

## The Governor General / Letters Patent



There is a number of myths surrounding the assent of legislation, such as that the Queen needs to personally assent all legislation for it to be valid, and that the Governor General has not been properly sworn in under Letters Patent.

### The Queen needs to personally assent legislation

*"It has been declared by a number of High Court judges that the Governor-General, as the Queen's representative, possesses the prerogatives of the Crown relevant to the Federal Government's sphere of responsibility, which includes, for example, all matters relating to external affairs."* – [Volume 1 of the Final Report of the Constitutional Commission 1988](#).

The precedents were set in [Barton v Commonwealth \(1974\) 131 CLR 477](#), (Mason J); [Victoria v Commonwealth and Hayden \(1975\) 134 CLR 338](#), (Jacobs J); [New South Wales v Commonwealth \(1975\) 135 CLR 337](#). (Barwick C.J).

Pursuant to section 58 of the Constitution is regarding Royal assent to Bills, the Governor General has the discretion whether he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

#### 58. Royal assent to Bills.

When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

*Recommendations by Governor-General.*

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Here is a complete list of Commonwealth Bills that were [reserved for Her Majesty's pleasure](#).

**House of Representatives Practice, 6th edition –  
Appendix 19 - Bills reserved for the sovereign's assent and  
bills returned by the governor-general with recommended  
amendments**

**Reserved for Sovereign's Assent:**

- Customs Tariff (British Preference) Bill 1906 (failed to receive Royal Assent)
- Navigation Bill 1912 (Act No. 4 of 1913)
- Navigation Bill 1919 (Act No. 32 of 1919)
- Navigation Bill 1920 (Act No. 1 of 1921)
- Navigation Bill 1925 (Act No. 8 of 1925)
- Navigation Bill 1926 (Act No. 8 of 1926)
- Navigation (Maritime Conventions) Bill 1934 (Act No. 49 of 1934)
- Navigation Bill 1935 (Act No. 30 of 1935)
- Judiciary Bill 1939 (Act No. 43 of 1939)
- Navigation Bill 1942 (Act No. 1 of 1943)
- Royal Style and Titles Bill 1953 (Act No. 32 of 1953)
- Flags Bill 1953 (Act No. 1 of 1954)
- Privy Council (Limitation of Appeals) Bill 1968 (Act No. 36 of 1968)
- Royal Style and Titles Bill 1973 (Act No. 114 of 1973)
- Privy Council (Appeals from the High Court) Bill 1975 (Act No. 33 of 1975)

