go, whether or not they involve matters of principle or merely relate to some particular and maybe unique issue of fact. It would seem that provision should be made for one review of decisions made in courts of first instance, *before* an appeal is taken to the High Court of Australia. The creation of a new federal superior court would provide a forum for initial appeals from the Supreme Courts of Territories, and would thereby tend materially to reduce the volume of territorial appeals that would reach the High Court. It would allow matters of particular fact and the application of accepted principles to be dealt with by the intermediate court leaving room for a determination of relevant principles and for the correction of the misapplication of accepted principles to be made by the High Court.

Subject to what I have just said about Territorial appeals, the principal means open to the Parliament of reducing the work-load of the High Court is therefore to divert elsewhere the matters in which it has itself,

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[6] *Collins v. Charles Marshall Pty Ltd* (1955) 92 C.L.R. 529; *Cockle v. Isaksen* (1957) 99 C.L.R. 155.

[7] *Ibid.*

[8] Australian Capital Territory Supreme Court Act 1933-1959, ss. 51, 52 (Cth).
Northern Territory Supreme Court Act 1961, ss. 46, 47 (Cth).
Papua and New Guinea Act 1949-1963, s. 64 (Cth).
Norfolk Island Act 1957-1963, s. 24 (Cth).
Cocos (Keeling) Islands Act 1955-1963, s. 16 (Cth); Supreme Court Ordinance 1955-1963, s. 14 (Cth).
Christmas Island Act 1958-1963, s. 14 (Cth).

[9] *Porter v. R.* (1926) 37 C.L.R. 432. *Boilermaker's Case* (1957) 95 C.L.R. 529, 545.

in pursuance of section 76 of the Constitution, conferred original jurisdiction on the High Court. Though there has been no universal or general exercise of the Parliament's power under section 76 (ii) to confer jurisdiction in matters ' arising under any laws made by the Parliament ', individual instances are numerous. I append as Annexure A[10] a list of the relevant statutory provisions which I hope is complete. From the point of view of lessening the work-load of the High Court, however, the important consideration is the extent to which the several heads of jurisdiction are in actual practice invoked.

By way of foundation for an analysis of the High Court's present work, I sent out below tables showing respectively the number of cases heard by a Full Court ; the number of cases heard 1957-1963, under heads of jurisdiction which contribute significantly to the Court's work; and the distribution as between the several Registries of the Court of the cases heard during those years under the same heads of jurisdiction.

Statistics of this kind, accurate though they are, must be used with caution. The figures are too small to serve in all respects as a basis for generalisation. Any list in terms of the mere number of cases, for instance, takes no account of differences between cases that are short and easy, requiring relatively little in the preparation of reasons for judgment and involving little or no differences of judicial opinion and cases on the other hand that are long and complex, requiring a great deal of judicial work after the hearing and possibly give rise to much difference of opinion on the Bench. Even the bare totals, moreover, are in any event liable to wide fluctuations because the volume of litigation will always closely reflect the political economic and industrial conditions of the period.

TABLE A

HIGH COURT OF AUSTRALIA

FULL COURT CASES 1924-1963

	Average number of cases per year
Five years ended 1928	103
„ „ „ 1933	113
„ „ „ 1938	145
„ „ „ 1943	112
„ „ „ 1948	117
„ „ „ 1953	139
„ „ „ 1958	163
„ „ „ 1963	189

[10] *Infra* p. 22-23.

TABLE B

MATTERS HEARD BY HIGH COURT IN CERTAIN CATEGORIES

Subject matter	*Year* 1957	1958	1959	1960	1961	1962	1963	*Total*
1. Taxation matters								
(a) Single Justice	9	4	17	11	16	30	10	97
(b) Full Court	6	11	11	6	11	9	7	61
2. Territory Appeals (Including applications for leave to appeal).	7	6	14	8	13	41	14	103
3. Commonwealth Employees' Compensation Act Appeals	2	2	13	9	2	7	2	37
4. Bankruptcy Appeals	2	2	5	10	1	4	6	30
5. Industrial Property matters								
(a) Single Justice	8	8	12	14	9	9	8	68
(b) Full Court	2	1	6	—	1	3	2	15
6.[11] Insurance & Life Insurance Act	—	—	—	1	2	3	1	7
7.[11] Lands Acquisition Act.	—	1	1	1	—	—	—	3
8.[11] Other Acts (e.g. Customs)	2	3	2	3	3	5	5	23
Total included in Table	38	38	81	63	58	111	55	

TABLE C

HIGH COURT CASES IN CERTAIN JURISDICTIONS

1957-1963

	Total	*N.S.W. and Victoria*	*Other States*
Taxation matters	158	112	46
Appeals from Territory Supreme Courts	103	98	5
Commonwealth Employees' Compensation Appeals	37	33	4
Bankruptcy appeals	30	21	9
Industrial Property	83	82	1
Matters under statutes not included above (see Table B, items 6-8)	33	32	1

Table A[12] suggests that, since the close of World War II at any rate, there has been a steady increase in the volume of Full Court work, an increase which seems likely to be maintained. Full Court work is mainly appellate, and of the appellate cases the majority (including applications for leave to appeal) come from State Supreme Courts. For example, 22 of the 38 cases listed for the Full Court at the November sittings in Sydney in 1963 were appeals from State Supreme Courts. But of course

[11] Note: Items 6, 7 and 8 are matters heard in the original jurisdiction by a single justice. Some of the Full Court matters in items 1 (b) and 5 (b) are also in original jurisdiction.

