The Constitution 1901.

The Constitution of the Commonwealth of Australia.

SECTION 1.

Section 1; General Legislative Power.

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called "**The Parliament**," or "**The Parliament of the Commonwealth**."

The Annotated Constitution makes the following comments; plus our comments where applicable.

Legislative Power.

Legislation consists in the making of laws. It is contrasted with the Executive power, whose office is to enforce the law (Police), and with the judicial power which deals with the interpretation and application of the law. (And all that guarantees the separation of Powers) sort of.

"The legislative power of the Commonwealth," referred to in this section, means the legislative power in respect of matters limited and defined in the Constitution;(sections 51, 52, 55,107 or where it is stated "until the parliament otherwise provides") "the legislative power herein granted." The legislative power so granted and vested in the Federal Parliament does not exhaust the whole of the authority of the Commonwealth**.** A residue of power continues vested in the States. **What is not granted to the federal government and what is not possessed by the States is reserved to the people of the Commonwealth, and may at any time be brought into action by the provision for amendment of the Constitution of the Commonwealth** (Referendum, section 128).

By the process of amendment further legislative power may be assigned to the Federal Parliament. **That Parliament will possess only such authority as is expressly, or by necessary implication, conferred upon it by the Constitution, as it stands, or by amendments which may hereafter be incorporated into and become part of the Constitution.**

The power of the Federal Parliament can only be found by searching through the federal constitution. It has no scrap or particle of authority except such as can be discovered or inferred somewhere within the constitution. A general list the legislative powers of the Parliament is given in section 51 of the Constitution. That, however, is not the only section in which legislative power is conferred. Numerous sections may be referred to, in which law -making authority is embedded.

Some examples.

Thus every section beginning with the words or containing the words “until the parliament otherwise provides” contains a grant of legislative power. Other sections not so plainly identifiable are of the same effect; such as section 27—the Parliament may alter the number of members of the House of Representatives; Chapter III.—the Parliament may create inferior federal courts and make other judiciary arrangements; section 94—the Parliament may distribute the surplus revenue; section 102—the Parliament may forbid preferences and discriminations by States; sec. 104—the Parliament may take over the public debts of the States; Chapter VI.—The Parliament may admit new States, govern territories, and alter the limits of States with the consent thereof.

Federal Parliament.

THE QUEEN.—The Federal Parliament consists of the Queen, the Senate, and the House of Representatives. This is a statutory recognition of the Queen as an essential part of Parliament. In the British Constitution, and in most of the colonial constitutions, the King or Queen for the time being has up to the present been recognized in form and in theory, at least, as the principal legislator, if not the sole legislator, acting by and with the consent of the parliamentary bodies**. For over three hundred years every Act of Parliament passed in England has begun with the well-known formula “Be it enacted by the King's (Queen's) most excellent Majesty by and with the advice and consent.”**

In the Australian Constitutional Acts, the legislative power was vested in the Governor by and with the advice and consent of the Legislative Council.

In the subsequent constitutions of the self-governing Australian colonies (Victoria 1855) the power of legislation was conferred upon the Queen “by and with the advice and consent of the said Legislative Council and Legislative Assembly.” In the Constitution of the Commonwealth the old fiction that the occupant of the throne was the principal legislator, as expressed in the above formula, has been disregarded; and the early enacting words will hereafter be replaced by words more in harmony with the practice and reality of constitutional government.

The Queen, instead of being represented as the principal or sole legislator, is now plainly stated to be one of the co-ordinate constituents of the Parliament. Consequently, federal legislation will begin with such mandatory words as **“Be it enacted by the Queen, the Senate, and the House of Representatives,” or, “Be it enacted by the Parliament of the Commonwealth of Australia.”**

It would not be correct to say that the Queen's share in the exercise of federal legislative authority will be altogether official. As regards matters of entirely Australian policy, no doubt the Governor-General, as representative of the Queen, will be guided by the advice of the federal administration, as to whether he should, in the Queen's name, assent to a proposed law passed by both Houses. But if he has reason to believe that any proposed law comes within a class of bills to which, in his discretion as the Queen's representative, he ought not to assent, he will reserve the proposed law for the Queen's pleasure. A Bill so reserved will not have any force unless and until it receives the Queen's assent within two years from the day on which it was presented to the Governor-General (section 60).