**[Volume 1 of the Final Report of the Constitutional Commission 1988:](#)**

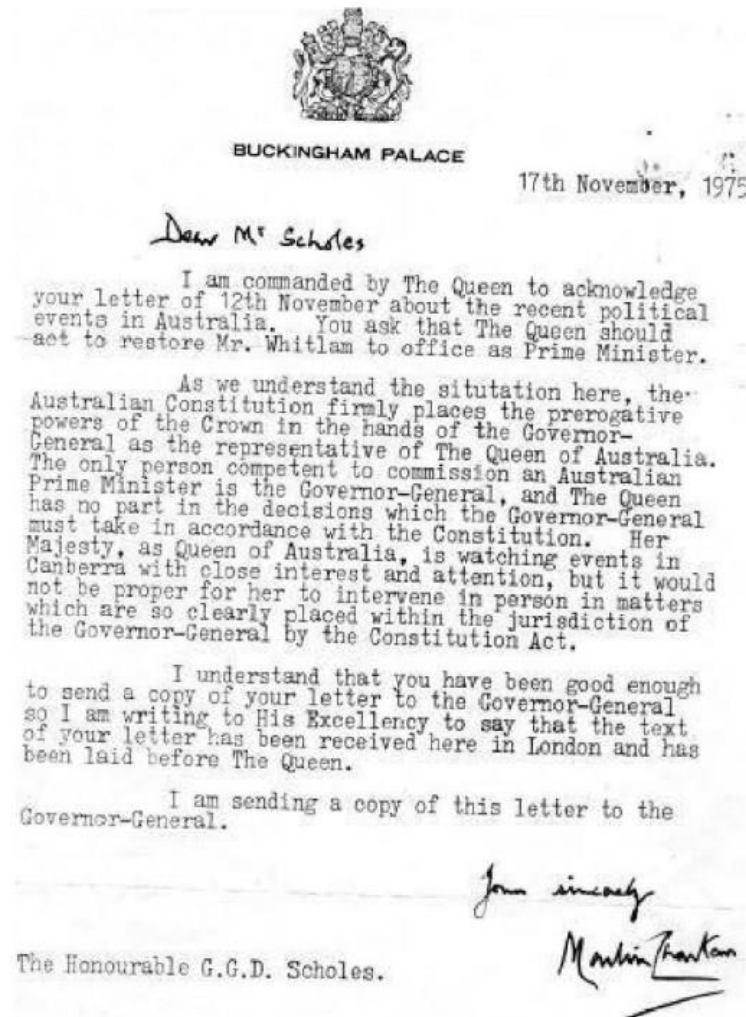
*“The Queen is empowered by section 2 of the Constitution to appoint a Governor-General who ‘shall be Her Majesty’s representative’. Section 61 of the Constitution vests the executive power of the Commonwealth in the Queen and declares that it is exercisable by the Governor-General as the Queen’s representative. These powers are, of course, consistent with British constitutional practice, exercised on the advice of Australian Ministers (except in those very rare cases which are said to come within the ‘reserve powers’ of the Crown). On those occasions when the Queen acts in her own capacity, such as in appointing the Governor General, she also acts on the advice of Australian Ministers, rather than British ones, in accordance with the principle established at the Imperial Conference of 1926.”*

At the Imperial Conference of 1926, agreement was reached between all dominions of the then British Empire, which resulted in the [Balfour Declaration 1926](#). The Balfour Declaration declared the United Kingdom and the Dominions to be:

*“...autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.”*

It was decided that the Governors-General, the representatives of the King in each dominion, should no longer also serve automatically as the representative of the British government in diplomatic relations between the countries.

The Queen herself, has stated that she has no powers to intervene in matters clearly placed within the responsibilities of the Governor General. There is also a recognition of her position as “Queen of Australia” (as opposed to the “Queen of England”) and the differences for her role that this alternate title represents.



### The Governor General has not been sworn in under Letters Patent

In [Pham v Secretary, Department of Education, Employment and Workplace Relations \[2009\] FCA 1310](#) the applicant contended that the judges appointment was invalid as the Governor General had not been properly appointed:

*“It was suggested that the Governor General was not validity appointed, and thus my appointment was not valid. The Applicant contended that there is no record from the Privy Council to indicate that the Queen made a valid appointment of the Governor-General. Putting aside the question of whether the Constitution requires such appointments of the Queen to made ‘in Council’ or with the advice of the Privy Council, I must presume that the appointment of the Governor-General is valid without at least some evidence or basis to the contrary.*”

*I observe that a similar argument was put before Justice Goldberg in the ACCC v Purple Harmony Plates Pty Ltd [2001] FCA 1062. At [27] his Honour stated:*

*“I reject the respondents’ submission that the Governors General have not been properly appointed and that legislation assented to by the Governors General has not been validly assented to. On 29 October 1900, Queen Victoria issued Letters Patent constituting the office of Governor General of the Commonwealth of Australia. Those Letters Patent were passed under the seal of the United Kingdom and issued by Warrant under the Queen’s Sign Manual: Commonwealth Gazette (No 1), 1 January 1901. The first Governor General, Lord Hopetoun, was appointed to his office in accordance with those Letters Patent. The current Letters Patent were issued by Queen Elizabeth II on 21 August 1984 and gazetted in the Commonwealth Special Gazette (No S334), 24 August 1984. The Governor General at the time the application was filed, Sir William Deane, was appointed to his office in accordance with the current Letters Patent by Commission dated 29 December 1995 passed under the Royal Sign Manual and the Great Seal of Australia and took the oath of allegiance and prescribed oath of office on 16 February 1996: Commonwealth Special Gazette (No S66), 19 February 1996. As each of the Governors General have been validly appointed, there is no merit in the respondents’ contentions that all members of parliament, ministers of State and justices were invalidly appointed or that the Act is invalid.”*

