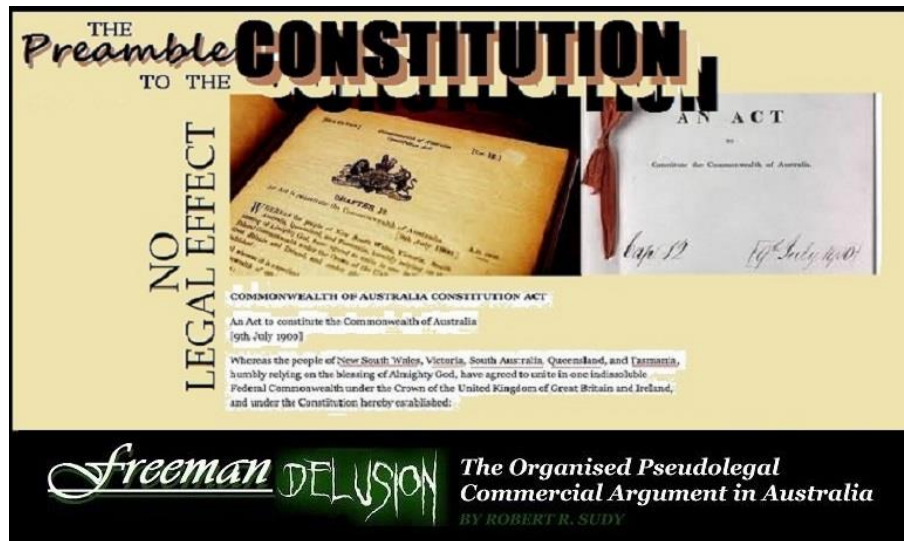


The Preamble to the Constitution



The preamble of the *Commonwealth Constitution Act* is relied on by many theorists to insist on various contentions regarding our constitutional relations with the UK, and also adherence to Christian principles.

Although often referred to as a preamble to the *Constitution*, this is factually incorrect. It is generally accepted that everything below Section 9 is the *Constitution*, and everything above it is part of the *Constitution Act*. Even Section 9 itself provides: "*The Constitution of the Commonwealth shall be as follows...*" In reality, the *Commonwealth Constitution* actually has no preamble, it is the *Constitution Act* that has a preamble, and even the covering clauses fall outside of the "four corners" of the *Commonwealth Constitution*.

The 1998 Constitutional Convention recommended that it was time that the *Constitution* had a new preamble which made reference, amongst other things, to shared national values, as is common in the constitutional preambles of many other countries around the world. The Prime Minister was technically correct to make a distinction between the British Act of Parliament called the *Commonwealth of Australia Constitution Act* (which begins with the existing preamble), and the *Constitution* proper (which has no preamble of its own) commencing at section 9 of the *Constitution Act*.

Although they mean little in terms of Constitutional law, as Anne Winckel points out in "[The Contextual Role of a Preamble in Statutory Interpretation](#)", the preamble and covering clauses have a contextual and a constructive role in statutory interpretation, and are therefore a useful tool to understand the legal meaning of the *Constitution*. The High Court did this in [Kable v Director of Public Prosecutions \(NSW\) \[1996\] HCA 24](#) in explaining the concept of a unified court system established under Chapter III, and in [Joosse & Anor v Australian Securities and Investment Commission \[1998\] HCA 77](#), explaining what law is to be applied in the courts of Australia.

<https://freemandelusion.com/wp-content/uploads/2022/04/Anne-Winckel-The-Contextual-Role-of-a-Preamble-in-Statutory-Interpretation.pdf>

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

It is important to note that "*The Crown of the United Kingdom of Great Britain and Ireland*" that appears in the preamble ceased to exist after the [Anglo-Irish treaty of 1922](#) put an end to the union of Great Britain and Ireland, creating a smaller dominion of which George V remained king. "The Crown of the United Kingdom of Great Britain and Ireland" became "*The Crown of the United Kingdom of Great Britain and Northern Ireland*". The Parliament in Westminster ceased to represent all of Ireland, which required a change in its style. Therefore, the [Royal and Parliamentary Titles Act 1927 \(17 Geo 5 c. 4\)](#) changed the style of Parliament, which would "*hereafter be known as and styled the Parliament of the United Kingdom of Great Britain and Northern Ireland*". This is just one example of how history has altered the literal meaning of the preamble. Both this change, and the following were changes that occurred outside Australia, and outside the "four corners" of the *Commonwealth Constitution*.

At the time of Federation it may be accepted that the preamble was binding on Australia, as at that time Australia was bound by section 2 of the [Colonial Laws Validity Act 1865](#) which provided that colonial laws were invalid if they were repugnant with UK law. But since the passing of both the [Statute of Westminster Adoption Act 1942](#) (section 2) on a federal level, and the [Australia Acts 1986](#) (section 3) on a State level, no law made by any parliament is void on the ground that it is repugnant to UK law.

As held in [Volume 1 of the Final Report of the Constitutional Commission 1988](#):

"The sovereign status of Australia resulted in the rejection of earlier colonial restrictions on the interpretation of the powers of the Commonwealth. The development of Australian nationhood did not require any change to the Australian Constitution. It involved, in part, the abolition of limitations on constitutional power that were imposed from outside the Constitution, such as the Colonial Laws Validity Act 1865 (Imp) and restricting what otherwise would have been the proper interpretation of the Constitution, by virtue of Australia's status as part of the Empire. When the Empire ended and national status emerged, the external restrictions ceased, and constitutional powers could be given their full scope."

As also confirmed in many other sources, including these [Parliament and Senate documents](#)... (Note: the 'covering clauses' show the various changes since 1901)

Note 3. *Covering clause 5 – Cf. the Statute of Westminster Adoption Act 1942.*
(Cf. means "compare")

The legal effect of the preamble is discussed in the Conclusion to "[First Words: The Preamble to the Australian Constitution](#)"

"Despite what some of the Constitution's framers may have anticipated, it is not surprising that the present Preamble has played a very limited role in the interpretation of the Constitution. It must not be forgotten that the Preamble does not accompany the Constitution itself, but rather sits at the head of the Imperial enactment to which the Constitution was appended for passage through the British Parliament. That the Preamble has received limited attention from judges can be attributed not only to this placement outside the 'four corners' of the Constitution, but also to the limited and relatively inconsequential matters with which it deals."

<https://freemandelusion.com/wp-content/uploads/2018/07/first-words-the-preamble-to-the-australian-constitution.pdf>

The first 3 paragraphs are (excluding the long and short title) as follows:

"Whereas the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established: And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen Be it therefore enacted by the Queen's most Excellent Majesty, and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows"

Following the constitutional technique which has been approved in the [Engineers Case \(1920\) 28 CLR 129](#), plain English should be used. It is also important to use connotation rather than denotation (See Engineers at 142-3 and 151; and also see [Grain Pool of Western Australia v Commonwealth \(2000\) 202 CLR 479](#) at 493). I believe it was Galdron J who made the very good point that the Constitution should be read as if it is being read for the very first time, and to apply a modern meaning.

It's also important to understand that the first few sections of any Act merely provide context, and in the case of Westminster acts are full of formalities that are legal idioms (ie: they don't have words that are legally binding.) A good example is *"for peace, order and good government"*. This doesn't create anything that is legally actionable, as it can be debated from sunrise to sunset what is *"peace, order and good government"* without any definitive answer. In the first paragraph *"Almighty God"* is a legal idiom, as the question of *"which God?"* springs to mind. Christian? Tibetan? Islamic? This phrase has no legal effect. Great Britain and Ireland is the United Kingdom, and expresses that the Crown creating the Act is the Crown of the UK.

The bits in the first paragraph that provides some legal device is:

"the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania ... have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established"

This simply means that the States have agreed to form a federal parliament, which is answerable to the UK parliament and the Constitution. UK parliament relinquished power to legislate for Australia in 1931, leaving the Crown in Australia's hands, so what we are left with is that we have a hierarchy of:

Constitution > Crown > Federal Government > States. This first paragraph simply describes a constitutional monarchy.

The second paragraph reads:

"And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen"

This paragraph is stating that the UK parliament has agreed with that colonies have the right to Federation, and they will grant it. The third paragraph, the one I think many Christian-orientated theorists are most concerned with is:

"Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows..."

"*Spiritual and Temporal*" is a reference to the House of Lords in the UK (their Senate), and "*Commons*" is the House of Commons (their House of Representatives). Remember, the House of Lords is not elected, and are members of the clergy, and the nobility from time to time. Hence "*spiritual*" (the clergy) and "*temporal*" (nobility, as they are from time to time). Also, the House of Commons are elected commoners, hence, "*Lords Commons*". This paragraph simply states that the Act has passed through both houses of UK Parliament, and is given Royal Assent.

A summary of the first three paragraphs could be:

"The colonies of Australia has requested to unite under a Federation, in a Constitutional Monarchy. UK Parliament recognizes this, and has advised the Monarch. The Act has passed through both houses of Parliament, and is now given Royal Assent. It is as follows..."



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