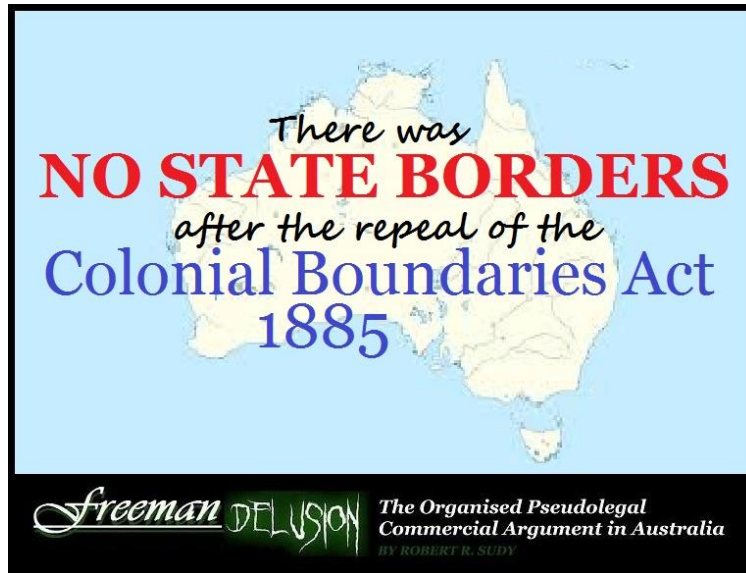


## Australia has no State borders



It is a common premise among some constitutional theorists in Australia such as [Wayne Glew](#), that because the *Colonial Boundaries Act 1895* did not apply to the States after Federation, there exists no borders between States. One example of this can be found on page 60 and 63 in [Steven Spiers](#) "Realms and Man" where he states "...the repeal of the Colonial Boundaries Act 1875 removing any border from New South Wales as at Constitution on the 1st January 1901." (Note the wrong date - it's 1895 not 1875) On page 63 he explains this further:

*"Clause 8 of the Commonwealth of Australia Constitution Act July 1900 UK/PGA repealed the Colonial Boundaries Act 1875 [1895] leaving the State of New South Wales without a border as civilians united in a Federal Body called the Commonwealth of Australia. So what is the "jurisdiction" of the New South Wales Policy Enforcer on "civilians" of the Commonwealth of Australia, and what is a State of the Commonwealth of Australia, formerly a Colony with its own borders now repealed. If the State has no borders, and under Clause 5 of the Commonwealth of Australia Constitution Act July 1900 UK/PGA has its line of authority in the Constitution at Clause 9 of said act, then what exactly is a "State" of the Commonwealth of Australia?"*

During the COVID-19 pandemic, [Rodney Culleton](#) of the [Great Australian Party](#) also consistently told his followers that there are no State borders hence there can be no border restrictions. He also took offence to checkpoint police and anyone else referring to these boundaries as "borders" and instead called them "political limitations" which is quite the logical fallacy. The terms "border" and "boundary" basically mean the same thing, from different perspectives.

**By definition, a border is the outer edge of something, while a boundary is the dividing line or location between two areas.**

The limits of a State ARE the boundaries, and they are actual physical geographic boundaries, as evidenced by fact the original *Letters Patent* that established the particular colony provides the latitude and longitude points to define the exact location of the boundary.

Covering clause 8 of the *Constitution* provides:

*"After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act."*

Note it doesn't state that the boundaries themselves were abolished, but the effect of the *Colonial Boundaries Act 1895*. So what was the *Colonial Boundaries Act 1895* about? It certainly didn't establish the boundaries, they all existed prior to 1895, from the beginning of whatever colony.

## Colonial Boundaries Act 1895

- 1**      **Alteration of boundaries of colony.**
- (1) Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order in Council or letters patent the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony.
- (2) Provided that the consent of a self-governing colony shall be required for the alteration of the boundaries thereof.
- (3) In this Act "self-governing colony" means any of the colonies specified in the schedule to this Act.
- 2**      **Short title.**
- This Act may be cited as the Colonial Boundaries Act, 1895.