[12] *Supra* p. 6.

it must not be forgotten that some of the most important Full Court cases arise, and will always arise, in the original jurisdiction of the Court. I mean the cases arising under the Constitution or involving its interpretation and in which the Commonwealth or a State is a party.

Though the Full Court work accounts for the major part of the High Court's present lists, and though it is the increase in the number of Full Court cases that most obviously creates a need for alleviation, the very nature of the Full Court's work as well as constitutional limitations confines what is possible in the way of relief. Territorial appeals apart, it is thus primarily to the original jurisdiction of the Court exercised by single justices that one must look in considering the possible creation of a new federal superior court.

Matters heard by single justices (including matters heard in chambers) have averaged 78 *per annum* during the past five years. This figure is lower than the average (90) of the previous five years. But I do not myself think these figures would justify a conclusion that resort to the original jurisdiction of the High Court is on the decline—still less, a conclusion that the problem, left alone, would soon solve itself. At the end of every sitting, a number of single justice matters remains not reached, and the interval between the listing of a matter and its hearing is often long. My impression is that, it is at times difficult to bring on a matter before a single justice, and that in present circumstances the Court is able to cope with its single justice work only at the cost of judicial overwork.

Table B[13] shows at a glance under what heads of jurisdiction the single justice work of the High Court mainly falls. Taxation and industrial property matters provide the bulk of the work. A glance at the lists for one or two recent sittings will serve to emphasise the point even further. For example, there were 37 cases listed for hearing before a single justice at the sittings at Sydney which commenced on 5 November 1963. Of these 27 were matters arising under the taxation Acts; 5 were industrial property matters (including infringement actions); there was one appeal from the Defence Forces Retirement Benefits Board, and the remaining 4 were actions brought in the High Court by virtue of the jurisdiction conferred by section 75 of the Constitution. The corresponding figures from the list for the Melbourne sittings in October 1963, were—taxation 7, industrial property 12, Superannuation Act 1, actions 8.

Before leaving these figures, I draw attention to Table C[14], which takes certain significant heads of the High Court's jurisdiction during the seven-year period 1957-1963, and assigns broadly as between Registries the total numbers of cases heard. What this Table shows is that taxation matters were the only listed head of jurisdiction under which any significant

[13] *Supra* p. 7.
[14] *Supra* p. 7.

total of cases arose in States other than New South Wales or Victoria. I do not know of any factor which would suggest that the experience of these seven years is in any way exceptional. Taken as normal, the figures in Table C are directly relevant to the kind of organisation that a new federal superior court would require: in particular, in considering whether resident judges would be required in each State. To this point I shall return later.

From the analysis above, it seems to me that two things at least need to be done if the High Court is to be relieved of some of its present excessive work-load and to be placed in a position to deal with the rising load of work in its primary functions which I expect the future will bring, and thus be enabled to concentrate on, and adequately perform, these primary responsibilities as interpreter of the Constitution and ultimate national court of appeal. First, Territorial appeals should be routed initially to a new federal superior court. Second, Parliament should withdraw a great deal of the original jurisdiction that it has conferred on the High Court under section 76 of the Constitution, and provide otherwise for the exercise of this jurisdiction. Some of it could perhaps be left simply to the ambulatory operation section 39 of the Judiciary Act (1903-1960) (Cth)—*i.e.*, left to the already invested federal jurisdiction of the State courts. My own preference, for most of what is transferred, would be to confer it on a new federal superior court. I would not myself favour the adoption of both courses in respect of the same subject matter. There seems to me no advantage in leaving to the litigant a choice of alternative tribunals; for my part I see strong reason for not allowing the litigant such a choice. My own preference for a new federal court rests on a view that most of these matters present characteristics sufficiently ' special ' to make a federal court the most appropriate forum. Wherever it can, therefore, I think the Parliament should make the jurisdiction it gives any such new federal court, exclusive.

I say, ' wherever it can ', because of the original jurisdiction vested in the High Court by section 75 of the Constitution itself. Nothing either in section 76 or in section 77 enables the Parliament to take any of this jurisdiction away, though if matters were *res integra* there would be much to be said for doing so. The difficulty arises that some matters of federal jurisdiction, taxation matters for example, have a dual aspect, either as matters arising under a law made by the Parliament, within the meaning of section 76 (ii), or as matters in which a person suing or being sued on behalf of the Commonwealth is a party, within the meaning of section 75 (iii). And taxation matters, as we have seen from Table B above, are the very heads under which so much of the original jurisdiction of the High Court is exercised by single Justices. Much the same, *mutatis mutandis*, is true also of some industrial property matters, though the relevance of section 75 (v) must not be overlooked.

In matters covered by section 75 of the Constitution, therefore, Parliament can go no further towards relieving the High Court of original jurisdiction than to establish an alternative federal tribunal, possibly more accessible and possibly less costly but still only an alternative. Some litigants, moreover, would probably continue to think, as indeed they do now when they invoke the original jurisdiction of the High Court rather than the invested federal jurisdiction of a State court, that their case will ultimately get into the High Court on appeal, and might just as well start there.

