

Notice of Extracts - Queen and Crown

First & Final Constitutional Commission Reports 1988.

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- *Le contrat fait la loi. The contract makes the law.*
- *Quod populus postremum jussit, id just ratum esto. What the people have last enacted, let that be the established law.*
- *Verba intentioni, non e contra, debent inservire. Words ought to be made subservient to the intent, not contrary to it.* 8 Co. 94.
- *Quicquid in excessu actum est, lege prohibetur. Whatever is done in excess is prohibited by law.* 2 Co. Inst. 107.

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1. Introduction.

This summary has been prepared by scrutiny of an official public record, commissioned by the Australian government and published in 1988. The summary provides evidence for insight into activities having been promoted to replace *Queen Elizabeth II*, as *Queen of United Kingdom*, from application as the sovereign within the Commonwealth as expressed in the foundation Act for the Commonwealth of Australia, established 1900.

The revision of *The Constitution* had been prepared by the Constitutional Commission consisting of Sir Maurice Byers, CBE, QC Chairman, Professor Enid Campbell OBE, Hon Rupert Hamer KCMG, Hon E.G. Whitlam AC, QC & Professor Leslie Zines and delivered to the Attorney Generals Department on June 30th 1988.

The summary has focused on the constitutional expressions for the application of the Crown and monarch, analysing the means and manner, in which an 'alternate' Crown and office of monarch had been introduced to supersede that as the Commonwealth of Australia Constitution Act may recognise.

2. Terms of Reference.

This summary focuses on specific terms of reference made by the Commission, on the Crown, Monarch and subjects in light of the current written law.

3. Commonwealth of Australia Constitution Act 1900

The current expression identifies the Crown and Queen for application and command:

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

- PREAMBLE

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

- CLAUSE 2

Act to extend to the Queen's successors

The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

- CLAUSE 5

Operation of the Constitution and laws [see Note 3]

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State;

4. First Report Identifies the Crown's Removal

Leading extracts on the identity of *the Crown* from the First Report of the Constitutional Commission, at pages 109 & 110:

The Crown, therefore, was one Imperial Crown. That is no longer the case.

There was in law and in fact no distinct Monarch of Australia, Canada, New Zealand, etc. There was just the one and indivisible sovereign of all parts of the Queen's dominions.

We consider that covering clause 2 gives the impression that our Monarch must be chosen according to the law of another country and, further, it can mislead a person to the view that the institution of Monarchy in Australia is not an entirely separate institution from the Monarchy in the United Kingdom. It can hardly be said, therefore, that covering clause 2 reflects Australia's independent status. The reverse is the case.

We recommend, accordingly, that:

- (a) in covering clause 2 the words '*the United Kingdom*' be omitted and the word '*Australia*' be substituted; and
- (b) in the Note to the Schedule to the Constitution the words '*the United Kingdom of Great Britain and Ireland*' be omitted and the word '*Australia*' be substituted.

5. Commission Background.

A commission for this report was established by executive decision of the Federal government, at page 33:

Establishment of the Constitutional Commission and Advisory Committees

1.1 On 19 December 1985, the Acting Prime Minister and Attorney-General, Hon Lionel Bowen, MP, announced that the Federal Government had decided to establish a Constitutional Commission to carry out a fundamental review of the Australian Constitution. The members of the Commission would be Sir Maurice Byers, CBE, QC, (Chairman), Professor Enid Campbell, OBE, Hon Sir Rupert Hamer, KCMG, Hon Mr Justice JL Toohey, AO, Hon EG Whitlam, AC, QC, and Professor Leslie Zines.

1.2 The Attorney-General also announced that the Commission would be assisted by five Advisory Committees, each of which would examine and report to the Commission on a particular area of the Constitution, namely:

- (a) Australian Judicial System
(Chairman: Hon Mr Justice DF Jackson);
- (b) Distribution of Powers
(Chairman: Hon Sir John Moore, AC);
- (c) Executive Government
(Chairman: Rt Hon Sir Zelman Cowen, AK, GCMG, GCVO, KSt J, QC);
- (d) Individual and Democratic Rights under the Constitution
(Chairman: Mr Terence Purcell); and
- (e) Trade and National Economic Management
(Chairman: Hon Mr Justice MG Everett).

