



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

FOI16/183; 16/12834

3 January 2017

Mr [REDACTED]  
[REDACTED]  
[REDACTED]

By email: [REDACTED]

Dear Mr Dickson

**Freedom of Information Request FOI16/183**

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

**Summary of your request and my decision**

I, Jeff Murphy, Acting Special Adviser, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests made to the Attorney-General's Department.

On 6 December 2016 you requested access to documents relating to two alternate entities in Australia's Federal system. Specifically you sought access to:

- "1. The document/s of instrument/s that creates an entity known as the "Australian Parliament"*
- 2. The document/s or instrument/s that delegate the powers of the "Parliament of the Commonwealth" as found in the Commonwealth of Australia Constitution Act 1900 to the "Australian Parliament".*
- 3. The document/s or instrument/s that provides the "Parliament of the Commonwealth" to be continued as the "Australian Parliament".*
- 4. The document/s or instrument/s that allows any entity other than the "Parliament of the Commonwealth" to enact laws within the "Commonwealth of Australia".*
- 5. The document/s or instrument/s that allows the "Australian Parliament" to rename the "Commonwealth of Australia Constitution Act" at Clause 1, to "Australian Constitution".*
- 6. The document or instrument that evidences the current "Commonwealth" to be the "Commonwealth of Australia".*
- 7. The document/s or instrument/s that allows any Governor of a State or the Governor General of the Commonwealth to act on behalf of a Queen other than the Queen in the Sovereignty of the United Kingdom."*

Subparagraph 24A(1)(b)(ii) of the FOI Act provides:

- (1) *An agency or Minister may refuse a request for access to a document if:*
- (a) *all reasonable steps have been taken to find the document; and*
  - (b) *the agency or Minister is satisfied that the document:*
    - (i) *is in the agency's or Minister's possession but cannot be found; or*
    - (ii) *does not exist.*

The Australian Constitution provides the basic rules for the government of Australia. There are no other relevant documents.

While neither the Attorney-General nor this Department is able to provide legal advice to members of the public, the following general comments may be of assistance.

The Australian Constitution was originally enacted as part of a British statute, the *Commonwealth of Australia Constitution Act* (1900). 'Australian Constitution', 'Constitution of Australia' and 'Constitution' are often used interchangeably.

Section 1 of the Constitution provides that the legislative power of the Commonwealth is vested in a Federal Parliament. 'The Parliament', 'The Parliament of the Commonwealth', 'Commonwealth Parliament', 'Australian Parliament', 'Parliament of Australia' and 'Parliament of the Commonwealth' are often used interchangeably. Likewise, 'Commonwealth' and 'Commonwealth of Australia' are sometimes used interchangeably.

The Australian Constitution establishes the Australian States as part of the Commonwealth of Australia. The States are bound by the Australian Constitution, and the constitutions of the States must be read subject to the Australian Constitution (sections 106 and 107). Under the constitutions of each of the States, a State Parliament can make laws on any subject of relevance to that particular State. Subject to a few exceptions, the Australian Constitution does not confine the matters about which the States may make laws. The legislatures of the self-governing Territories also have the power to make laws.

Under section 2 of the Constitution, 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. It is now generally accepted that, as Queen of Australia, the Queen holds an entirely distinct position from that which she holds as Queen of the United Kingdom (or any other country). A former Chief Justice of Australia, the Hon Sir Harry Gibbs, stated that '[t]he allegiance which Australians owe to Her Majesty is owed not as British subjects but as subjects of the Queen of Australia' (*Pochi v Macphee* (1982) 151 CLR 101 at 109). This is also reflected in the 1973 amendment of the *Royal Style and Titles Act 1973*.

It follows that the Attorney-General's Department has no relevant documents and I must refuse your request.

### **Material taken into account**

I have taken the following material into account in making my decision:

- the content of the documents that would fall within the scope of your request
- the FOI Act (specifically section 24A)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, and

- the *Commonwealth of Australia Constitution Act 1900*

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### **Internal review**

Under section 54 of the FOI Act, you may apply in writing to the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email:      foi@ag.gov.au  
post:        Freedom of Information and Privacy Section  
              Strategy and Delivery Division  
              Attorney-General's Department  
              3-5 National Circuit  
              BARTON ACT 2600

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

### **Information Commissioner review**

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:      <https://forms.business.gov.au/aba/oaic/foi-review-/>  
email:        enquiries@oaic.gov.au  
post:         GPO Box 5218, SYDNEY NSW 2001  
in person:   Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

### **Questions about this decision**

If you wish to discuss this decision, please contact Quentin, FOI case manager, by telephone on (02) 6141 6666 or by email [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Jeff Murphy  
Acting Special Adviser  
Office of Constitutional Law