*In relation to my own appointment, the Governor-General was appointed to his office in accordance with the current Letters Patent (as amended on 11 May 2003) by Commission dated 29 July 2003 passed under the Royal Sign Manual and the Great Seal of Australia, and he took oath of allegiance and prescribed oath of office on 11 August 2003 (see Commonwealth Special Gazette (No S309), 11 August 2003).”*

<https://freemandelusion.com/wp-content/uploads/2019/05/pham-v-secretary-department-of-education-employment-and-workplace-relations-2009-fca-1310.pdf>

The Letters Patent “as amended” at the time of His Honours appointment was the “[\*\*Office of Governor-General of the Commonwealth of Australia \(Amendment\) – 11/05/2003\*\*](#)”

<https://freemandelusion.com/wp-content/uploads/2018/07/office-of-governor-general-of-the-commonwealth-of-australia-amendment-11052003.pdf>

See [\*\*Special Gazette No. S309\*\*](#) dated 11 August 2003.

<https://freemandelusion.com/wp-content/uploads/2018/07/special-gazette-no.-s309-11-august-2003.pdf>

This amended [\*\*Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 21 August 1984\*\*](#).

<https://freemandelusion.com/wp-content/uploads/2018/07/letters-patent-relating-to-the-office-of-governor-general-of-the-commonwealth-of-australia-21-august-1984.pdf>

See [\*\*Special Gazette No. S334\*\*](#) dated 24 August 1984.

<https://freemandelusion.com/wp-content/uploads/2018/07/special-gazette-no.-s334-24-august-1984.pdf>

This was repealed by the new “[Letters Patent Relating to the Office of Governor-General of the Commonwealth of Australia 21 August 2008](#)”.

<https://freemandelusion.com/wp-content/uploads/2018/07/letters-patent-relating-to-the-office-of-governor-general-of-the-commonwealth-of-australia-21-august-2008.pdf>

See [Special Gazette No. S179](#) dated 9 September 2008.

<https://freemandelusion.com/wp-content/uploads/2018/07/special-gazette-no.-s179-9-september-2008.pdf>

Many of the cases submitted by [The Institute of Taxation Research and Wayne Levick](#) engaged in the so-called “*interregnum* argument” based upon an asserted deficiency in the appointment of Lord Gowrie VC as Governor-General so therefore the giving of Royal Assent to the *Income Tax Assessment Act 1936*. This argument is based on the proposition that, at the time when Lord Gowrie gave his assent, His Majesty King George V, who had appointed Lord Gowrie on 20 December 1935, had died on 20 January 1936 and that Lord Gowrie’s commission was not gazetted until 23 January 1936. It is argued that the Letters Patent, which were the source of the appointment of Lord Gowrie, expired with the death of the King and that no new Letters Patent were issued until 10 January 1938 after King George VI ascended the throne of the United Kingdom.

This premise has been rejected in a multitude of cases, such as by Hill J in [Deputy Commissioner of Taxation v Levick](#) (at 26-33), and [McKewins Hairdressing and Beauty Supplies Pty Ltd v Deputy Commissioner of Taxation \[2000\] HCA 27](#) where Gummow J noted (at 8):

*“Further, the text of the Constitution itself points to the efficacy of the Royal Assent given to the Act. The statute was assented to on 2 June 1936. Section 58 of the Constitution states: “When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen’s assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen’s name, or that he withholds assent, or that he reserves the law for the Queen’s pleasure.” Section 58 is to be read with s 4 of the Constitution. This states: “The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being ...”*

*Lord Gowrie answered that description for the purposes of s 58 because he had been appointed by King George V pursuant to s 2 of the Constitution. This provides: “A Governor-General appointed by the Queen shall be Her Majesty’s representative in the Commonwealth ...”*

<https://freemandelusion.com/wp-content/uploads/2018/07/mckewins-hairdressing-and-beauty-supplies-pty-ltd-v-deputy-commissioner-of-taxation-s123-1999-2000-hca-27.pdf>



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