

SCHEDULE

EXAMPLES OF REFERRALS FROM STATE PARLIAMENTS TO THE COMMONWEALTH PARLIAMENT UNDER SECTION 51 (xxxvii.) OF THE CONSTITUTION

Date	States	Legislation	Subject Matter	Examples of Conditions/Exclusions/Adoptions	Status	Commonwealth Laws
1915	NSW	<i>Commonwealth Powers (War) Act</i> No.65 (Bills were introduced in the other States but not passed)	War related matters (included trade & commerce; corporations; employment; industrial disputes; trust, combinations, monopolies and arrangements; any industry or business that each House, by resolution, declared to be the subject of a monopoly).	Control or management of railways the property of a State. To expire with the expiration of a “period twelve months after the declaration of peace” (s. 5).	Expired 9 Jan 1921	
1920 1921	VIC TAS QLD SA	<i>Commonwealth Powers (Air Navigation) Act</i> No.3108 <i>Commonwealth Powers (Air Navigation) Act</i> 11 Geo V No.42 <i>The Commonwealth Powers (Air Navigation) Act</i> 1 Geo VI No.30 <i>Commonwealth Powers (Air Navigation) Act</i> No.1469 (Bills were introduced in NSW and WA but not passed)	Air Navigation	TAS - Nothing to restrict the right of the State regarding: <ul style="list-style-type: none"> • acquisition or ownership of aircraft/ aerodromes; • State aircraft operating within the State; • Police powers (see, s.3). 	Only TAS Act came into operation. This Act was repealed by <i>Air Navigation Act</i> 1937 (Tas) 1 Geo VI, No.14.	In 1920, the <i>Air Navigation Act (Cth)</i> No.50 was passed but owing to the failure of the States to take the necessary common legislative action this Act was never proclaimed.
1942 1943	NSW NSW QLD SA WA VIC	<i>Commonwealth Powers Act</i> No.33 <i>Commonwealth Powers Act</i> No.18 (echoed provisions of earlier Act) <i>Commonwealth Powers Act</i> 7 Geo VI No.19 <i>Commonwealth Powers Act</i> No.3 <i>Commonwealth Powers Act</i> No.4 <i>Commonwealth Powers Act</i> No.4950	Not Uniform Across the States (air transport; returning soldiers; employment and unemployment; organised marketing of commodities; uniform company legislation; trusts, combines and monopolies; family allowances; people of the aboriginal race; profiteering and prices; distribution of goods; rationing of goods; overseas exchange and investment; railway gauges; national works but consent to be obtained by Governor in Council before work to be undertaken and to be carried out in co-operation with the State; national health in co-operation with State; family allowances; people of the Aboriginal race.)	All States – To expire five years after Australia ceased to be engaged in hostilities of WWII and no law made by the Commonwealth Parliament with respect to matters referred was to continue to have any force or effect after the expiration of that period. NSW & QLD – referral included air transport. SA – did not include uniform company legislation nor trusts, combines and monopolies. WA – did not include uniform company legislation but did include “rationing of goods” . WA made various amendments to its referral. VIC & SA - did not refer rationing/ distribution of goods but adopted the <i>Liquid Fuel (Rationing) Act</i> 1949 (Cth).	The referrals have expired. VIC Act never proclaimed to come into operation.	The <i>Australian National Airlines Act</i> 1945 (Cth) No.31 was amended by the <i>Australian National Airlines Act</i> 1947 (Cth) No.90, by the insertion of s.19A which authorised the Australian National Airlines Commission to establish intra-State airline services in any State referring to the Cth the power over air transport, subject to the consent of the Premier in any respective State. (This resulted in the establishment of a number of airline services in NSW and QLD.) As a result of the referral of the “distribution of goods” (NSW & QLD) and the “rationing of goods declared to be scarce...” (WA), the <i>Liquid Fuel (Rationing) Act</i> 1949 (Cth) was enacted.
1950	QLD	<i>The Commonwealth Powers (Air Transport) Act</i> 14 Geo VI No.2	Air Transport	QLD Act came into operation immediately after the <i>Commonwealth Powers Act</i> 1943 (Qld) ceased to be in force (see s.2(1)).	Still in force.	The <i>Australian National Airlines Act</i> 1959 (Cth) No.3, further amended s.19A of the

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1952	TAS	<i>Commonwealth Powers (Air Transport) Act No.46</i>		<p>TAS Act did not commence until 2 April 1959.</p> <p>Both Acts expressly stated that, upon termination, no Cth law with respect to the matter of air transport shall continue to have any force or effect (see s.4).</p> <p>Governor in Council may by proclamation fix date for termination.</p>		<i>Australian National Airlines Act 1947 (Cth)</i> extending its application to TAS (see <i>R v Public Vehicles Licensing Appeal Tribunal (Tms); Ex parte Australian National Airways Pty Ltd</i> (1964) 113 CLR 207).
1986 1987 1990	NSW SA VIC TAS QLD	<i>Commonwealth Powers (Family Law – Children) Act No.182</i> <i>Commonwealth Powers (Family Law) Act No.89</i> <i>Commonwealth Powers (Family Law – Children) Act No.92</i> <i>Commonwealth Powers (Family Law) Act No.5</i> <i>Commonwealth Powers (Family Law – Children) Act No.37</i>	<p>Matters included:</p> <ul style="list-style-type: none"> The maintenance of children and the payment of expenses in relation to children or child bearing; The custody and guardianship of, and access to, children. <p>(To cover custody and maintenance of ex-nuptial children)</p>	<p>Each of the original Acts excluded from the reference all matters relating to child welfare under specified State child welfare legislation, and the adoption of children.</p> <p>Governor/Governor in Council may, at any time, by proclamation, fix a date for termination.</p> <p>No referral by WA: Ex nuptial children in WA are governed by the <i>Family Court Act 1997 (WA)</i>, Part 5 Div 11, s.36.</p> <p>Amending Acts provided for a further reference to clarify anomalies in relation to children who are subject to child welfare laws relating to:</p> <ul style="list-style-type: none"> custody, guardianship and access matters involving children who are subject to a child welfare law where the relevant State minister or authorised person consents; maintenance for children who are subject to a child welfare law. 	Still in force.	<i>Family Law Amendment Act 1987 (Cth)</i> .
1992 1992 1993	NSW QLD TAS	<i>Mutual Recognition (New South Wales) Act No.61</i> <i>Mutual Recognition (Queensland) Act No.67</i> <i>Mutual Recognition (Tasmania) Act No.33</i>	<p>Text based reference: for “the enactment of An Act in the terms, or substantially in the terms, set out in the Schedule” and for “the amendment of that Act ... but only in terms which are approved by the designated person for each of the then participating jurisdictions”</p> <p>Purpose: “to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations”.</p>	<p>Governor may, at any time, fix by proclamation a day on which the reference was to terminate but with a minimum period of 5 years after commencement of the Cth Act.</p> <p>TAS - adopted the Cth Act and referred the necessary power to Cth for the amendment of that Act.</p> <p>VIC, SA & WA – Adopted Cth Act as follows: <i>Mutual Recognition (Victoria) Act 1998 No.62</i> <i>Mutual Recognition (South Australia) Act 1993 No.72</i> <i>Mutual Recognition (Western Australia) 1995 Act No.53</i> (For W.A. the adoption was to terminate on 28 February 1998 but it was subsequently extended.)</p>	Still in force.	<i>Mutual Recognition Act 1992 (Cth)</i> (Still in force; includes regulation of the legal profession).

