

The Australia Acts 1986

The Australia Act...

Australia Act 1986
No. 104 of 1985

An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation

WHEREAS the Prime Minister of the Commonwealth and the Premiers of the States at conferences held in Canberra on 24 and 25 June 1982 and 21 June 1984 agreed on the taking of certain measures to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation:

AND WHEREAS in pursuance of paragraph 51 (xxxviii) of the Constitution the Parliaments of all the States have requested the Parliament of the Commonwealth to enact an Act in the terms of this Act:

BE IT THEREFORE ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Termination of power of Parliament of United Kingdom to legislate for Australia

1. No Act of the Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to the

Constitution Section 51 (xxxviii)

Complete Legislative Independence...

Freeman DELUSION The Organised Pseudolegal Commercial Argument in Australia
BY ROBERT R. SUDY

[The Australia Act 1986](#) is often raised by OPCA adherents in Australia as having replaced the *Commonwealth Constitution 1901* without referendum. This is factually incorrect as it was solely to do with the States relationship with the UK not the Commonwealth. The theory is based on a misconception of the changes to constitutional relations between Australia and the UK that had already occurred decades earlier. As stated in the preamble, its purpose was:

"An Act to bring constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign, independent and federal nation."

<https://freemandelusion.com/wp-content/uploads/2020/11/australia-acts-1986.pdf>

The Australia Acts were put in place to properly separate UK law from the law of the Australian States. By their introduction, they solved a legal problem that occurred with the [Balfour Declaration 1926](#), and the [Statute of Westminster Act 1931](#), where the UK declared they will no longer legislate for "the dominions" (Canada, India, New Zealand, Australia etc).

While the [Statute of Westminster Adoption Act 1942](#) cut legislative ties between the Federal Parliament and UK Parliament, UK law from before the Statute of Westminster Act that was intended for the States (or former Colonies), and UK law in general, was still able to be used for State affairs. UK Acts that were around before 1931 were stuck in a kind of legal 'time warp', where even if UK Parliament repealed a UK Act it would still apply to State law. For instance, many Australian states were still using old UK shipping laws in 1931 and never bothered to write their own. When the UK amended their shipping Acts the amendments had no effect on Australian law (since the UK declared they would no longer legislate for the dominions, they could also no-longer repeal or amend the laws of the dominions), some Australian states were still stuck in the old laws, which caused havoc with trade disputes, resulting in many a judge putting their head through a wall in frustration.

Another problem was that State courts could bypass the High Court in appeals and go straight to the Privy Council in the UK, causing further headaches in Australia's court system, since the High Court still had to answer to the UK privy council. In legal terms, the Australian law system was in a tangled mess that no parliament in the world had the power to solve. In almost Monty Python hilarity, the UK couldn't even undo their own error, as they had legally bound themselves to not legislate for any of the dominions.

In the end, the solution was found in [Section 51 \(xxxviii\)](#) which gives the Commonwealth Parliament power to legislate at the request of the State parliaments. The State parliaments passed various *Request Acts* giving the Commonwealth Parliament the ability to pass the Australia Act (Cth).

This was backed by the Australia Act (UK) just in case there was any absence of power on any level, which gained its authority from section 4 of the *Statute of Westminster 1931*, which provides: "*No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.*"

This officially made the Commonwealth and State constitutions Australian property, and gave Australia complete independence from the UK. It also cut the Privy Council out of the States court system, continuing from previous legislation that enabled this on a federal level. All appeals to the Privy Council from Australian courts exercising federal jurisdiction were abolished in 1968 (*Privy Council (Limitation of Appeals) Act 1968* (Cth)) and all appeals from any decision of the High Court (other than those where a certificate might be granted under section 74 of the Constitution) were terminated by the *Privy Council (Appeals from the High Court) Act 1975* (Cth). See article regarding [Appeals to the UK Privy Council](#).