Short of an alteration of the Constitution, therefore, the High Court will have to continue to exercise the original jurisdiction conferred on it by section 75 of the Constitution, notwithstanding anything the Parliament does or could do, unless the High Court itself declines jurisdiction in the matters concerned, or at least in some of them. But can the High Court lawfully decline to exercise any part of the jurisdiction conferred on it by the Constitution? This question has never squarely arisen for judicial determination, though instances of refusal of jurisdiction have occurred, and serious doubts have been expressed as to the existence of any power in the Court to refuse a jurisdiction once validly invoked.[15] Apart from the practical question of there being no ready remedy to compel the exercise, there is some ground for arguing that the Court may, in a proper case, refuse to exercise its jurisdiction where another forum is available, resorting to the judicial doctrine of *forum non conveniens.*

According to this doctrine, a court, or at any rate a superior court, has an inherent power or discretion to decline the exercise of jurisdiction if the court is satisfied that the matter before it may be more appropriately tried in some other tribunal. The origin of the doctrine is obscure. In Roman law the rule appears to have been to the contrary: '*judex tenetur impertiri judicium suum*'. But the Scottish courts, faced with frequent conflict of law cases in which Anglo-Scottish interests were involved, appear to have exercised a discretion, quite without statutory authority, to refuse jurisdiction where the defendant objected and the court was satisfied that the cause could properly be tried in another tribunal, and that it would be vexatious or unjust to the defendant to exercise the jurisdiction invoked by the plaintiff.[16] This doctrine naturally found its way also into the English courts.[17]

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[15] See especially Cowen, *Federal Jurisdiction in Australia* (1959) 68-73, submitting that the High Court may not lawfully invoke the doctrine of *forum non conveniens.* See also Cowen, 'Diversity Jurisdiction: The Australian Experience' (1956) 7 *Res Judicatae* 1, 26, 30-31.

[16] *La société du Gaz de Paris v. Société Anonyme de Navigation "Les Armateurs Francais"* [1926] S.C. (H.L.) 13 and cases there cited.

[17] *Logan v. Bank of Scotland* (No. 2) [1906] 1 K.B. 141 and cases there cited. See also Blair, 'The Doctrine of *Forum non conveniens* in Anglo-American Law' (1929) 29 *Columbia Law Review* 1.

As developed in the Anglo-Scottish cases, the doctrine of *forum non conveniens* seems to have been exercisable with reference to considerations of justice only as between the parties, and not with reference to the convenience of the court itself. Indeed, in the *Société du Gaz* case[18] Lord Sumner, while thinking that the test should be more broadly stated than was customary, and that the real question should be whether the forum invoked, or some other forum, is ' the one in which justice will be the better done ',[19] remarked that ' obviously the court cannot allege its own convenience, or the amount of its own business or its distaste for trying actions which involve taking evidence in French, as a ground for its refusal '.[20]

In the United States, the rule appears to have been that a court has no inherent power to decline jurisdiction. In *Cohens v. Virginia*[21] for instance, Marshall C.J. said, ' We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given '.[22] But this is no longer accepted as a universal proposition. A number of exceptions have been recognized and acted upon by the Supreme Court. Most significantly, for present purposes, a unanimous court has been prepared to decline, in favour of a federal District Court, original jurisdiction in a suit between a State and a resident of another State, not because it would be vexatious or unfair as between the parties to exercise the jurisdiction itself but because the court could not, without impairment of its other work, accept jurisdiction in this type of case if there were another fully satisfactory tribunal available.[23]

In *Massachusetts v. Missouri*,[24] the court held first that the bill of complaint that Massachusetts sought leave to file did not present a justiciable controversy against Missouri. In the alternative, the complainant State contended that the proposed bill did present a justiciable controversy between itself and citizens of Missouri—*i.e.* an action against certain trustees to recover tax claimed to be due to Massachusetts. Even as so regarded, the court held that the invocation of its original jurisdiction must fail.

The court's reasoning is so clearly germane to our present subject that I quote in full the relevant passage from the opinion delivered by Hughes C.J. for a unanimous court.

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[18] [1926] S.C. (H.L.) 13.

[19] *Ibid.* 23.

[20] *Ibid.* 21.

[21] 6 Wheat. 264.

[22] *Ibid.* 404.

[23] *Massachusetts v. Missouri and Others* (1939) 308 U.S. 1. Compare *Georgia v. Pennsylvania Railroad Company and Others* (1944) 324 U.S. 439 where the court strongly affirmed its inherent right to decline jurisdiction in the suit, though not exercising that right in the instant case because not satisfied that there was any one single alternative tribunal in which the numerous railroad defendants could be sued. See also Hart and Wechsler, *The Federal Courts and the Federal System* (1953) 258.

[24] (1939) 308 U.S. 1.

> If it be possible to consider the proposed bill as thus stripped of its abortive allegations against Missouri and as presenting a cause of action so distinct from that primarily relied upon, still the invocation of our jurisdiction must fail. In the exercise of our original jurisdiction so as truly to fulfill the constitutional purpose we not only must look to the nature of the interest of the complaining State—the essential quality of the right asserted—but we must also inquire whether recourse to that jurisdiction in an action by a State merely to recover money alleged to be due from citizens of other States is necessary for the State's protection. In *Oklahoma ex rel. Johnson v. Cook* (1937) 304 U.S. 387, *supra*, we called attention to the enormous burden which would be imposed upon this Court if by taking title to assets of insolvent state institutions, including claims against citizens of other States, a State could demand access to the original jurisdiction of this Court to enforce such claims. To open this Court to actions by States to recover taxes claimed to be payable by citizens of other States, in the absence of facts showing the necessity for such intervention, would be to assume a burden which the grant of original jurisdiction cannot be regarded as compelling this Court to assume and which might seriously interfere with the discharge by this Court of its duty in deciding the cases and controversies appropriately brought before it. We have observed that the broad statement that a court having jurisdiction must exercise it (see *Cohens v. Virginia* 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum. *Canada Malting Co. v. Paterson Steamships Co.* (1931) 285 U.S. 413, 422; *Rogers v. Guaranty Trust Co.* (1932) 288 U.S. 123, 130, 131. Grounds for justifying such a qualification have been found in " considerations of convenience, efficiency and justice " applicable to particular classes of cases. *Rogers v. Guaranty Trust Co., supra.* Reasons not less cogent point to the need of the exercise of a sound discretion in order to protect this Court from an abuse of the opportunity to resort to its original jurisdiction in the enforcement by States of claims against citizens of other States.
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> In this instance it does not appear that Massachusetts is without a proper and adequate remedy. . . . With respect to the character of the claim now urged, we are not advised that Missouri would close its courts to a civil action brought by Massachusetts to recover the tax alleged to be due from the trustees. The Attorney General of Missouri at this bar asserts the contrary. He says that " it would seem that Massachusetts should be able to bring a suit against the trustees for the collection of its taxes in either a Missouri state court or in a federal district court in Missouri " and that " such a suit would be of a civil nature and would present a justiciable case or controversy ".[25]

The contrary opinion, that a jurisdiction given unconditionally to a court must be exercised when properly invoked, must rest in the last analysis on the view that the law which confers the jurisdiction (the

[25] *Ibid.* 18-20.

Constitution itself or Parliamentary enactment under it) should be interpreted not merely as conferring on the court authority to hear and determine the class of matters concerned but as conferring on plaintiffs a legal right to invoke the jurisdiction. From this it would follow that if the Constitution itself did not authorize the court concerned to decline jurisdiction the court could not be regarded as possessing any inherent power to do so. Nor, in the absence of constitutional authorization could the Parliament so authorize the court. The real point, it is said, of giving a federal supreme court jurisdiction in suits between a State and a resident of another State, or between residents of different States, is to offer a way of escape from a possibly biassed State tribunal.[26] To admit the right of the federal supreme court to decline jurisdiction, it is therefore said, would be to deny this protection, or at any rate render it insecure. I think it is a fair inference from what Quick and Garran say about the investiture of State courts with federal jurisdiction[27] that if squarely put to them they would have denied the validity in Australia of this particular ground for vesting original jurisdiction in the federal supreme court, and would have said that Australian experience did not warrant doubts either of the learning or of the impartiality of State courts. But whatever its original validity in the United States, it clearly can have no bearing on the question whether the High Court should be able to decline the exercise of original jurisdiction where it is satisfied that an appropriate alternative *federal* tribunal exists. And it is of course this latter question which is of present concern.

As I have said, the High Court has not had to give an express decision on the question whether it can lawfully decline jurisdiction on the doctrine of *forum non conveniens*. Certainly it does not appear ever to have declined jurisdiction on this ground. In 1917, it intimated that it did not encourage litigants to bring actions in the High Court merely because the defendant resided in another State, and that in future a successful plaintiff doing this would not be allowed costs[28]—a threat which, so far as the records go, does not appear to have been carried out. In 1953, Taylor J., sitting in original jurisdiction, dismissed cross-applications by husband and wife residing in different States—the husband seeking *habeas corpus* for the production of his baby son, the wife seeking an order for custody of the child.[29] Taylor J. appears to have been ready to decline jurisdiction in both matters on the ground that they would be more appropriately made in the Supreme Court of Tasmania, upon which the State statute had specifically conferred a relevant discretion.[30] But in fact Taylor J.

[26] Story, *Commentaries on the Constitution of the United States* (5th ed. 1891) paragraphs 1682, 1690-1692.

[27] *The Annotated Constitution of the Australian Commonwealth* (1901) 804. See also the valuable discussion in Cowen *Federal Jurisdiction in Australia* (1959) 76-77.

[28] *Fausset v. Carroll* (1917) 15 W.N. (N.S.W.) No. 12 Cover note (14 August 1917).

[29] *Reg. v. Langdon: ex parte Langdon* (1953) 88 C.L.R. 158.

[30] *Ibid.* 161, 163.

did not decline jurisdiction. He considered each application on the merits, and dismissed it.[31] *Langdon's* case[32] therefore cannot be regarded as express authority for the application to the original jurisdiction of the High Court of the doctrine of *forum non conveniens.*

The American cases, and for that matter the English and Scottish cases too, make clear that one of the accepted cases in which a superior court will feel free to decline a given jurisdiction is the case where another tribunal has been given express powers in relation to matters of the class concerned.[33] This point was made also by Taylor J. in considering whether or not he should exercise jurisdiction, in the *Langdon* case, with regard to the wife's application for a custody order: ' It would, I think, be most inappropriate for this Court to make an order for custody and maintenance when there exist courts specially constituted for this purpose and which may, if and as occasion requires, review the matter from time to time '.[34] The greater width of jurisdiction conferred by section 75 of the Constitution on the High Court as compared with the original jurisdiction conferred on the United States Supreme Court by the United States Constitution would tend to give greater warrant for the doctrine in the case of the High Court.

Quoad State courts invested with federal jurisdiction, Parliament has, by section 45 of the Judiciary Act, expressly conferred on the High Court a discretion to remit for trial, to any State Court that has federal jurisdiction with regard to the subject-matter and the parties, any matter pending in the High Court, whether originally commenced in that Court or not. The Court is at large as to the grounds on which the discretion may be exercised.[35] So far as can be discovered, section 45 has never been construed by the High Court, or even cited in any matter before it.

In terms, section 45 of the Judiciary Act does not appear as a statutory adoption of the doctrine of *forum non conveniens.* The discretion it confers on the High Court is quite different. If it acted under the section, the High Court would not merely decline jurisdiction, leaving the plaintiff to start again in some alternative tribunal. An order of remittal under section 45 would obviate the necessity for any such action on the part of the plaintiff, and would effectively transfer the cause to

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[31] *Ibid.* 162-163.

[32] (1953) 88 C.L.R. 158.

[33] *North Dakota v. Chicago & Northwestern Railway Company and Others* (1921) 257 U.S. 485; *Smeeton v. Attorney-General* [1920] 1 Ch. 85.

[34] (1953) 88 C.L.R. 158, 163.

[35] The text of s. 45 is as follows

(1) Any matter which is at any time pending in the High Court, whether originally commenced in the High Court or not, may be remitted for trial to any Court of a State which has federal jurisdiction with regard to the subject-matter and the parties.

(2) The order remitting the matter may be made by the High Court, or a justice sitting in Chambers, on the application of any party to the matter.

the State court concerned. In this regard, the section would be considered to be based on the power to invest State courts with federal jurisdiction.[36] But the matters on which it operates are matters in which jurisdiction has been conferred, either by the Constitution or by the Parliament itself, on the High Court. In purporting to authorize the High Court in effect to divest itself of jurisdiction, the section is plainly inconsistent with the view that section 75 of the Constitution should be read as requiring the High Court to exercise itself whatever jurisdiction is vested in it; either by the Constitution or by the Parliament.[37] It follows from what I have said above, however, that there is room for the view that section 45 of the Judiciary Act should be regarded, in its divesting aspect, as merely declaratory of the common law position. On that view, it need not be regarded as excluding the High Court's power, in accordance with the doctrine of *forum non conveniens*, to decline jurisdiction where another *federal* court was in its opinion the more appropriate tribunal. But the complementary or vesting aspect of section 45 is, in a practical sense, so convenient and useful that, if a new federal superior court is established, section 45 might well be extended so as to allow remittal to other federal courts as well.

All in all, therefore, without there being any authority, and indeed without any present need to form a conclusion, there is room for contending that the High Court holds largely in its own hands the power to determine whether or not it can, and should, be relieved from the exercise of any of the original jurisdiction vested in it by section 75 of the Constitution where another federal court is available to deal with the matter proposed to it for its determination. Theoretically, even though no mandamus can go to a federal *supreme* court to hear and determine a matter, a refusal of jurisdiction on the ground of *forum non conveniens* could be reviewed on appeal by the Privy Council. But in a practical sense a refusal on the ground that an alternative tribunal in Australia is more convenient is not likely to be thought worth the cost of an application for special leave to the Judicial Committee nor for intervention in this day and age by the Privy Council. It might not be inappropriate in this connexion to recall the familiar proposition that the writ of mandamus is discretionary. The High Court would not itself send mandamus requiring a lower court to hear and determine a matter if the plaintiff had another equally effective and convenient remedy.[38]

As a matter of personal view, as I have already indicated, I do not myself favour much the giving of litigants a choice between parallel jurisdictions. There would, therefore, appear to be merit in having this in mind when deciding how much original jurisdiction should be with-

[36] Constitution, s. 77 (iii).
[37] This is the view strongly put by Cowen, *op. cit.* 68-73, especially 71-73.
[38] *In re Barlow* (1861) 30 L.J.Q.B. 271.

drawn from the High Court. So far as concerns the jurisdiction vested by section 75 of the Constitution, the High Court on the brief analysis I have made, can help itself, at least to a considerable extent, if it so wishes. But this field in a practical sense has some limitations. A large number of the major cases in the constitutional history of Australia commenced in the original jurisdiction of the High Court under section 75 (iii)—matters in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party. It is no part of my suggestion that litigation such as the *Bank Nationalisation Case*[39] should have to reach the High Court only through the filter of another federal superior court. The existence of the constitutionally granted original jurisdiction is thus a useful vehicle for prompt and authoritative decision by the High Court of such constitutional issues, and there may well be great issues in the general law which merit like treatment.

The picture that thus emerges is of a new federal superior court, exercising jurisdiction both original and appellate, drawing off from the High Court some of its present over-load of jurisdiction both appellate and original and exercising jurisdiction also in some matters that at present go to State courts as invested federal jurisdiction. To these matters there is surely room to add some new matters, arising under laws to be made by the Parliament. I shall note briefly and in summary outline the scope of the work which might well be considered in determining the jurisdiction of the new court.

On the appellate side, there are appeals from the Supreme Courts of all the Territories of the Commonwealth—certainly the two mainland Territories and the small external Territories; and, to my mind, also the Territory of Papua and New Guinea.

The same considerations as move me to support the interposition of a new federal superior court between the Supreme Courts of the Territories and the High Court lead me to think that the new court should likewise perform the role of initial court of appeal from the Federal Court of Bankruptcy. The same course should be followed, I think, in respect of appeals from the decisions of county courts (or equivalent State tribunals) under the Commonwealth Employees' Compensation Act. Appeals from magistrates exercising federal jurisdiction[40] need special consideration. One is very conscious of the extent to which, in practice, the existence of the federal jurisdiction in magisterial proceedings is overlooked. Consequently, great care would need to be exercised in deciding whether or not such appeals should be added to the new court's jurisdiction. To make that jurisdiction exclusive might well make for chaos rather than anything else.

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[39] (1948) 76 C.L.R. 1.

[40] Judiciary Act 1903-1960 s. 39 (2) (b) (Cth).

Whether there should be any restriction on appeals to the High Court from appellate decisions of the new court is the subject of divergent views. To my mind appeals by leave only of the High Court would be adequate both to enable a general supervision of the other federal courts to be exercised and for all matters of principle to be brought before the High Court.

I turn now to consider what original jurisdiction should be conferred on a new federal superior court. The basic ingredients I think I have perhaps already sufficiently indicated—taxation matters other than mere enforcement of assessments, and industrial property matters. Insofar as the existing jurisdiction of the High Court in these matters rests on legislation under section 76 (ii) of the Constitution, jurisdiction can simply be transferred by Parliament to the new court, and made exclusive. Insofar as it rests on section 75 of the Constitution itself, Parliament could not make the jurisdiction of the new court exclusive.

In addition to taxation and industrial property matters, it would seem appropriate to bring within the framework of the new court the present Federal Court of Bankruptcy, so that the original jurisdiction of the new court would include the whole range of bankruptcy matters under the Commonwealth Act.[41]

The future of the only other federal court, strictly so called, the Commonwealth Industrial Court, is a matter for careful consideration. The specialised character of the jurisdiction would not in itself be an obstacle to integrating the existing Court with the new court, which will, in the nature of things, exercise in any event a congeries of diverse special jurisdictions. But the present Court deals primarily not with individual citizens so much as with organised industrial associations, of employers and employees respectively. Appropriately as I think, it does not in general exercise a single-judge jurisdiction. The matters arising under the Conciliation and Arbitration Act 1904-1961 (Cth) do not fully occupy the time of the existing Bench, each member of which holds other judicial offices as well. No doubt there is a strong case for maintaining the integrity of the group of Judges already exercising the industrial jurisdiction, and certainly the industrial jurisdiction should not be thrown into the hotch-pot, so to say. The determination of cases in an industrial jurisdiction may well require insights of a kind not necessarily developed in matters of common law and equity. Expertise in such a field, therefore, should not be lost or dissipated. However, the assignment of industrial work to a special group of Judges, who, as now, could have other federal activities, is probably no more than a mere question of organisation.

There would also appear to be room to bring into the original jurisdiction of the new federal court the initial review of decisions of the Com-

[41] Bankruptcy Act 1924-1960 (Cth).

missioner under the Commonwealth Employees' Compensation Act, which at present takes place in County Courts or their equivalent. The present arrangements have not been found altogether satisfactory, from the point of view either of the profession or of the claimant. There may be grounds for providing something in the way of an original hearing before the Commissioner in contested cases, as under the industrial property laws. Such a change if made, would strengthen the case for review by a superior court.

Consideration of appeals against the decisions of the Commissioner under the Commonwealth Employees' Compensation Act leads naturally to consideration of the broader question of appeals against the decisions of other administrative tribunals and authorities. There is, in fact, under existing Commonwealth law much more extensive *ad hoc* provision for judicial review of administrative decisions than is generally realized. I attach as Annexure B[42] a list which, lengthy as it is, may yet not be quite complete. Under Commonwealth law the citizen is far from being left, for opportunities of judicial review, wholly to the prerogative writs. But Australia has lagged behind both Britain and the United States in making some general and systematic provision for the judicial review of administrative decisions. There is as yet nothing in Commonwealth law to correspond with the Tribunals and Inquiries Act 1958 (U.K.). This Act is, in a sense, only a very conservative beginning. But section 9 does provide for recourse to the High Court of Justice, by way either of direct appeal or of case stated, from the decisions on points of law of a wide variety of administrative tribunals and authorities.[43] Britain has stopped short of the highly judicialised pattern of administrative inquiry established in the United States by the Federal Administrative Procedure Act 1946. Whether the Australian Parliament should go further than the British Act of 1958 is too large a question for examination here.[44] But the time is near for the Commonwealth to take the matter up in a comprehensive manner.

To these and other miscellaneous matters arising under existing laws made by the Parliament there could also be added such matters as are provided for by the projected restrictive trade practices legislation of the Commonwealth. The Bill, however, is still in course of preparation,

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[42] *Infra* p. 23.

