

Constitution Act 1900.

Covering Clause 4.

Commencement of Act.

The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Some words from CLRA.

The above is the enabling act that allowed the Colonies/States taking part in Federation to continue to make Laws but only those Laws that they could make after Federation (Reserved and Concurrent powers).

The Annotated Constitution make the following comments;

The above words “But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

All Acts have a date, or a process, that such Act comes into force or takes effect. Most Acts come into force or take effect 28 days after such Act receives Royal Assent. The Constitution Act was different, instead of a date being the method that such Act comes into force or takes effect, there was a process that allowed the Constitution Act to come into force or to take effect and that process was by proclamation.

Some words from CLRA.

As is described in Covering Clause 3 the process was to declare by proclamation, that, on and after a day therein appointed, not being later than one year after the passing of this Act. In other words, the Constitution Act was created and then assented to on the 9th of July 1900 (the passing of this Act) and the Constitution Act came into effect only after Queen Victoria (the then Monarch) announced by proclamation or if you like,

**such Act was proclaimed, to come effect on the 1st January 1901.
The time that elapsed in-between was about 5 and ½ Months which
was less than one year.**

The Annotated Constitution make the following comments;

HISTORICAL NOTE.—Clause 4 of the Commonwealth Bill of 1891 (which became the Constitution Act 1900) was as follows:—
Unless where it is otherwise expressed or implied, this Act shall commence and have effect on and from the day so appointed in the Queen's proclamation; and the name 'The Commonwealth of Australia' or 'The Commonwealth' shall be taken to mean the Commonwealth of Australia as constituted under this Act.

This clause, was adopted at the Adelaide Session, 1897. A provision was then added that "The Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had been established at the passing of this Act."

Now back to Covering Clause 4 and the Annotated Constitution makes the following comments; Page 343 to 345.

Shall be Established.

Clause 3 says that the people of the Commonwealth shall be united on and after the day appointed in the Queen's Proclamation. Clause 4 contains a detailed list and expansion of the legal results of the Union so accomplished. The first immediate result is that the Commonwealth is established.

Some words from CLRA.

The word Union refers to the unification of the colonies into becoming firstly States and then the Commonwealth of Australia.

Now back to Covering Clause 4 and the Annotated Constitution makes the following comments; Page 343 to 345.

Parliament authorizing the creation of colonies, the words "erect" and "establish" are used as identical terms. The Act 9 Geo. IV. (1828) (the Australian Courts Act of 1828), provided that it should be lawful for the King by charters or letters patent under the Great Seal to "erect and establish" courts of judicature in New South Wales and Van Diemen's Land.

Some words from CLRA.

In 1828, all of the area now known as the mainland of Australia was then called New South Wales and the area now known as Tasmania was then called Van Diemen's Land.

Now back to Covering Clause 4 and the Annotated Constitution makes the following comments; Page 343 to 345.

The Act (1840) authorized the Queen by letters patent to “erect” into a separate colony or colonies any islands being dependencies of the colony of New South Wales; and by section 3, in case Her Majesty should establish any such new colony or colonies, Legislative Councils might be “established” therein.

Some words from CLRA.

The Act (1840) established that Her Majesty could create new colony or colonies.

Now back to Covering Clause 4 and the Annotated Constitution makes the following comments; Page 343 to 345.

In the first section of the notable Act 13 and 14 Vic, the provision occurs that the territories comprised in the district of Port Phillip should be “erected” into and subsequently form a separate colony to be known as the colony of Victoria (1851).

In the second section of the same Act the words occur “that upon the issuing of such writs for the first election of members of the Legislative Council of the said colony of Victoria such colony shall be considered to be established.

Some words from CLRA.

As a result of the Act (1840) that allowed for the creation of the colony of Victoria in 1851. There was other colonies created prior to 1851 and some created after 1851.

Now back to Covering Clause 4 and the Annotated Constitution make the following comments; Page 343 to 345.

From these precedents it appears that the word “Established” is the one commonly used to denote the creation of a new State or community.

Shall take Effect.

Another consequence and necessary incident of the Union is that the Constitution shall on the day so appointed “take effect” or come into operation. Here we reach the third and final stage in the progress of political organization contemplated by the Act.

It clearly appears that the Constitution is something distinct from the Commonwealth. The Commonwealth is the community united by the Imperial Act. The Constitution provides the necessary machinery for the government of that community so as to secure its steadiness, safety and development.

The provision of Clause 3 that the Queen may appoint a Governor-General for the Commonwealth at any time after the issue of the Proclamation, and before the actual establishment of the Commonwealth and before the Constitution “takes effect,” is somewhat strange and looks like a speaking out of harmony with the sequence of the other stages. It enables the Queen to appoint a Governor-General, not for an actual existent Commonwealth, not to fill an office created by a constitution actually in force, but for the Commonwealth that is to be, and in order to fill an office that does not yet exist.

May make any such Laws.

At any time after the passing of the Act (the Constitution Act), and therefore before as well as after the day appointed by the Proclamation, the Parliament of each of the federating colonies may proceed to exercise certain powers intended by the Constitution to be conferred upon them.

Some words from CLRA.

The above is the enabling act that allowed the Colonies/States taking part in Federation to continue to make Laws, but as said early only those Laws that they could make after Federation (Reserved and Concurrent powers).

Now back to Covering Clause 4 and the Annotated Constitution make the following comments; Page 343 to 345.

The Constitution, by which these powers are defined, does not take effect until the day appointed by the Proclamation. In anticipation of that day the Act authorizes the Parliaments to exercise the powers referred to.

Turning to the Constitution we find that the laws referred to by this clause comprise the following:—

- (1.) Laws prescribing the method of choosing the Senators for a State, and
- (2.) Laws for determining the times and places of election of Senators for a State, and
- (3.) Laws for determining the divisions in each State for which Members of the House of Representatives may be chosen, and the number of Members to be chosen for each division,

Some words from CLRA.

To put this into perspective, The Constitution Act was created and then assented to on the 9th of July 1900 and the Constitution came into effect on the 1st January 1901. The paragraphs under the heading “May make any such Laws” allowed the Colonies/States to make Laws but only with the constraints that the new Commonwealth Constitution would apply. The Colonies/States could only use those powers reserved for them and the concurrent powers that both the States and the Federal Parliament (when it came into effect) could make Laws for.