

Constitution Act 1900.

Covering Clause 8

Application of Colonial Boundaries Act.

After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

The Annotated Constitution makes the following comments;

After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

The effect of this clause is to make the Colonial Boundaries Act apply, not to the separate States of the Commonwealth, but to the Commonwealth as a whole just as it applies to the Dominion of Canada as whole. In other words, the colonies which become States are in effect struck out of the schedule, and the Commonwealth of Australia is substituted.

The purpose of the Colonial Boundaries Act was to confer general statutory authority on the Queen to alter the boundaries of a self-governing colony, with the consent of that colony, without the necessity of resorting to Imperial legislation in every case.

The reason for repealing the Act, so far as it applied to colonies which become States of the Commonwealth, is that the Constitution itself makes provision for the alteration of the boundaries of States. Sec. 123 provides that the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of a majority of voters in the State, alter the limits of the State.

Now, therefore, the Colonial Boundaries Act only applies to the alteration of the boundaries of the Commonwealth. Apart altogether from that Act, the Commonwealth has power under section 121 to alter the boundaries of the Commonwealth by admitting new States; and sec. 122 contemplates, the power to accept or acquire new territories.”

The question is

What constitutes the consent of the Commonwealth within the meaning of the Colonial Boundaries Act?

The Commonwealth, which is described in the Colonial Boundaries Act, as “a self-governing colony,” is meant that the people; and that the consent of the people cannot be given either by the Parliament of the Commonwealth or by the Parliaments of the States, or both, but only by the people by their amending power (section 128).

This, however, was certainly not the intention of the framers of the Colonial Boundaries Act, or of the Federal Constitution of the Commonwealth. The consent of Canada under the Colonial Boundaries Act is clearly to be given by the Parliament of Canada; and the consent of the Commonwealth means the consent of the Parliament of the Commonwealth. That is to say, the word “Commonwealth” is used here as in other provisions as referring to the central governing organs of the Commonwealth.

Where the alteration of the boundaries of the Commonwealth involves merely territory which is not part of any State, the clause presents no further difficulty; but where it involves the alteration of the limits of a State.

It becomes a question whether in addition to the consent of the Parliament of the Commonwealth, the consent of the Parliament and electors of the State is also necessary.

The Colonial Boundaries Act, as amended by the Constitution Act, provides that Orders in Council, or letters patent, altering the boundaries of the Commonwealth, shall be valid if made with the consent of the Commonwealth; sec. 123 of the Constitution provides that the Parliament of the Commonwealth may, with the consent of the Parliament and a majority of the electors of a State, alter the limits of the State.

The latter section certainly suggests that the Parliament of the Commonwealth may not alter the limits of a State without such consent. The question is whether, in consenting to an alteration of boundaries by the Queen, the Parliament can be said to alter the limits of a State.

Under sec 123, the Parliament of the Commonwealth makes the alteration, then under the Colonial Boundaries Act, the Queen also consents to the alteration. It is certainly open to argument that the consent of the Commonwealth, in such a case, is in effect an alteration of the limits of a State by the Commonwealth, and therefore that the Parliament of the Commonwealth cannot lawfully give such consent without the consent of the Parliament of the State, and the approval of a majority of the electors.”