[43] So far as material s. 9 provides as follows

> 9.—(1) If any party to proceedings before any such tribunal as is specified in paragraph 2, 3, 4 or 8, sub-paragraph (*b*) of paragraph 10, or paragraph 14, 18, 19 or 23 of the First Schedule to this Act is dissatisfied in point of law with a decision of the tribunal given on or after the appointed day he may, according as rules of court may provide, either appeal therefrom to the High Court or require the tribunal to state and sign a case for the opinion of the High Court. . . .

[44] The matter is fully discussed, for instance, in Friedmann and Benjafield, *Principles of Australian Administrative Law* (2nd ed. 1962) Ch. XII; H.W.R. Wade, *Administrative Law* (1961) Ch. VI.

and it would be premature to discuss here the kinds of matters that are likely to arise. But I assume that some at least will be suitable for the jurisdiction of the proposed new federal superior court.

There is a strong opinion in some quarters in the profession that, in order to relieve the pressure on the overworked State Supreme Courts, the Commonwealth should make provision for the exercise by a federal court or courts, either the proposed new superior court or an *ad hoc* tribunal, of all jurisdiction under the Matrimonial Causes Act 1959. When the Bill for this Act was being considered by the House of Representatives, I gave my reason for not adopting the suggestion that federal jurisdiction under the Act should be withdrawn from the State courts and vested exclusively in a federal court. I am still, on balance, of the same opinion, though by no means insensible of the considerations that may be advanced to the contrary. The rather lengthy quotation above from my statement in the House will perhaps be sufficient by way of present discussion.

The jurisdiction indicated for the new court in the foregoing suggestions would afford to the High Court substantial assistance in concentrating upon its basic tasks as interpreter of the Constitution and as ultimate court of appeal in Australia. It would also, I think, constitute a sufficient work-load for a new superior court. The sheer size of Australia, however, and the uneven development within the area of the main centres of population and therefore of economic and social activity, create some obvious problems in determining the size of such a court, and its optimum structure and organisation.

In considering these matters, let me first return to Table C.[45] This shows the broad distribution, as between the registries in Melbourne and Sydney on the one hand and the less populous centres on the other, of the present jurisdiction of the High Court under the main heads of jurisdiction that we have been considering for the purpose of a new federal superior court. The Table shows, even at a glance, how small is the number of cases in all States other than Victoria and New South Wales. Table C seems to me to show that, unless matrimonial causes were to be added to the new court's jurisdiction, it would be extravagant and improvident to appoint Judges, or even a Judge, stationed full-time, in each State. The work available, though it might be more extensive than that of the High Court, would still be altogether insufficient to warrant such a course.

Table C therefore leads to the conclusion that the new court must be to some extent peripatetic. I do not think we should shrink from this at all. In a country as large as Australia, I am sure there are real advantages in a Commonwealth 'presence' in outlying centres. The High

[45] *Supra* p. 7.

Court almost alone, in present circumstances, supplies this in the judicial field. But how long the High Court can, and should, continue to hold at least one sitting each year in each of the State capitals is a matter which, though perhaps not immediately pressing, cannot indefinitely escape consideration. As in the United States, the centralisation of the High Court's work in one place is probably an inevitable development, at a date perhaps not very long ahead measured against a nation's life though nevertheless substantial, may be, in terms of an individual's life-span. The new court should, I think, supplement, and eventually probably replace, the High Court in supplying a Commonwealth 'presence' in the less populous State capitals. Nor should we limit that presence to capital cities, particularly in a large and decentralised State like Queensland. There seems to be no reason for not contemplating the possible exercise of the new court's jurisdiction, if need be, at any circuit town in a State, though of necessity the availability of court premises and other administrative difficulties may place practical obstacles in the way of such a course. Transport does not today offer any difficulty in the way of a peripatetic court in view especially of the spectacular advance in civil aviation, both interstate and intrastate. I think I am right in saying that Perth is already much closer to Melbourne, in point of travelling time, than is any circuit town in the remoter parts even of a small area like Victoria which is not served by an intrastate airline. But I do not think that transport is really the basic problem. It is one of organisation and management.

I agree that justice delayed is justice denied. The chief problem therefore is to ensure that cases arising in the less populous centres will not have to wait too long for a hearing. One should not, of course, be unrealistic. Literally 'instant justice' is scarcely ever attainable. It is certainly not attained at present in any State system. With proper management I would expect the new court to be able to provide, in any State, justice which will at least compare, in point of expedition, with that of the State's own tribunals.

Fortunately, the power to invest State Courts with federal jurisdiction is still available, and can be used to provide relief in a State tribunal on occasions when urgent action is needed and the federal Judge is absent. It may be advisable, in some cases, to leave federal jurisdiction invested in a State court, notwithstanding the otherwise exclusive conferment of jurisdiction on the federal superior court, for use in circumstances of emergency. Such a position does, in fact, exist at present in bankruptcy matters in both New South Wales and Victoria, though ordinarily it is not resorted to because of the regular and frequent sittings in both States of the Federal Court of Bankruptcy. No doubt a Judge of the new federal court could sit in specified State cities on specified days each month, and these should be of sufficient frequency to meet all but the case arising urgently in unexpected circumstances.