Some words from CLRA.

The above talks about the Parliament enacting laws is a load of rubbish. Parliament do not enact laws, they create bills.

It’s the Executive that take bills once passed by the Parliament and give such bills Royal Accent subject to the constraints prescribed by the Constitution and they then enact such bills into law.

The Annotated Constitution makes the following comments;
If the Governor-General assents to a proposed law in the Queen's name, and the Imperial Government find that it is contrary to an Imperial Act applicable to the Commonwealth, or that it is in excess of the legislative power possessed by the Federal Parliament, or that it is inconsistent with Her Majesty's treaty obligations, Her Majesty may be advised to disallow such law, within one year from the Governor-General's assent. (Sections. 58 and 59.)

“The right of the Crown, as the supreme executive authority of the empire, to control all legislation which is enacted in the name of the Crown, in any part of the Queen's dominion, is self-evident and unquestionable. In the mother country, the personal and direct exercise of this prerogative (Privilege) has fallen into disuse. But eminent (Important) statesmen (Person with status), have concurred in asserting that it is a fundamental error to suppose that the power of the Crown to reject laws has consequently ceased to exist.' The authority of the Crown, as a constituent part of the legislative body, still remains; although, since the establishment of parliamentary government, the prerogative has been constitutionally exercised in a different way.

But, in respect to the colonies, the royal veto upon legislation has always been an active and not a dormant power. The reason of this is obvious. A colony is but a part of the empire, occupying a subordinate position in the realm. No colonial legislative body is competent to pass a law which is at variance with, or repugnant to, any Imperial statute which extends in its operation to the particular colony. Neither may a colonial legislature exceed the bounds of its assigned jurisdiction, or limited powers.

Should such an excess of authority be assumed, it becomes the duty of the Crown to veto, or disallow, the illegal or unconstitutional enactment.

This duty should be fulfilled by the Crown, without reference to the conclusions arrived at in respect to the legality of a particular enactment, by any legal tribunal.

It would be no adequate protection to the public, against erroneous and unlawful legislation on the part of a colonial legislature, that a decision of a court of law had pronounced the same to be ultra vires. (Made outside of power).

An appeal might be taken against this decision, and the question carried to a higher court. Pending its ultimate decision, the public interests might suffer. Therefore, whenever it is clear to the advisers of the Crown that there has been an unlawful exercise of power by a legislative body, it becomes their duty to recommend that the royal prerogative should be invoked to annul the result of unlawful exercise of power."

THE BICAMERAL (two house) SYSTEM.—The Senate and the House of Representatives compose the two Chambers, according to what is generally described as the Bicameral System. Apart from the theoretical and practical arguments in favour of a two-chambered legislature as against a single chambered legislature, a political union on the federal plan could not have been accomplished without the constitution of two Houses to represent the people. **Such theory and practice both proclaim that in a single House there is danger of a legislative dictatorship.** (As in Queensland)

We may say that modern constitutional law has settled firmly upon the bicameral system in the legislature, with important uniformity of powers in the two Houses, except in dealing with the budget; and that, in the control of the monies.

A single body of men is always in danger of adopting hasty and one-sided views, of accepting facts upon insufficient tests, of being satisfied with incomplete generalizations, and of mistaking happy phrases for sound principles. Two legislative bodies do not always escape these crude and one-sided processes, but they are far more likely to do so than a single body.

In this conflict of views between the two houses lies, in fact, the only safe-guard against hasty and ill-digested legislation when the same party is in majority in both houses.

A disagreement between the majorities in such a case is far more likely, also, to lead to a deeper generalization of principle than when the struggle is between the majority and the minority in each house; since the majority in each house will be much more inclined to look into the real merits of the question in the former instance than in the latter instance, and will come to a decision far more independent of partisanship.

The necessity of a double, impartial debate is thus the fundamental principle of the bicameral system in the construction of the legislation. A legislature of one chamber inclines too much to be to extremist.

One of three chambers or more would incline to be conservative. The true interpretation of the common awareness at each particular moment is best secured by the Parliament consisting of two chambers.

There is another reason for this system, which, though less philosophic, is fully as practical. It is that two chambers are necessary to preserve the balance of power between the legislative and executive departments. The single-chamber legislature tends to subject the executive to its will. It then introduces into the administration, a confusion which collapses into anarchy.