

ANNEXURE 10

Letter from Office of Australian Attorney General

20/97071622

Mr Peter Batten
PO Box 1333
Renmark
South Australia 5341

Dear Mr Batten

I refer to your letter dated 17 July 1997 to Sir Robert Fellowes and to your letter to the British High Commission in which you requested information about the status of certain constitutional instruments and the Queen's role as Queen of Australia. Your letter have been forwarded to the office of the Attorney-General. I have been asked to reply on behalf of the Attorney-General.

The status of the Commonwealth Constitution

You would be aware that the Commonwealth Constitution was passed as part of a British Act of Parliament in 1900. A British Act was necessary because before 1900 Australia was merely a collection of self-governing British colonies and ultimate power over those colonies rested with the British Parliament.

However, during the course of this century Australia has become an independent nation and the character of the Constitution as the fundamental law of Australia is now seen as deriving not from its status as an Act of British Parliament, which no longer has any power over Australia, but from its acceptance by the Australia People.

Nevertheless, the Constitution remains part of an Act of the British Parliament. That Act has not been repealed.

Letters Patent

I am advised that Letters Patent constituting the office of Governor General of Australia were issued on 29 October 1900 under the Great Seal of the United Kingdom by Queen Victoria as Queen of the United Kingdom. Amendments to the Letters Patent issued in 1900, made on 4 December 1958, were approved by Queen Elizabeth II on the advice of the Australian Government. On 24 August 1984 the Letters Patent issued in 1900 were revoked and new Letters Patent were issued by Queen Elizabeth II as Queen of Australia under the Great Seal of Australia. The Letters Patent issued in 1984 have not been superseded.

The Queen's Role

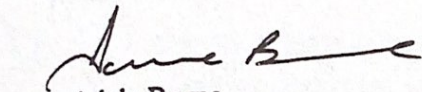
The Queen's role as Queen of Australia is, in legal terms, distinct from her role as Queen of the United Kingdom (as it is distinct from her role as Queen of Canada or of

New Zealand). The Queen of Australia, when acting in relation to Australia, acts on the advice of the Australian Government. I have not seen and therefore cannot comment on any advice from the 'Keeper of the Royal Seals' to the effect that the Queen of Australia cannot issue Letters Patent in relation to the office of the Governor-General on the advice of the Australian Government.

I am afraid I cannot say whether the Queen, when acting in her capacity as Queen of the United Kingdom under the laws of the United Kingdom, can issue Letters Patent to non-British subjects.

I hope you find these comments helpful.

Yours sincerely



Adele Byrne
Adviser