

# **Constitution Act 1900.**

## **Covering Clause 9.**

### **Constitution.**

The Constitution of the Commonwealth shall be as follows:

#### **THE CONSTITUTION.**

This Constitution is divided as follows:

Chapter I.— The Parliament:

Part I.— General:

Part II.— The Senate:

Part III.— The House of Representatives:

Part IV.— Both Houses of the Parliament:

Part V.— Powers of the Parliament:

Chapter II.— The Executive Government:

Chapter III.— The Judicature:

Chapter IV.— Finance and Trade:

Chapter V.— The States: Chapter VI.—New States:

Chapter VII.— Miscellaneous:

Chapter VIII.—Alteration of the Constitution:

The Schedule.

### **The Annotated Constitution makes the following comments;**

#### **The Constitution.**

##### **ORGANIZATION OF THE COMMONWEALTH WITHIN THE CONSTITUTION.**

Up to this stage the Imperial Act has dealt with the organization of the Commonwealth outside of and without reference to the Constitution. Clause 9 unfolds the Constitution, which, as we have already seen, deals with the internal organization of the Commonwealth, distributes power, provides for the government of the Commonwealth, guarantees the corporate rights of the States, parts of the Commonwealth, and the personal rights and liberties of individuals resident within the Commonwealth.

It also contains provisions of changes to meet the possible requirements of the future. We are now able to appreciate the distinction, between the Commonwealth and the Constitution. Behind the Federal and State governments lays the amending power of the Commonwealth within the Constitution (section 128 referendum), then behind that amending power of the Constitution lies the sovereign British Parliament, which proclaimed the Constitution. The Constitution embodies the terms of the political partnership between the people and the States, by whose union the Commonwealth is composed.

It must, however, be remembered that the Constitution does not profess to be a complete scheme of government, creating organs for the discharge of all the functions and duties which a civilized community undertakes. It pre-supposes the State governments. It assumes their existence of their wide and constant activity. It is a scheme designed to provide for the discharge of such and so many functions of government as the States do not already possess. But no such implication is necessary in order to show that the Constitution of the Commonwealth is not an incomplete statute dealing in an incomplete manner with the political government of the Union. It is a comprehensive and a complete system of government, dividing the powers delegated to the Commonwealth, as well as providing for a future development and expansion of those powers. A logical classification of the various powers exercisable under the Constitution would resolve them into three parts:

- (1.) General authority vested in the Federal Parliament, the Federal Executive, and the Federal Judiciary, with limitations and qualifications.
- (2.) Residuary authority of the States as defined in their respective Constitutions, confirmed and continued by sections 106, 107, and 108 of the supreme Constitution, and exercised by them through their respective legislative, executive, and judiciary organization, with limitations and qualifications.
- (3.) Power to amend the Constitution of the Commonwealth, enlarging or diminishing the area of federal authority and jurisdiction; or enlarging or diminishing the area of State authority and jurisdiction.

TRIPARTITE DIVISION OF GOVERNMENT.—It will be noticed that the authority and jurisdiction assigned to the central or general government is distributed among three departments;

- (1) The Legislature;
- (2) the Executive;
- (3) the Judiciary.

A further tripartite division of the legislative power itself is seen in the threefold mode of legislation—the legislative power being vested jointly in three bodies;

- (1) The Queen;
- (2) the Senate; and
- (3) the House of Representatives.

The Constitution of the Commonwealth is a compound, embodying the best features of both those time-honoured models, and eliminating those considered objectionable, according to the views and judgments of its framers.

This tripartite principle of division and distribution of power has been followed in the Constitution of the Commonwealth; though, of course, there are differences in the relative

### **Powers of the several organs.**

Where the government lays down general rules for the guidance of conduct, it is exercising its legislative functions. Where it is carrying those rules into effect it is exercising its executive powers. And where it is punishing or remedying the breach of them, it is fulfilling judicial duties. It by no means follows that the exercise of these different classes of functions is always entrusted to different hands. But, nevertheless, the distinctions between the functions themselves usually exist, both in central and in local matters.

The Constitution of the Commonwealth, in accordance with these time honored principles, draws a clear-cut distinction between the law making and the law enforcing agencies; the legislative power being vested in the Federal Parliament, and the Executive power being vested in the Queen, and exercisable by the Governor-General with the advice of a Federal Executive Council. The two departments are separated as clearly as they can be by language. But out of the Executive Council will spring a body whose name is not to be found in this Constitution; whose name is not legally known to the British Constitution; a body which is "the connecting link," fastening the legislative to the executive part of the Federal Government; that ministerial committee of Parliament, nominally and theoretically servants of the Crown.

### **PRECURSORS AND PROTOTYPES.**

The Parliament of the Commonwealth is not an original invention in any of its leading principles. In constructing a legislative machine for the new community they believed that they would most successfully perform their work by utilizing and adapting the materials to be found in the British, American, and Canadian Constitutions, with such developments and improvements as might be justified by reason and expediency.

The Commonwealth contains provisions for the accomplishment of changes to meet the possible requirements and potentialities of the future. We are now able to appreciate the distinction, previously emphasized, between the Commonwealth and the Constitution. Behind the Federal and State governments lies the amending power of the Commonwealth within the Constitution; and behind of the amending power and the Constitution lies the sovereign British Parliament, which enacted the Constitution **The Constitution embodies the terms of the agreement of the political partnership between the people and the States, by whose union, the Commonwealth is composed.**

This action contains a complete scheme for the regulation of the legal rights and duties of the people as members of the States in which they respectively reside; it contains a full distribution of the governing powers of the Commonwealth, not only creating a central government, but expressly confirming the Constitutions, powers and laws of the State governments so far as not inconsistent with grants of powers to the central government

It must, however, be remembered that the Constitution does not profess to be a complete scheme of government, creating organs for the discharge of all the functions and duties which a civilized community undertakes.

It pre-supposes the State governments. It assumes their existence, their wide and constant activity. It is a scheme designed to provide for the discharge of such and so many functions of government as the States do not already possess and discharge.

It expressly recognizes and confirms their existence. It is a comprehensive and a complete system of government, partitioning the totality of powers delegated to the Commonwealth, as well as providing for a future development and expansion of those powers.

In every form of government there are three departments and in every form the wise law giver must consider, what, in respect to each of these, is for its interest. Of these three,

one is the part which thinks about public affairs; the second is, which has to do with the offices; and the third is the judicial part.