The Commonwealth Parliament did not require the use of a section 128 referendum, because the Australia Act 1986 did not alter any part of the Commonwealth Constitution, nor was there any intention of altering the Constitution, as stated in the Australia Act itself, in [Section 5](#):

"Commonwealth Constitution, Constitution Act and Statute of Westminster not affected: Sections 2 and 3 (2) above - (a) are subject to the Commonwealth of Australia Constitution Act and to the Constitution of the Commonwealth; and (b) do not operate so as to give any force or effect to a provision of an Act of the Parliament of a State that would repeal, amend or be repugnant to this Act, the Commonwealth of Australia Constitution Act, the Constitution of the Commonwealth or the Statute of Westminster 1931 as amended and in force from time to time."

While it is true that Justice Michael Kirby delivered a dissent in [Attorney-General \(WA\) v Marquet \(2003\) HCA 67](#) this was not due to a lack of a section 128 referendum. He argued that the *Australia Act* was invalid because section 106 of the *Constitution* guarantees that a State constitution may be altered only in accordance with its own provisions, hence not by the Commonwealth Parliament. However, Sections 50 and 51 of the *Constitution Act 1889 (WA)* were altered by section 14 of the *Act*, and sections 11 and 14 of the *Constitution Act 1867 (QLD)* were altered by section 13 of the *Act*. In Kirby's view was that this was inconsistent with Constitution section 106, so that the *Australia Act* was not a valid exercise of Commonwealth legislative power. A majority, however, thought that it was sufficient that the *Act* had been passed in reliance on Constitution section 51(xxxviii), which gives the Commonwealth parliament power to legislate at the request of the State parliaments.

<https://freemandelusion.com/wp-content/uploads/2020/10/attorney-general-wa-v-marquet-2003-hca-67.pdf>

Soon afterwards, however, in [***Shaw v Minister for Immigration and Multicultural Affairs \(2003\) HCA 72***](#), the whole Court (including Kirby) took a more comprehensive view: that the Australia Act in its two versions, together with the State request and consent legislation, amounted to establishing Australian independence at the date when the Australia Act came into operation, 3 March 1986. Kirby J. (from 108):

"In Attorney-General (WA) v Marquet (2003) 202 ALR 233 I expressed my reservations about the validity of the relevant parts of the Australia Acts invoked in that case. I contested the proposition that, in 1986, the United Kingdom Parliament had any legislative power to enact a law with respect to Australia's constitutional arrangements. Such power in my view belongs, and in 1986 belonged, only to the Australian people and their legislatures. So far as the federal Act is concerned, the stream could not rise higher than the source. It could not enlarge federal constitutional power or make it greater than it was. Nor, in my opinion, did s 51(xxxviii) of the Constitution provide a source for the validity of the federal Act. That Act was subject to the provisions of Chs III and V of the Constitution, including provisions with respect to the States and the requirements of s 128 concerning alteration of the Constitution. However, in Marquet, my view was not adopted by the majority of this Court. Pending a greater enlightenment, I must accept this Court's holding that the Australia Acts are valid laws."

<https://freemandelusion.com/wp-content/uploads/2020/10/shaw-v-minister-for-immigration-and-multicultural-affairs-2003-hca-72.pdf>

These two decisions from the High Court are referred to whenever the contention arises in any other court in Australia disputing the validity of the Australia Acts, as has occurred many times in the Supreme Courts of the States. You can locate these cases on this website under the Tag "[***Australia Acts 1986***](#)". Some of the most recent cases demonstrate the binding nature of these decisions on the Supreme Courts, such as in [***Southdale Stud Pty Ltd v RJR Trading Pty Ltd \[2020\] SASC 106***](#) (at 26):

"The appellant has not raised any argument of merit that is capable of challenging the validity of the Australia Act at all. Further, the existence of this Court is not dependent on the validity of the Australia Act. In any event, as the respondent submits, it is not for this Court to depart from what is manifestly 'seriously considered dicta' of the High Court as to the validity of the Australia Act, even if, against all probability, I had concluded that the Notice of Appeal contained a proposition of merit. (See Farah Constructions v Say-Dee Pty Ltd (2007) 230 CLR 89 (at 134, Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ.)"

