

Constitution Act 1900.

Covering Clause 6.

Definitions.

“**The Commonwealth**” shall mean the Commonwealth of Australia as established under this Act.

“**The States**” shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the Northern Territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called “a State.” Original States” shall mean such States as are parts of the Commonwealth at its establishment.

The Annotated Constitution makes the following comments;

HISTORICAL NOTE.

The term ‘The States’ shall be taken to mean such of the existing colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and the Province of South Australia, as for the time being form part of the Commonwealth, and such other States as may hereafter be admitted into the Commonwealth under the Constitution thereof, and each of such colonies so forming part of the Commonwealth shall be hereafter designated a State.

Definitions.

The definitions in the Act are remarkably few, being confined to the words “Commonwealth” and State”—both old English words which receive by this Act a new technical application and the phrase “Original States.” Every other word and phrase of the Constitution is left to be construed from its natural meaning and its context.

When a doubt arises upon the construction of the words of an Act of Parliament, it is the duty of the Court to remove the doubt by deciding it; and when the Court has given its decision, the point can no longer be considered doubtful. **Acts should be construed according to the intent of Parliament.** If the words of the statute are themselves precise and clear-cut, then no more can be done than to explain those words in their natural and ordinary sense.

The Court knows nothing of the intention of an Act, except from the words in which it is expressed, applied to the facts existing at the time. Anyone who contends that a section of an Act of Parliament is not to be read literally, must be able to show one of two things, either that

- (1) there is some other section which cuts down its meaning, or else
- (2) that the section itself is repugnant to the general area of the application of the Act.

I prefer to stay to the golden rule of construction that the words of a statute are to be read in their ordinary sense. **No Court is entitled to depart from the intention of the legislature** as appearing from the words of the Act because it is thought unreasonable. But when two constructions are open, the Court may adopt the more reasonable of the two.

In construing Acts which infringe on the common law, the state of the law before the passing of the Act must be ascertained to determine how far it is necessary to alter that law, in order to carry out the object of the Act.

As a rule, existing customs or rights are not to be taken away by mere general words in an Act. But, without words especially repealing them, they may be repealed by plain directions to do something which is wholly inconsistent with them. And this may be the case though **the Act is a private Act**, and though the particular custom may have been confirmed, years before, by a verdict in a court of law.

Commonwealth as Established Under this Act.

We have summarized the legendary history of the name Commonwealth. We now come to the statutory definition of the term. This definition, it will be observed, is a vague and technical one; the dominant words being as established under this Act. The Commonwealth is not in any way defined or explained by the Constitution itself; that deals only with the **governing of the Commonwealth.**

The first observation to be made is that the Commonwealth should not be confused with the Constitution or with the Government. The Commonwealth, as a political entity and a political partnership.

The Commonwealth is established by a clause in the Imperial Act which could operate as a forerunner to, and independently of the Constitution detailed in Clause 9, and of the machinery and procedure therein specified.

In the clause now under review the States are defined as such of the colonies as form the union and become parts of the Commonwealth. In the Imperial Acts creating the colonies they are described as territories included within certain geographical boundaries.

Some words from CLRA.

Prior to Federation the Colonies were often referred to as local government by mother England and the local government as we know it today was referred to as Municipal Intuitions. Many people since Federation in Australia and even the High Court have confused local government with Municipal Intuitions.

IMPERIAL RELATIONSHIP.

By the preamble the Commonwealth **is declared to be Under the Crown; it is constitutionally a subordinate, and not an independent Sovereign community, or state.** But its population is so great, its territory so vast, the obvious scope and intention of the structure of the union is so comprehensive, whilst its political organization is of such a superior type, that it is entitled to a description which, whilst not conveying the idea of complete sovereignty and independence, will serve to distinguish it from an ordinary regional society.”

SECONDARY MEANING OF“COMMONWEALTH.

In several sections of the Constitution the term Commonwealth is used to denote the Central Government as contrasted with the Governments of the States, i.e. The Legislative Power of the Commonwealth, sec. 1; the Executive Power of the Commonwealth, sec. 61; the Judicial Power of the Commonwealth, sec. 71. These expressions refer to the Legislative, Executive, and Judicial Powers granted by the Constitution to the various organs of the Central Government. The secondary use and meaning of Commonwealth must be distinguished from its primary and proper meaning as defined in the clauses of the Imperial Act.

States.

VARIOUS MEANINGS.

“We will

1. consider the term State as popularly understood in English speaking communities, without reference to technical or external relations;
2. State in its international significance;
3. State” in its federal significance; and finally,

A State is a collective body composed of individuals united for their safety and convenience and intended to act as one man.

Such a body can be only produced by a political union, by the consent of all persons to submit their own private wills or one or more assemblies of men to whom the supreme authority is entrusted, and this will of that one man, or one or more assemblies of men is, in different States, according to their different constitutions understood to be law.

COMMONWEALTH AND STATES.

As we have already seen, there is no such thing as a federal State. A federation, **is merely a dual system of government** under a common sovereignty. This definition is defined to reconcile national unity and power with the maintenance of State rights.

Colonies or Territories.

The only States at the outset will be the Original States, namely, New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania.