



**Australian Government**  
**Attorney-General's Department**

19 October 2020

Mr [REDACTED]  
[REDACTED]

Dear Mr Pritchard

Thank you for your email of 11 August 2020 to the Attorney-General and Minister for Industrial Relations, the Hon Christian Porter MP, regarding the Constitution of Australia. The Attorney-General has requested that the Attorney-General's Department respond to you on his behalf. I apologise for the delay in response.

The Australian Constitution was originally enacted as part of a British statute, the *Commonwealth of Australia Constitution Act* (1900) and took effect on 1 January 1901. A British statute was necessary because, before 1901, Australia was a collection of self-governing British colonies and ultimate power over those colonies rested with the British parliament. Before the Constitution came into effect, its terms were approved, with one small exception, by the people of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania.

Neither the legal force of the Constitution nor its status as the fundamental law of Australia is affected by the fact that it was originally enacted as part of an 'imperial' statute. A previous Chief Justice of Australia, the Hon Sir Anthony Mason, observed in *Australian Capital Television Pty Ltd v Commonwealth* (177 CLR 106, at 138) that while the Constitution owes its legal force to its character as a statute of the imperial parliament enacted in the exercise of its legal sovereignty, the Constitution brought into existence an enduring system of national government:

*Despite its initial character as a statute of the Imperial Parliament, the Constitution brought into existence a system of representative government for Australia in which the elected representatives exercise sovereign power on behalf of the Australian people.*

A later Chief Justice, the Hon Murray Gleeson AC, also noted the status of the Constitution as Australia's basic law (in the 2000 Boyer Lectures published as *The Rule of Law and the Constitution*, ABC Books, 2000, at page 6):

*In Australia, unlike the United Kingdom we have a basic law, the Constitution, which defines and limits the power of the Parliament to alter the law. Because the basic law can now be altered only by the people of Australia, the sovereignty of our nation lies with the people, both as a matter of legal principle and as a matter of practical reality.*

The Queen's role in relation to Australia is entrenched in the Constitution. Section 1 states that the Commonwealth Parliament consists of a House of Representatives, a Senate and the Queen. Under section 2, the Queen is empowered to appoint the Governor-General as her representative in the Commonwealth. Under section 61 the 'executive' power of the Commonwealth is vested in the Queen and exercisable by the Governor-General. The Queen does not, however, play a day to day role in Australian government. Further, it is a fundamental principle of Australian constitutional practice that those few functions which the Queen does perform as Queen of Australia are performed in accordance with advice from the Australian Government.

It is quite clear both that the current Queen of Australia (and of the United Kingdom) is a successor to Queen Victoria and that references in the Australian Constitution to 'the Queen' encompass references to the current Queen. This is reflected in the *Royal Style and Titles Act 1973*, under which the current Royal Style and Titles in Australia are 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'.

The preamble to the *Commonwealth of Australia Constitution Act 1900* refers to the historical fact of the agreement to federate under the 'Crown of the United Kingdom of Great Britain and Ireland'. Covering clause 2 of that Act states that references to 'the Queen' extend to 'Her Majesty's heirs and successors in the sovereignty of the United Kingdom'. The oath and affirmation set out in the schedule to the Australian Constitution, which members of the Commonwealth parliament must make under section 42 of the Constitution, refer to 'Her Majesty Queen Victoria, Her heirs and successors according to law.'

While some provisions of the Australian Constitution refer to state governors (see, for example, sections 7, 12, 15 and 21 in relation to senators, and section 110 in relation to references to a governor), the powers and functions of state governors are generally conferred by the constitution of each state.

Thank you again for bringing your concerns to the Attorney-General's attention.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Lewis'.

**David Lewis**  
General Counsel (Constitutional)  
Office of Constitutional Law