### SCHEDULE SELF-GOVERNING COLONIES

Canada.	Victoria.	Western Australia.	Cape of Good Hope.
Newfoundland.	South Australia.	Tasmania.	Natal.
New South Wales.	Queensland.	New Zealand.	

The answer is relatively simple, there were no borders removed by this repeal. [The Colonial Boundaries Act 1895](#) merely dealt with the manner of which the colonial boundaries could be altered. Before federation, the colonial boundaries could be altered by the Queen in Council under the *Colonial Boundaries Act 1895* with the consent of the affected Colonial Parliaments.

Since federation, section 123 of the *Commonwealth Constitution* provides the only constitutional avenue for an alteration in State borders. It provides:

*"The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected."*

This is confirmed by [Page 378](#) of Quick and Garran's *Annotated constitution of the Australian Commonwealth*:

The purpose of the Act is to confer general statutory authority on the Queen to alter the boundaries of a self-governing colony, with the consent of that colony, without the necessity of resorting to Imperial legislation in every case.

The reason for repealing the Act, so far as it applied to colonies which become States of the Commonwealth, is that the Constitution itself makes provision for the alteration of the boundaries of States. Sec. 123 provides that the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of a majority of voters in the State, alter the limits of the State.

Accordingly, it is only possible for the borders of a State to be altered by Commonwealth legislation enacted under s 123 which has been approved by both that State's Parliament and by a referendum of that State's electorate. Where the alteration affects the borders of more than one State, then the requisite approvals will be required from all affected States.

Ultimately, there are two methods here of boundary alteration here, one prior to Federation, the other after Federation. So the following question needs to be asked: Was there either (a) any alteration of the borders by the the Queen in Council under the *Colonial Boundaries Act 1895*, or (b) any alteration of the borders under section 123 approved by referendum of all the States? No there wasn't, so no borders were affected by this repeal.

#### **Further provisions which show the existence of State territory post Federation:**

Section 111 - States may surrender territory -

*"The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth."*

Section 124 - Formation of new States -

*"A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected."*

Section 121 - New States may be admitted or established -

*"The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit."*

Extract from the Public Lecture Series of the High Court of Australia. Dr Gerard Carney [The Story behind the Land Borders of the Australian States](#) - A Legal and Historical Overview (10 April 2013):

*"Writing in 1900, Quick & Garran (at 975) considered the requirement of electoral approval as an "extraordinary limitation" on the power of State Parliaments. This additional approval had been inserted into clause 123 subsequent to the Convention Debates, in response to the failure of the*



*Convention Bill to be approved by the requisite majority in NSW. Today, referendum approval for any alteration in the State borders seems entirely appropriate and justified.*

*However the late inclusion of State electoral approval in the drafting of s 123, creates difficulty with ss 111, 121 and 124 of the Constitution. Section 111 enables a State Parliament to surrender part of its territory to the Commonwealth. Section 121 enables the Commonwealth Parliament to establish new States, which by s 124, can occur by an existing State giving up part of its territory to form a new State, or by the union of two or more States or parts thereof. In each of these circumstances, State borders are likely to change, but only the consent of the relevant State Parliament is expressly required.*

*Hence the issue: whether s 123 applies in each of these circumstances to require referendum approval? Not surprisingly, Quick & Garran argue against this on the basis that each of the specific powers in ss 111, 121 and 124 should not be read down by s 123. (The NT was surrendered by SA to the Cth under s 111, approved in Paterson v O'Brien (1977) 138 CLR 276 without any SA or NT referendum.) While constitutional arguments can be mounted each way on this issue, I suggest that each of the State electorates in the 21st century would expect their approval to be sought before the borders of their State were altered in any respect."*

<https://freemandelusion.com/wp-content/uploads/2019/01/the-story-behind-the-land-borders-of-the-australian-states.pdf>

The complete ss 49 from [Page 378-379](#) of Quick and Garran's *Annotated constitution of the Australian Commonwealth*:

**§ 49. "Colonial Boundaries Act."**

This is an Act to provide, in certain cases, for the alteration of the boundaries of self-governing colonies. It provides as follows:—

- (i.) Where the boundaries of a colony have, either before or after the passing of this Act, been altered by Her Majesty the Queen by Order-in-Council or letters-patent, the boundaries as so altered shall be, and be deemed to have been from the date of the alteration, the boundaries of the colony.
- (ii.) Provided that the consent of a self-governing colony shall be required for the alteration of the boundaries thereof.
- (iii.) In this Act "self-governing colony" means any of the colonies specified in the schedule to this Act.

