

**Constitution Act 1900.  
Covering Clause 9.**

**The Constitution of the Commonwealth of Australia.**

**SECTION 2.**

**Section 2; Governor-General.**

**“A Governor-General appointed by the Queen shall be Her Majesty's Representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.”**

**Some words from CLRA.**

There has been much conjecture in relation to the appointment of the Governor General within CLRA and the alternative law movement more generally. The appointment of the Governor General has not changed for many decades, although that in itself is not a reason why we should look at such appointment. The premise has been that the Governor General has been appointed by the Prime Minister and not the Queen.

That premise is not true, the queen appoints the Governor General on the advice of her Ministers (the Prime Minister). There is nothing in the above paragraph or Quick and Garran that indicate that the Queen cannot receive advice from her Ministers. On the contrary, Quick and Garran does indicate, that the Queen can receive advice from her Ministers. The appointment of the current Governor General was appointed by the Queen of the UK.

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

**Historical note.**

“The governor of a colony constitutes the only political link connecting the colony with the mother country. So far as regards the internal administration of his government, he is merely a constitutional sovereign acting through his advisers; interfering with their policy or their patronage, if at all, only as a friend and impartial councillor.

But for these purposes the constitution furnishes him with no public officers to assist him in council or execution, or to share his responsibility.”

**A Governor-General.**

“It is a common supposition that his office is consequently one of parade and sentiment only. There cannot be a greater error.

The functions of a Governor-General under responsible government are (occasionally) arduous and difficult in the extreme.

Even in the domestic politics, his influence as a mediator between extreme parties and controller of extreme resolutions, as an independent and dispassionate adviser, is far from inconsiderable, however cautiously it may be exercised. Here he has to reconcile, as well as he can, his double function as Governor-General responsible to the Crown, and as a constitutional head of an executive controlled by his advisers.

**He has to watch and control, as best he may, those attempted infringements of the recognized principles of the connection between the Parliament and the Executive, which carelessness or ignorance, or deliberate intention, or mere love of popularity, may from time to time commence. His responsible ministers may (and probably will) entertain views quite different from his own.”**

#### **During the Queen's Pleasure.**

“Colonial Governors invariably hold office during the pleasure of the Crown; but their period of service in a colony is usually limited to six years from the assumption of their duties therein; although, at the discretion of the Crown, a Governor may be re-appointed for a further term. The rule which limits the term of service of a Governor to six years was established principally for the purpose of ensuring in Governors the utmost impartiality of conduct, by disconnecting them from fixed relations with the colony over which they are appointed to preside.”

#### **Powers and Functions of the Queen.**

“Section 2 of the Constitution is the same in substance as section 2 of the Commonwealth Bill of 1891. When it was first proposed in 1891, strong exception was taken to it and other sections relating to the Governor-General on the ground that they would confer particular and vast powers on the Governor-General, far in excess of any authority previously conferred on any governor in these colonies.

In the creation of the powers and functions of the Governor-General of the Commonwealth, the principal and most important of his powers and functions, legislative as well as executive, are expressly conferred on him by the terms of the Constitution itself.

Among these may be mentioned:

the appointment of the times for holding the Sessions of Parliament; the prorogation of the Parliament;

the dissolution of the House of Representatives (sec. 4);

the dissolution of the Senate and of the House of Representatives simultaneously (sec. 57);

the convening of a joint sitting of the members of the Senate and of the House of Representatives (sec. 57);

the assent in the name of the Queen to Bills passed by the Federal Houses; the withholding of the Queen's assent to such Bills;

the reservation of Bills for the Queen's pleasure; the recommendation of amendments to be made in Bills (sec. 58);

the exercise of the Executive power of the Commonwealth (sec. 61);

the appointment of political officers to administer departments of state of the Commonwealth (sec. 64);

the command of the naval and military forces of the Commonwealth (sec. 68);

and generally, in respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a colony (sec. 70).

These are powers and functions vested in the Governor-General by statute, to be exercised by him in accordance with the recognized principles of Responsible Government. The point to emphasize is that they are legislative and executive powers and functions conferred on the Governor-General, not by Royal authority, but by statutory authority.

The section now under consideration authorizes the Governor-General to exercise such powers and functions as Her Majesty may be pleased to assign to him. These powers and functions, however, must not be confused with the statutory authority and statutory duties to which reference has been made, relating to the Government of the Commonwealth, expressly specified in and expressly conferred on the Governor-General by the Constitution.

The powers and functions contemplated by this section relate either to matters subordinate and ancillary to the statutory authority and statutory duties enumerated in the Constitution,

or to matters connected with the Royal prerogative (that body of powers, rights, and privileges, belonging to the Crown at common law, such as the prerogative of mercy, or to authority vested in the Crown by Imperial statute law, other than the law creating the Constitution of the Commonwealth.

Some of these powers and functions are of a formal character; some of them are purely ceremonial; others import the exercise of sovereign authority in matters of Imperial interests. The nature of some of the prerogative as well as formal and ceremonial powers referred to may be gathered from the extracts from letters patent and commissions relating to the office of Governor, which will be found further on.

**MODE OF APPOINTMENT.**— All the old and obsolete provisions which were really only applicable to Crown colonies, were now eliminated. As portions of these new instructions will be the basis of the powers and functions of the Queen” which may be assigned **by Her Majesty to the Governor-General under section 2 of this constitution, they may be here appropriately inserted:—**

- (ii.) The Governor may, whenever he thinks fit, require any person in the public service to take the Oath of Allegiance, together with such other Oath or Oaths as may from time to time be prescribed by any Law in force in the Colony. The Governor is to administer such Oaths or cause them to be administered by some Public Officer of the Colony.
- (iii.) In the execution of the powers and authorities vested in him, the Governor shall be guided by the advice of the Executive Council, but if in any case he shall see sufficient cause to dissent from the opinion of the said Council he may act in the exercise of his said powers and authorities in opposition to the opinion of the Council, reporting the matter to the people without delay, with the reasons for his so acting. In any such case it shall be proper for any member of the said Council to require that there be recorded upon the Minutes of the Council the grounds of any advice or opinion that he may give upon the question
- (iv.) The Governor shall not, except in the cases hereunder mentioned, assent in our name to any Bill of any of the following classes:
  - (8.) Any Bill containing provisions to which has been disallowed by the people at referendum. Unless he shall have previously obtained the people instructions upon such Bill, unless such Bill shall contain a clause suspending the operation of such Bill until the signification in the Colony

of our pleasure thereupon, **or unless the Governor shall have satisfied himself that an urgent necessity exists requiring that such Bill be brought into immediate operation**, in which case he is authorized to assent in our name to such Bill, **unless the same shall be repugnant to the law of England, or inconsistent with any obligations imposed upon Us by Treaty**. But he is to transmit to the people by the earliest opportunity the Bill so assented to, together with his reasons for assenting thereto.