<https://freemandelusion.com/wp-content/uploads/2020/06/southdale-stud-pty-ltd-v-rjr-trading-pty-ltd-2020-sasc-106.pdf>

Likewise in [***Commonwealth Bank of Australia v Haughton \[2020\] SASC 135***](#) (at 44):

"There is nothing in the argument to which Mr Haughton took me that affects the outcome in Marquet, nor the ruling later made in Shaw v Minister for Immigration and Multicultural Affairs. Ultimately, this point goes nowhere. .. Even if this is merely regarded as seriously considered dicta

of the High Court, it remains binding on me, Farah Constructions Pty Ltd v Say-Dee Pty Ltd (2010) 230 CLR 89, [134] (Gleeson CJ, Gummow, Callinan, Heydon and Crennan JJ)."

<https://freemandelusion.com/wp-content/uploads/2020/06/commonwealth-bank-of-australia-v-haughton-2020-sasc-135.pdf>

There was also an argument that the *Australia Act 1986* altered certain entrenched provisions of the constitutions of Queensland and Western Australia without the referendum required by these State constitutions. Section 11 of the [Constitution Act 1867 \(QLD\)](#) is entrenched by [section 53](#) of the Act, which requires a referendum if the Queensland Parliament wants to expressly or impliedly provide for the alteration of the office of the Governor of Queensland or "*in any way affects*" the specified sections.

The argument proceeds that the [Australia Acts \(Request\) Act 1985 \(QLD\)](#) requested the enactment of Commonwealth legislation which would alter the office of the Governor of Queensland and that the Queensland Act therefore required approval in a referendum in order to be valid. The argument concluded that the *Australia Act 1986* is invalid because it was not enacted pursuant to a valid request from all the affected States.

This argument was rejected by the Queensland Court of Appeal in [Sharples v Arnison \[2002\] 2 Qd R 444](#), and by the Federal Court in [Kelly v Campbell \[2002\] FCA 1125](#). The fundamental flaw is that the *Australia Acts (Request) Act 1985 (QLD)* did not of itself have the effect of expressly or impliedly altering the office of Governor. It merely requested the Commonwealth and Westminster Parliaments to do so. A request for a change does not itself affect the existing law. The request may, indeed, be rejected. If so, there could be no effect upon the law.

The assumed invalidity of the *Australia Acts 1986* in reference to these entrenched provisions being altered without referendum was also rejected by the High Court in [Attorney-General \(WA\) v Marquet \(2003\) HCA 67](#).

In Western Australia, the same contention was rejected regarding sections 50 and 51 of the [Constitution Act 1889 \(WA\)](#) by their Supreme Court in [Sprlyan v Wyborn \[2019\] WASC 227](#), referring (at 296) in agreement with the reasoning of the decision in *Sharples v Arnison* noting that before and after *Sharples*, single judges of that court had reached conclusions to more or less similar effect.

<https://freemandelusion.com/wp-content/uploads/2020/06/sharples-v-arnison-2001-qca-518.pdf>

The Timeline

The Australia Act 1986 (Cth) was passed in reliance on section 51(xxxviii) of the *Constitution*, which gives the Commonwealth Parliament power to legislate at the request and consent of the State parliaments.

The Governor-General of Australia, Sir Ninian Stephen, had reserved the Act for Her Majesty's pleasure, and upon receiving her approval, assented to the *Australia Act (Cth)* according to section 58 of the *Constitution*, on [4 December 1985](#), which would come *into* force on a date to be fixed by *Proclamation*.

“the Constitution of the Commonwealth” means the Constitution of the Commonwealth set forth in section 9 of the Commonwealth of Australia Constitution Act, being that Constitution as altered and in force from time to time;

5 “the Statute of Westminster 1931” means the Act of the Parliament of the United Kingdom known as the Statute of Westminster 1931.