With both appellate and original jurisdiction to be provided for, and in a wide diversity of mostly rather specialised matters, it is tempting to provide a neat and formal divisionalised structure for the new Commonwealth court. But, at the outset at any rate, it would be desirable to establish the court with the maximum of flexibility. As a beginning, rather than establish a formal Appellate Division, it may be found more convenient to let the court sit in banc to hear appeals. A formal structure could be introduced later as the needs are disclosed in practice. But, from the beginning, a new federal court should conceive of its role as that of attracting and keeping causes, to the end that the High Court of Australia may move into a new phase of development as the court mainly of ultimate resort in Australia in constitutional matters, in matters which call for a decision in point of legal principle of public import and in matters in which it is necessary to intervene to keep the administration of the law, not merely uniform in recognition of legal principle and adequate in its application but also in the maintenance of attitudes and practices consonent with justice.

ANNEXURE A

STATUTORY PROVISIONS BY WHICH ORIGINAL JURISDICTION IS CONFERRED ON THE HIGH COURT OF AUSTRALIA.[46]

	Sections.
Australian Capital Territory Supreme Court Act 1933-1959	13
Australian Industries Preservation Act 1906-1950	10, 11, 13, 19, 21, 22, 26.
Bankruptcy Act 1924-1960	20 (3.)
Commonwealth Electoral Act 1918-1962	164BB, 184, 203.
Commonwealth Inscribed Stock Act 1911-1963	21.
Copyright Act 1912-1963	13A.
Courts-Martial Appeals Act 1955	50, 53.
Customs Act 1901-1963	221, 227, 245.
Defence Act 1903-1956	91.
Defence Forces Retirement Benefits Act 1948-1963	83.
Designs Act 1906-1950	28.
Estate Duty Assessment Act 1914-1963	25 - 28, 38 - 41.
Excise Act 1901-1963	109, 115, 134.
Gift Duty Assessment Act 1941-1963	32-35.
Income Tax and Social Services Contribution Assessment Act 1936-1963	196-198, 233.
Insurance Act 1932-1963	18, 25.
Judiciary Act 1903-1960	18, 30, 33.
Lands Acquisition Act 1955-1957	62.
Life Insurance Act 1945-1961	38, 39, 40, 47, 52, 58, Part III, Division 8, 75, 82, 89, 94, 105, 119.
Matrimonial Causes Act 1959	91.
National Oil Proprietary Limited Agreement Act 1937	6.
Navigation Act 1912-1961	383, 385.
Overseas Telecommunions Act 1946-1963	69.
Parliamentary Retiring Allowances Act 1948-1959	25.
Patents Act 1952-1962	32, Parts IX, XI, XII, XIII and XIV, 138 Part XVII, 177.
Pay-Roll Tax Assessment Act 1941-1963	40, 50.
Post and Telegraph Act 1901-1961	29, 43.
Re-Establishment and Employment Act 1945-1962	Part X, Divisions 2 & 3.
Referendum (Constitution Alteration) Act 1906-1950	29.
River Murray Waters Act 1915-1958	11.
Royal Commission on Espionage Act 1954	18.
Sales Tax Assessment Act (No. 1) 1930-1962	42, 54.
Sales Tax Procedure Act 1934-1953	12.

[46] Does not include—

(a) Jurisdiction under Imperial Legislation e.g. Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27); or

(b) Jurisdiction under repealed Acts which may still operate in relation to matters pending at the date of repeal.

ANNEXURE A—*continued.*

Superannuation Act 1922-1963	141.
Trade Marks Act 1955-1958	22, 23, 67, 74, 88, 94, 111, 124.
Trading with the Enemy Act 1939-1957	13D.
Treasury Bills Act 1914-1940.	10.

ANNEXURE B.

COMMONWEALTH STATUTORY PROVISIONS FOR THE JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS

	Sections.
Air Navigation Act 1920-1963	28.
Broadcasting and Television Act 1942-1963	87A, 105A.
Commonwealth Employees Compensation Act 1930-1962	20.
Crimes Act 1914-1960	19A.
Customs Act 1901-1963	183C.
Defence Forces Retirement Benefits Act 1948-1963	83.
Designs Act 1906-1950	25.
Estate Duty Assessment Act 1914-1963	25-27.
Gift Duty Assessment Act 1941-1963	32 - 34.
Income Tax and Social Services Contribution Assessment Act 1936-1963	196, 197, 251K.
Insurance Act 1932-1963	17, 20, 24, 25.
Life Insurance Act 1945-1961	40, 47, 52, 58.
National Health Act 1953-1963	37, 80, 97.
Navigation Act 1912-1961	375B.
Overseas Telecommunications Act 1946-1963	69.
Parliamentary Retiring Allowances Act 1948-1959	25.
Patents Act 1952-1962	49, 49A, 50, 52, 60, 63, 73, 77, 81, 84, 98, 106, 107, 142, 146, 154, 155, 160, 163, 177.
Pay-Roll Tax Assessment Act 1941-1963	40.
Post and Telegraph Act 1901-1961	29, 43.
Removal of Prisoners (Territories) Act 1923-1962	8A.
Sales Tax Assessment Act (No. 1.) 1930-1962	42.
Stevedoring Industry Act 1956-1963	45M.
Superannuation Act 1922-1963	141.
Trade Marks Act 1955-1958	19, 20, 21, 23, 26, 30, 36, 42, 43, 46, 51, 70, 71, 81, 86, 111, 127, 139.