For peace, order and good government

The words *"for peace, order and good government"* appear in the Commonwealth and State Constitutions in relation to the legislative powers of the parliaments. For example, section 51 of the *Commonwealth Constitution* begins with the words:

> *"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to…"*

Similarly, by reference to the legislative powers of state parliaments, ***Section 5 of the Constitution Act 1902 (NSW)*** states:

> *"The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever."*

There is an OPCA theory that unless a law is in fact "for peace, order and good government" then it is beyond legislative powers, for example if a law isn't personally considered to be "good" or "peaceful" then it is invalid.

From ***Union Steamship Co of Australia Pty Ltd v King [1988] HCA 55*** (from 13):

> *"The scope and content of the power conferred by s.5 of the Constitution Act 1902 (N.S.W.) to make laws "for the peace, welfare, and good government of New South Wales" is still a topic of current debate: see BLF v. Minister for Industrial Relations (1986) 7 NSWLR 372. This may seem somewhat surprising. The explanation is historical and it is to be found in the evolving relationships between the United Kingdom and its colonies, especially the relationships with the Australian colonies and, after federation, with the Commonwealth of Australia and the Australian States.*

The power to make laws "for the peace, welfare, and good government" of a territory is indistinguishable from the power to make laws "for the peace, order and good government" of a territory. Such a power is a plenary power and it was so recognized, even in an era when emphasis was given to the character of colonial legislatures as subordinate law-making bodies. The plenary nature of the power was established in the series of historic Privy Council decisions at the close of the nineteenth century: Reg. v. Burah (1878) 3 AppCas 889; Hodge v. The Queen (1883) 9 AppCas 117; Powell v. Apollo Candle Company (1885) 10 AppCas 282; Riel v. The Queen (1885) 10 AppCas 675. They decided that colonial legislatures were not mere agents or delegates of the Imperial Parliament.

Lord Selborne, speaking for the Judicial Committee in Burah, said (at p 904) that the Indian Legislature "has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself". Later, Sir Barnes Peacock in Hodge, speaking for the Judicial Committee, stated (at p132) that the legislature of Ontario enjoyed by virtue of the British North America Act 1867 (Imp.): "authority as plenary and as ample within the limits prescribed by sect.92 as the Imperial Parliament in the plenitude of its power possessed and could bestow.

Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament …" In Riel Lord Halsbury L.C., delivering the opinion of the Judicial Committee, rejected (at p 678) the contention that a statute was invalid if a court concluded that it was not calculated as a matter of fact and policy to secure the peace, order and good government of the territory. His Lordship went on to say (at p 678) that such a power was "apt to authorize the utmost discretion of enactment for the attainment of the objects pointed to". In Chenard and Co. v. Joachim Arissol (1949) AC 127, Lord Reid, delivering the opinion of the Judicial Committee, cited (at p 132) Riel and the comments of Lord Halsbury LC with evident approval. More recently Viscount Radcliffe, speaking for the Judicial Committee, described a power to make laws for the peace, order and good government of a territory as "connot(ing), in British constitutional language, the widest law-making powers appropriate to a Sovereign": Ibralebbe v. The Queen (1964) AC 900, at p 923.

These decisions and statements of high authority demonstrate that, within the limits of the grant, a power to make laws for the peace, order and good government of a territory is as ample and plenary as the power possessed by the Imperial Parliament itself. That is, the words "for the peace, order and good government" are not words of limitation. They did not confer on the courts of a colony, just as they do not confer on the courts of a State, jurisdiction to strike down legislation on the ground that, in the opinion of a court, the legislation does not promote or secure the peace, order and good government of the colony. Just as the courts of the United Kingdom cannot invalidate laws made by the Parliament of the United Kingdom on the ground that they do not secure the welfare and the public interest, so the exercise of its legislative power by the Parliament of New South Wales is not susceptible to judicial review on that score. Whether the exercise of that legislative power is subject to some restraints by reference to rights deeply rooted in our democratic system of government and the common law (see Drivers v. Road Carriers (1982) 1 NZLR 374, at p 390; Fraser v. State Services Commission (1984) 1 NZLR 116, at p 121; Taylor v. New Zealand Poultry Board (1984) 1 NZLR 394, at p 398), a view which Lord Reid firmly rejected in Pickin v. British Railways Board (1974) AC 765, at p 782, is another question which we need not explore."

https://freemandelusion.com/wp-content/uploads/2019/06/union-steamship-co-of-australia-pty-ltd-v-king-1988-hca-55.pdf

Similarly in ***Essenberg v The Queen [2000] HCATrans 297*:**

> *GUMMOW J: "Now these words, "for peace, order and good government" are words of expansion, not contraction, you see – they are not words of limitation."*
>
> *McHUGH J: "They do not limit the powers. In fact they arguably have no legal effect whatever, and that is the doctrine of this Court. We do not make a decision as to whether the law is for the peace, for the order, for the good government. It is assumed that if Parliament makes it, it is, and the real question is, is it a law with the same respect to trade and commerce in other countries or whatever the relevant law of Parliament relies on, but this Court has never attempted to say that a law, on the subject of trade and commerce, for example, is not "for peace, order and good government". It is, in effect, a parliamentary expression rather than a legal expression. It does not limit Parliament's power; it is said to expand them."*

https://freemandelusion.com/wp-content/uploads/2019/05/essenberg-v-the-queen-2000-hcatrans-297.pdf

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**.