10 (2) The expression “a law made by that Parliament” in section 6 above and the expression “a law made by the Parliament” in section 9 above include, in relation to the State of Western Australia, the Constitution Act 1889 of that State.

15 (3) A reference in this Act to the Parliament of a State includes, in relation to the State of New South Wales, a reference to the legislature of that State as constituted from time to time in accordance with the Constitution Act, 1902, or any other Act of that State, whether or not, in relation to any particular legislative act, the consent of the Legislative Council of that State is necessary.

Short title and commencement

17. (1) This Act may be cited as the *Australia Act 1986*.

(2) This Act shall come into operation on a day and at a time to be fixed by Proclamation.

I HEREBY CERTIFY that the above is a fair print of the Australia Bill 1986 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General

4 December 1985

Queen Elizabeth II personally assented to the *Australia Act 1986 (UK)* on [17 February 1986](#), which would come into force on a date to be fixed by *Proclamation*.



On [24 February 1986](#) she proclaimed that the *Australia Act 1986 (UK)* would come into force at 0500 Greenwich Mean Time on 3 March.

1084

STATUTORY INSTRUMENTS

1986 No. 319 (C. 8)

AUSTRALIA

The Australia Act 1986 (Commencement) Order 1986

Made - - - - 24th February 1986

In pursuance of section 17(2) of the Australia Act 1986 (a), I hereby make the following Order:—

1. This Order may be cited as the Australia Act 1986 (Commencement) Order 1986.
2. The Australia Act 1986 shall come into force on 3rd March 1986, at five o'clock, Greenwich mean time, in the morning.

Geoffrey Howe,
Her Majesty's Principal Secretary of
State for Foreign and
Commonwealth Affairs.

24th February 1986.

The Queen then came to Australia, and at a ceremony held in Government House, Canberra, on [2 March 1986](#), Queen Elizabeth II signed a *Proclamation* that the *Australia Act (Cth)* would come into force at 0500 GMT the following day, 3 March 1986. (See *Commonwealth of Australia Gazette* No S 85 of 2 March 1986, page 87)

Thus, according to both UK law and Australian law, the two versions of the *Australia Act* would commence simultaneously—the UK version at 0500 GMT in the UK and, according to the time difference, the Australian version at 1600 AEST in Canberra.



PROCLAMATION

Elizabeth II

BY HER MAJESTY
THE QUEEN OF AUSTRALIA

WHEREAS it is provided by subsection 17(2) of the *Australia Act 1986* that that Act shall come into operation on a day and at a time to be fixed by Proclamation:

NOW THEREFORE, acting with the advice of the Federal Executive Council,
WE HEREBY FIX 3 March 1986 at 5.00 a.m. Greenwich Mean Time as the day on which, and the time at which, the *Australia Act 1986* shall come into operation.



GIVEN under the Great Seal of Australia at Our Court at Government House, Canberra, on 2 March 1986.

By Her Majesty's Command,

Bob Hawke
Prime Minister

GOD SAVE THE QUEEN!

Queen then presented the signed copy of the *Proclamation*, along with the *Assent original* of the *Australia Act 1986 (UK)* to the then Australian Prime Minister Bob Hawke. As seen [here](#) Elizabeth II personally signed the *Proclamation* to bring the *Australia Act* into law herself.



[Video summary:](#)

<https://freemandelusion.com/10-v4-australia-act-1986-mp4/>

There is a misconception that the Royal Sign Manual being placed on the top of the document somehow invalidates the document and her “permission”, or oversight. See the article "[The Queen signed it at the top!](#)" where [Wayne Glew](#)'s remarks that the Royal Sign Manual on the *Australia Act 1986* is a forgery because it reads "Elyabeth" instead of "Elizabeth" is also addressed.



[Robert R. Sudy](#) (author) Website: [Freeman Delusion: The Organised Pseudolegal Commercial Argument in Australia](#) Email: robertsudy@freemandelusion.com * Like the page on [Facebook](#) Public group [Australian Pseudolaw](#) * Follow me on [Twitter](#) * Subscribe on [YouTube](#).