

This package has been put together by members of the Community Law Resources Association (CLRA).

The time of Federation.

Some words from CLRA.

Recognition.

We accept that the people of this continent known as Australia recognize that the traditional inhabitants of Australia are of Aboriginal or Torres Strait Islander descent and that the Aboriginal or Torres Strait Islander people are the Indigenous people of this continent.

History tells us, that whether we like it or not, it was the United Kingdom (UK) that settled this country, bringing with them their central form of Governance that had operated for centuries.

Some History

The Colonies:

In the mid to late 1800s, the Colonies were not working together; instead they were constantly trying to outdo one another to the people's disadvantage. They were also consistently making laws that were repulsive to the people and offensive to the Laws of England. **This misbehaviour continues today and is almost certainly worse.**

The rampant Governments of the Colonies were misbehaving so badly that the UK Parliament were forced to make a law, the Colonial Laws Validity Act 1865(Imp) that stopped such Governments from making laws that were repugnant to the Laws of England. The wise men and women of Australia (The humanitarians) were not particularly happy with the way the Colonies were behaving to the extent, that in their eyes Australia needed a local umbrella body (the Commonwealth Government) that had the ability to restrain the Colonies.

Federation

At the time just before Federation, Australia consisted of six Colonies. To turn six Colonies into the Commonwealth of Australia required an Act from the UK Parliament.

The Act that the UK Parliament used to Federate Australia was called; "An Act to constitute the Commonwealth of Australia, which received Royal Assent on the 9th July 1900 and came into force on the 1st January 1901.

That Act is a Law of the UK Parliament and they can repeal, amend or do nothing with it and the latter is what has happened.

There is no provision to change the Constitution Act other than the UK Parliament and it's extremely unlikely that they would do that without a referendum of the people in this country. The Constitution Act is made up of a Preamble and 9 Covering Clauses or Sections and no more. The Constitution Act is an enabling act, in other words an Act that allowed Australia to Federate.

We must understand the difference between the Constitution Act and the Constitution. We also must understand that the Constitution is part of the Constitution Act. (Covering Clause 9)

Some words from CLRA.

The Constitution Act.

Below we have included part of the preamble, with some explanation of the Constitution Act.

An Act to constitute the Commonwealth of Australia; and is referred to as the Constitution Act.

Preamble.

(Relevant part only).

“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.”

“Whereas the people.....; the words “Whereas the people” establish the fact that it was the people that Federated Australia and not any form of Government. “Whereas the people” is neither discriminatory nor racist. Those three words also establish the fact that the people are sovereign over and above any Parliament in Australia.

The Annotated Constitution makes the following comments;

What is an Annotated Constitution?

The word annotated means - explained in detail, interpreted, expanded on and Quick and Garran (as the book is generally referred to) can be used as evidence in any court.

About Quick and Garran.

Sir John Quick was a very prominent man in the formation of our Constitution having a substantial input into the Constitutional Conventional Debates held during the 1890s and was also very active, along with Sir Robert Garran in the creation of the book called Quick and Garran.

The book, **Quick and Garran** is very heavily based on the **Constitutional Conventional Debates** and as such has become what is called a book of authority and can be used in any Court in the world when relating to Australian matters. **Quick and Garran** has been used by the High Court on more than 160 occasions and by the Privy Council on several occasions, as a book of reference, with regards the Australian Constitution. **Quick and Garran** should be considered as the second reading speech, that because of its formation circumstances, our Commonwealth Constitution never had.

A second reading speech is part of the process that a **Bill (Proposed Law)** goes through in the Parliament, to become a Law. It is to explain the purpose and the intention of the proposed Law.

This opinion approaches near the truth, is the supreme absolute and uncontrollable authority remains with the people. *The opening words of the preamble also proclaim that the Constitution of the Commonwealth of Australia is founded on the will of the people whom it is designed to unite and govern”.*

.....**New South Wales, Victoria, South Australia, Queensland, and Tasmania;** those five Colonies now States, decided to unite as the Commonwealth of Australia and although Western Australia was not part of the Commonwealth at the time of the Royal Assent of the Constitution Act. They did however decide to become part of the Commonwealth about one month later.

Now that all six Colonies have become six States they united to form the Commonwealth of Australia. New Zealand was invited to be part of the Commonwealth of Australia at that time but they declined the offer.

.....**have agreed to unite in one indissoluble Federal Commonwealth;** simply means that the six Colonies that became States, then went on to be part of the Federal Commonwealth that could not be split up. There is no provision in either the Constitution Act or the Constitution for any State to split from the Commonwealth.

.....**under the Crown of the United Kingdom;** The words “under the Crown of the United Kingdom” have very significant meaning. The Annotated Constitution written by Quick and Garran make the following comments; “*It is a concrete and unequivocal acknowledgment of a principle which pervades the whole scheme of Government; harmony with the British Constitution and loyalty to the Queen of the United Kingdom with its multitudinous peoples and its complex divisions of political power”.*

.....**United Kingdom of Great Britain and Ireland;** The words “United Kingdom of Great Britain and Ireland” simply mean that three Countries formed together. Prior to the Act of Union 1707, United Kingdom consisted of three separate Countries. Those Countries were England, Scotland and Ireland (Wales is part of England).

That on 1st May, 1707, the nations of England and Scotland were united into one kingdom by the name of Great Britain and that there should be one Parliament for the whole kingdom. In 1801, in another Act of Union, Great Britain and Ireland formed together to become the United Kingdom.

.....and under the Constitution hereby established; The words, “Under the Constitution,” The Annotated Constitution written by Quick and Garran make the following comments; **“The Commonwealth is a political community, carved out of the British Empire and endowed through its Constitution with a defined quota of self-governing powers. Those powers are delegated by and derived from the British Parliament, and they are to be held, enjoyed, and exercised by the people of the Commonwealth in the manner prescribed by the grant, subject;**

(1) to the supreme British Sovereignty (under the Crown), and

(2) to the Constitution of the Commonwealth. The Commonwealth is consequently under a double subjection. It is subject in the first place to the British Parliament, which, as the ultimate sovereign authority of the Empire, has the legal power to legislate for the Commonwealth as a part of the Empire, and even to amend or repeal the Constitution of the Commonwealth.

The grant of a Constitution to any dependency of the Empire is, however, a practical guarantee that no Imperial legislation conflicting with such grant will be passed except at the express request and with the concurrence of the dependency”

Some words from CLRA.

Below we have included part of Covering Clause 5 again with some explanation of the Constitution Act.

Covering Clauses 5. Operation of the Constitution and laws.

(Relevant part only).

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 (despite) anything in the laws of any State.

The Annotated Constitution written by Quick and Garran make the following comments,

*No difficulty is suggested by the words, “**and all laws made by the Parliament of the Commonwealth under the Constitution.**” The words “under the Constitution” are words of limitation and qualification. Not all enactments purporting to be laws made by the Parliament are binding; but laws made under, in pursuance of, and within the authority conferred by the Constitution, and those only, are binding on the courts, judges, and people. A law in excess of the authority conferred by the Constitution is no law; it is wholly void and inoperative; it confers no rights, it imposes no duties; it affords no protection. **The Act itself is binding without limitation or qualification because it is passed by the sovereign Parliament (UK Parliament), but the laws passed by the Parliament of the Commonwealth, a subordinate Parliament, must be within the limits of the delegation of powers or they will be null and void. What is not so granted to the Parliament of the Commonwealth is denied to it. What is not so granted is either reserved to the States, as expressed in their respective Constitutions, or remains vested but dormant in the people of the Commonwealth.***