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1996	VIC	<p><i>Commonwealth Powers (Industrial Relations) Act No.59</i></p> <p>(Amended <i>Employment Relations Act 1992 (Vic)</i>)</p> <p>Repealed <i>Annual Leave Payments Act 1992 (Vic)</i>)</p>	<p>Included:</p> <ul style="list-style-type: none"> • Conciliation and arbitration for the prevention and settlement of industrial disputes within Victoria; • Agreements pertaining to the relationship between employer(s) and employee(s) in Victoria; • Minimum terms and conditions of employment for Victorian employees; • Termination, or proposed termination of employment of Victorian employees (other than law enforcement); • Freedom of association described as the rights of employees; • The setting and adjusting of minimum wages for employees in Victoria, for workers who are not subjected to awards or agreements under the <i>Workplace Relations Act</i>. 	<p>Exclusions included the following matters:</p> <ul style="list-style-type: none"> • workers' compensation; • superannuation; • Occupational Health & Safety; • apprenticeship; • long service leave; • days observed as public holidays; • equal opportunity; • matters pertaining to Ministers, members of parliament, judicial officers or members of administrative tribunals; • matters pertaining to persons holding office in the public sector to which the right to appoint is vested in the Governor in Council or a Minister; • the duties of employees under a state of emergency. 	<p>Still in force.</p> <p>Reference to end on a day fixed by the Governor in Council pursuant to s 6. The reference would have terminated unless, before 1 July 1997, an inter-governmental agreement was entered into between the Commonwealth and Victoria about the matters referred.</p>	<p><i>Workplace Relations Act 1996 (Cth) (WRA)</i>, Part XV (Matters Referred by Victoria)</p> <p>(The WRA is the source of minimum conditions of employment for Victorian workers not covered by a federal award, certified agreement or Australian Workplace Agreement: Schedule 1A to the WRA.)</p>
2001	NSW VIC QLD SA TAS WA	<p><i>Corporations (Commonwealth Powers) Act No. 1</i></p> <p><i>Corporations (Commonwealth Powers) Act 2001 No. 6</i></p> <p><i>Corporations (Commonwealth Powers) Act 2001 No. 43</i></p> <p><i>Corporations (Commonwealth Powers) Act 2001 No. 21</i></p> <p><i>Corporations (Commonwealth Powers) Act 2001 No. 39</i></p> <p><i>Corporations (Commonwealth Powers) Act 2001 No. 7</i></p>	<p>Text based reference – “matters to which the referred provisions relate [the tabled text comprising Bills for Commonwealth Acts comprised in two or more documents as tabled by or on behalf of the Attorney General of New South Wales Schedule in the Legislative Assembly of New South Wales – (a) Corporations Bill 2001; (b) Australian Securities and Investments Commission Bill 2001] by including the referred provisions in Acts enacted in the terms, or substantially in the terms, of the tabled text” and the matters of “the formation of corporations, corporate regulation and the regulation of financial products and services, but only to the extent of the making of laws with respect to those matters by making express amendments of the Corporations legislation.”</p>	<p>Subject to earlier termination if the Governor in Council fixes that earlier day by proclamation, the references terminate on the day that is the fifth anniversary of the day of commencement of the Corporations legislation or (except for South Australia) on a later day fixed by Governor in Council by proclamation.</p>	<p>Still in force.</p>	<p><i>Corporations Act 2001 (Cth)</i></p> <p><i>Australian Securities and Investments Commission Act 2001 (Cth)</i></p>
2002	NSW QLD	<p><i>Terrorism (Commonwealth Powers) Act 2002 No. 114</i></p> <p><i>Terrorism (Commonwealth Powers)</i></p>	<p>Regulation of Terrorist Acts</p> <p>Text based reference: “The matters to</p>	<p>May be terminated with 3 months' notice, by proclamation by the Governor/ Governor in Council.</p>	<p>Still in force.</p>	<p><i>Criminal Code Amendment (Terrorism) Act 2003 (Cth)</i> No. 40.</p>

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2003	TAS WA SA VIC	<p><i>Act 2002 No. 79 Terrorism (Commonwealth Powers)</i></p> <p><i>Act 2002 No. 68 Terrorism (Commonwealth Powers)</i></p> <p><i>Act 2002 No. 53 Terrorism (Commonwealth Powers)</i></p> <p><i>Act 2002 No. 50 Terrorism (Commonwealth Powers)</i></p> <p><i>Act 2003 No. 14</i></p>	<p>which the referred provisions [the text set out in Schedule 1] relate, but only to the extent of the making of laws with respect to those matters by including the referred provisions in the Commonwealth Criminal Code in the terms, or substantially the terms, of the text set out in Schedule 1” and “the matter of terrorist acts, and actions relating to terrorist acts, but only to the extent of the making of laws with respect to that matter by making express amendments of the terrorism legislation or the criminal responsibility legislation.”</p>	<p>General Condition: No express amendment of Part 5.3 can be made unless the amendment is approved by: a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory and at least 4 states (see s.100.8).</p>		<p>Inserted new Part 5.3 and associated provisions of Part 2 into the <i>Criminal Code</i> to include, inter alia, the offences of engaging in a terrorist act or doing any act in preparation for or planning a terrorist act; providing or receiving training connected with a terrorist act.</p>
2003	VIC QLD NSW	<p><i>Commonwealth Powers (De Facto Relationships) Act 2004 No.84</i> (Assent date: 23 November 2004)</p> <p><i>Commonwealth Powers (De Facto Relationships) Act 2003 No.78</i> (Assent date: 6 November 2003)</p> <p><i>Commonwealth Powers (De Facto Relationships) Act 2003 No.49</i> (Assent date: 23 October 2003)</p>	<p>Certain financial matters arising out of the breakdown (other than by reason of death) of de facto relationships.</p> <p>(The Act provides for two references dealing separately with the law in relation to heterosexual couples and same sex couples.)</p> <p>"financial matters", in relation to de facto partners, means any or all of the following matters—</p> <p>(a) the maintenance of de facto partners;</p> <p>(b) the distribution of the property of de facto partners;</p> <p>(c) the distribution of any other financial resources of de facto partners, including prospective superannuation entitlements or other valuable benefits of or relating to de facto partners.</p>	<p>May be terminated, at any time, with 3 months' notice, by proclamation by the Governor/ Governor in Council.</p> <p>Extends to relationships that ended before the commencement of the Acts.</p>		<p>No legislation enacted.</p>