SCHEDULE.

SELF-GOVERNING COLONIES.

Canada.	South Australia.	New Zealand.
Newfoundland.	Queensland.	Cape of Good Hope.
New South Wales.	Western Australia.	Natal.
Victoria.	Tasmania.	

The effect of this clause is to make the Colonial Boundaries Act apply, not to the separate States of the Commonwealth, but to the Commonwealth as a whole—just as it applies to the Dominion of Canada as a whole. In other words, the colonies which become States are in effect struck out of the schedule, and the Commonwealth of Australia is substituted.

The purpose of the Act is to confer general statutory authority on the Queen to alter the boundaries of a self-governing colony, with the consent of that colony, without the necessity of resorting to Imperial legislation in every case.

The reason for repealing the Act, so far as it applied to colonies which become States of the Commonwealth, is that the Constitution itself makes provision for the alteration of the boundaries of States. Sec. 123 provides that the Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of a majority of voters in the State, alter the limits of the State.

Now, therefore, the Colonial Boundaries Act only applies to the alteration of the boundaries of the Commonwealth. Apart altogether from that Act, the Commonwealth has power under section 121 to alter the boundaries of the Commonwealth by admitting new States; and sec. 122 contemplates, and perhaps impliedly gives, the power to accept or acquire new territories.

The first question is—What constitutes the consent of the Commonwealth within the meaning of the Colonial Boundaries Act? The consent of a colony is ordinarily given by its Legislature; and the consent here intended is evidently the consent of the Parliament of the Commonwealth. It may indeed be contended that by the Commonwealth, which is described in the Colonial Boundaries Act, as "a self-governing colony," is meant the community; and that the consent of the community cannot be given either by the Parliament of the Commonwealth or by the Parliaments of the States, or both, but only by the community in quasi-sovereign organization—i.e., by the amending power. This, however, was certainly not the intention of the framers of the Colonial Boundaries Act, or of the Federal Constitution; whatever may be the teachings of political science as to the seat of quasi-sovereignty in the Commonwealth. The consent of Canada under the Colonial Boundaries Act is clearly to be given by the Parliament of Canada; and the consent of the Commonwealth means the consent of the Parliament of the Commonwealth. That is to say, the word "Commonwealth" is used here as in other provisions as referring to the central governing organs of the Commonwealth. (See notes § 17 and § 43 "Commonwealth," *supra*.)

Where the alteration of the boundaries of the Commonwealth involves merely territory which is not part of any State, the clause presents no further difficulty; but where it involves the alteration of the limits of a State, it becomes a question whether in addition to the consent of the Parliament of the Commonwealth, the consent of the Parliament and electors of the State is also necessary. The Colonial Boundaries Act, as amended by the Constitution Act, provides that Orders in Council, or letters patent, altering the boundaries of the Commonwealth, shall be valid if made with the consent of the Commonwealth; sec. 123 of the Constitution provides that the Parliament of the Commonwealth may, with the consent of the Parliament and a majority of the electors of a State, alter the limits of the State. The latter section certainly implies that the Parliament of the Commonwealth may not alter the limits of a State without such consent. The question is whether, in consenting to an alteration of boundaries by the Queen, the Parliament can be said to alter the limits of a State. Under sec. 123, the Parliament of the Commonwealth makes the alteration; under the Colonial Boundaries Act, the Queen makes the alteration, and the Parliament of the Commonwealth merely consents. It is certainly open to argument that the consent of the Commonwealth, in such a case, is in effect an alteration of the limits of a State by the Commonwealth, and therefore that the Parliament of the Commonwealth cannot lawfully give such consent without the consent of the Parliament of the State, and the approval of a majority of the electors.

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