

**Constitution Act 1900.**

**Covering Clause 9.**

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

**SECTION 51**

**Section 51; Legislative powers of the Parliament**

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to, the 39 subsections.

**The Annotated Constitution make the following comments;  
Legislative Powers.**

This important section, containing 39 sub-sections, enumerates the main legislative powers conferred on the Federal Parliament. They are not expressly described as either exclusive powers or concurrent powers, but an examination of their scope and intent, coupled with subsequent sections, will show clearly that, whilst some of them are powers which either never belonged to the States, or are taken from the States and are vested wholly in the Federal Parliament to the exclusion of action by the State legislatures, others are powers which may be exercised concurrently by the Federal Parliament and by the State legislatures.

CLASSIFICATION OF POWERS.—The powers conferred on the Federal Parliament may be classified as;

- (1) the new and original powers not previously exercised by the States, and
- (2) old powers previously exercised by the colonies and re-distributed, some being;
  - (a) exclusively vested in the Federal Parliament, and
  - (b) concurrently exercised by the Federal Parliament and the State Parliaments.

COMPLETE NATURE OF THE POWERS.—An important point to consider is whether the Legislative powers vested in the Federal Parliament are to be regarded as complete, absolute, or whether they are merely entrusted to the Federal Parliament as an agent of the Imperial Parliament, according to which a person or body to whom an office or duty is assigned by law cannot lawfully devolve that office or duty on another unless expressly authorized.

They are in no sense delegates of, or acting under any mandate from the Imperial Parliament. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion.

Applying the principles established in the foregoing cases to the Constitution of the Commonwealth, we may draw the conclusions:

- (1) As the words of the Imperial Act, creating the Federal Parliament and conferring on it legislative powers, conferring exclusive legislative authority, it follows that the Federal Parliament is in no sense a delegate or agent of, or acts under any mandate from, the Imperial Parliament.
- (2) Its authority within the limits prescribed by the Constitution are as complete and ample as the Imperial Parliament could bestow.
- (3) Within those limits the Federal Parliament can do what the Imperial Parliament could do, and among other things it can entrust to a body of its own creation power to make by-laws and regulations respecting subjects within its jurisdiction.

LIMITATIONS OF FEDERAL LEGISLATIVE POWER.—As we proceed with an analytical examination of section 51 it will be seen that whilst several of its sub-sections contain grants of legislative power in general and unlimited terms, the grants conveyed by other sub-sections are qualified or subject to restraints. These are known as constitutional limitations. Take sub-section 1. There, the Federal Parliament is assigned power to legislate respecting trade and commerce with other countries and among the States; the words quoted are words of limitation excluding from Federal control the internal commerce of each State. It is not founded on any distrust of the Federal Legislature; it is not designed for the protection of individual citizens of the Commonwealth against the Federal Legislature. It is, in fact, one of the stipulations of the federal compact. So the condition annexed to the grant of taxing power is, that there must be no discrimination between States in the exercise of that power.

NATURE AND DISTRIBUTION OF POWERS.—It was competent for the people to invest the Federal government with all the powers they might deem proper and necessary, to extend or restrain these powers, and to give them a paramount authority. **The Federal government can claim no powers not granted to it by the Constitution; powers actually granted must be such as are given expressly or by necessary implication.**

## **Peace, Order, and Good Government.**

These, or words nearly similar, have been used in most of the Constitutional Act passed by the Imperial Parliament, conferring local legislatures on British colonies.

SIGNIFICANCE OF THE WORDS.—The Federal Parliament has not general power to make laws for the peace, order, and good government of the Commonwealth, but only with respect to matters that are specifically enumerated in the section. The question has been raised as to whether the words peace, order, and good government may be construed so as to qualify, limit, or restrict the grant of power. Another question has been raised as to whether they will tend to increase, enlarge, or magnify the grant of power. These two questions will be found referred to in the extracts and cases given below.

Reference may be here made to a third question which has been raised, as to whether the words for the peace, order, and good government of the Commonwealth will prevent the Federal Parliament from passing a law which may be confined in its operation to a particular State. These words are copied from the several Acts of the Imperial Parliament providing for the establishment of legislatures in the various Australian colonies, and are completely appropriate when used in reference to the establishment of the legislature which is to possess complete legislative powers. It cannot be contended that they are required for the purpose of giving the Parliament of the Commonwealth full power to legislate with regard to all subjects mentioned in the sub-sections of section 51.

It appears to be suggested that any provision differing from the provisions which in this country have been made for administration, peace, order, and good government cannot, as matters of law, be provisions for peace, order, and good government in the territories to which the statute relates; and, further, that if a court of law should come to the conclusion that a particular enactment was not calculated as a matter of fact and policy to secure peace, order, and good government, that they would be entitled to regard any statute directed to these objects, but which a court should think likely to fail of that effect, as ultra vires and beyond the competency of the Dominion Parliament to enact.