1.3 The Advisory Committees comprised 37 people from a range of backgrounds who have achieved distinction in various fields of Australian life. Many members brought experience and knowledge which was directly relevant to the matters being considered by their committee. A list of the members of the Advisory Committees is set out at *Appendix A*.

1.4 Members of the Commission and the Advisory Committees were appointed by letters of appointment from the Attorney-General.

6. Stages of Commissions for constitutional review

- 1929 - Royal Commission by letters patent,
- 1956 – Joint Parliamentary Committee by resolutions of two Houses of the Federal Parliament,
- 1973 – Australian Constitutional Convention by initiative of Victorian Parliament, at page 37:

1.22 There have been a number of general reviews of the Constitution. A Royal Commission, appointed by Letters Patent in 1927, reported to the Governor-General in 1929.⁶ There was a conference of Federal and State Ministers in 1942. A Joint Parliamentary Committee on Constitutional Review was constituted by resolutions of the two Houses of the Federal Parliament in May 1956. It took evidence in all States and presented its final report in November 1959.⁷ In 1973, following the initiative of the Victorian Parliament, the Australian Constitutional Convention was convened. The Convention comprised delegates from all Houses and all political parties in the State and Federal Parliaments and representatives of Local Government. It met in Sydney (1973), Melbourne (1975), Hobart (1976), Perth (1978), Adelaide (1983) and Brisbane (1985). Committees and Sub-Committees of the Convention worked between those sessions and produced reports to the Convention.

1.23 So the work of the Constitutional Commission is a further part in a process of constitutional alteration and review dating back to the years immediately after Federation.

7. Intention to Change the First Law and Schedule

Clause 2 - The Commission promoted the change of the Crown and effect a change in the identity of the sovereign, in alteration of the second clause and schedule, by removing reference to 'United Kingdom' and replacing it with 'Australia', at page 2:

- (v) The words 'the United Kingdom' and the 'the United Kingdom of Great Britain and Ireland' should be omitted from covering clause 2 of the *Commonwealth of Australia Constitution Act 1900* and the Note to the Schedule to the Constitution, respectively. The word 'Australia' should be substituted in each case. (para 2.156, 2.240)

Recommendation for alteration of the second clause to recognise the *Queen of Australia*, at page 1055:

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of *Australia*.

8. Intention to recognise the Queen of Australia within the Commonwealth.

The commission takes the view of 'Australia' being a constitutional monarchy in which reference of 'colonial' is intended in the eighth clause.

The report makes note of the Commission's position in the identity of the Queen and as the head of State, to be the *Queen of Australia*, at page 12:

CHAPTER 5. THE EXECUTIVE GOVERNMENT OF THE COMMONWEALTH

Head of state

We recommend no change to Australia's status as a constitutional Monarchy or to the position of the Queen of Australia as head of State.³ (para 5.9)

9. Prime Minister.

The report promotes the position of Prime Minister, to be constitutionally recognised, for inclusion by a new sub-provision to the Constitution within s62, at page 13:

Prime Minister, Ministers and Departments of State

62. (1) The Governor-General shall appoint a person, to be known as the Prime Minister, to be the Head of the Government of the Commonwealth.

10. Queen's ministers of State.

The report promotes Ministerial advice to Her Majesty, as from Australian Ministers, for constitutional expression by inserting to the Constitution within section 64, at page 13:

Queen's Ministers of State

64. (1) The Prime Minister, Ministers and Assistant Ministers appointed under section sixty-two or section sixty-three of this Constitution shall be the Queen's Ministers of State for the Commonwealth.

11. Bill No. 1 – for recognition of the Queen of Australia.

Clause 2 of the Constitution Act provides the provisions within the Commonwealth Constitution exclusively extend to the heirs and successors of Queen Victoria in the sovereignty of the United Kingdom. The Commission Report of 1988 makes recommends to substitute *Queen Elizabeth II* with the *Queen of Australia*. Bill No. 1, at page 977:

A BILL

FOR

An Act to alter the Commonwealth of Australia Constitution Act by omitting obsolete words and so as to recognise the Queen of Australia.

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows:

Short title.

1. This Act may be cited as the *Constitution Alteration (Commonwealth of Australia Constitution Act) 1988*.

Omission of enacting words.

2. The Commonwealth of Australia Constitution Act is altered by omitting the words "Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-".

Act to extend to the Queen's successors.

3. Section 2 of the Commonwealth of Australia Constitution Act is altered by omitting the words "the United Kingdom" and substituting the word "Australia".

12. Bill No. 2 - Oaths and Affirmations to Queen of Australia

The second Bill recommended by the Commission seeks Constitutional recognition of the Queen of Australia so as to provide validation for senators and members of the House of Representatives to take oaths or affirmations of allegiance as none currently exists. Bill No. 2, at page 978:

BILL NO. 2

A BILL

FOR

An Act to alter the Constitution so as to require senators and members of the House of Representatives to take oaths or affirmations of allegiance to the Queen of Australia.

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows:

Short title.

1. This Act may be cited as the *Constitution Alteration (Oaths and Affirmations of Allegiance) 1988*.

Schedule.

2. The Constitution is altered by omitting from the schedule thereto the words "*of the United Kingdom of Great Britain and Ireland*" and substituting "*of Australia*".

13. Citizenship.

Bill No. 7 is to promote constitutional recognition of powers for 'nationality' and 'citizenship' by referendum, at page 999:

A BILL

FOR

An Act to alter the Constitution so as to empower the Parliament of the Commonwealth to make laws with respect to nationality and citizenship.

BE IT ENACTED by the Parliament of the Commonwealth of Australia, with the approval of the electors as required by the Constitution, as follows:

Short title.

1. This Act may be cited as the *Constitution Alteration (Citizenship and Related Matters) 1988*.

Legislative powers of the Parliament.

2. The Constitution is altered by omitting paragraph (xix.) of section 51 and substituting the following paragraph:

"(xix.) Nationality, citizenship, naturalization, and aliens:"

Recognition sought for 'nationality' and 'citizenship', at page 4:

Citizenship

We recommend that section 51 of the Constitution be altered to give the Federal Parliament an express power to make laws with respect to nationality and citizenship. We recommend that this alteration be by the addition of the words 'nationality, citizenship' to section 51(xix.) so that this paragraph would read:

(xix.) Nationality, citizenship, naturalization, and aliens: .
(para 4.177)

14. Conclusion.

The constitutional powers, vested in the Queen, may be regarded, in light of the promotion for the alteration of the Constitution to recognise the *Queen of Australia*, as not currently available for parliamentary law-making exercise, or for judicial exercise by the courts.

It is apparent that the list of powers sought presumes, for various reasons, the Federal Parliament has been operating unconstitutionally and the commission sought constitutional changes to validate the operations of the Federal Parliament within new constitutional parameters as advanced by the Constitutional Commission.

The proposed Bills, above, is evidence of strong presumption that the use of the *Queen of Australia* is outside the bounds of the foundation law.

The Act attributed to create the *Queen of Australia*, the *Royal Style and Titles Act 1973* is acknowledged, by the commission, not to be included for power within the Constitution. There is no power available to create an office, of 'Queen', for adoption by the monarch and such title fails in substance to meet the qualification of an '*heir and successor*' to Queen Victoria. There is no evidence that shows a provision exists for allegiance to an alternate Queen outside the Constitution Act.

The same discrepancies apply for Australia's citizenship laws: Bill No. 7 is evidence to infer the Federal Parliament is without constitutional power to write laws for citizenship in contradistinction to British subjects.

It is noted that Australia's citizenship laws are not recognised by the Commonwealth of Australia Constitution Act nor is the allegiance to an *alternate* Queen, the presumption being that the constitutions of the Commonwealth, and those of the States, recognise the people within the Commonwealth enjoy British citizenship, and the protections thereof.

Declaration.

I declare this summary to be an accurate summary, on the status of the Queen and the people of the Commonwealth, from the above referenced report, as I am able to understand the report.



Darren Dickson

Prudentur agit qui praecepto legis obtemperat

He acts prudently who obeys the commands of the law. 5 Co. 49.